



EUROPEAN PARLIAMENT

2014 - 2019

Plenary sitting

A8-0141/2015

24.4.2015

*****I**
REPORT

on the proposal for a regulation of the European Parliament and of the Council 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
(COM(2014)0111 – C7-0092/2014 – 2014/0059(COD))

Committee on International Trade

Rapporteur: Iuliu Winkler

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	45
OPINION OF THE COMMITTEE ON DEVELOPMENT	49
PROCEDURE.....	74

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council 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

(COM(2014)0111 – C7-0092/2014 – 2014/0059(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2014)0111),
 - having regard to Article 294(2) and Article 207 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0092/2014),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on International Trade and the opinion of the Committee on Development (A8-0141/2015),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) Natural mineral resources in conflict-affected or high risk areas – although holding great potential for development – can be a cause of dispute where their revenues are fuelling the outbreak or

Amendment

(1) Natural mineral resources in conflict-affected or high risk areas – although holding great potential for development – can be a cause of dispute where their revenues are fuelling the outbreak or

continuation of violent conflict, undermining **national** endeavours towards development, good governance and the rule of law. In these areas, breaking the nexus between conflict and illegal exploitation of minerals is critical **to** peace and stability.

continuation of violent conflict, undermining endeavours towards development, good governance and the rule of law. In these areas, breaking the nexus between conflict and illegal exploitation of minerals is **a** critical **element in guaranteeing** peace, **development** and stability.

Amendment 2

Proposal for a regulation Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Human rights abuses are common within the extractive industry and may include child labour, sexual violence, enforced disappearance, forced resettlement and the destruction of ritually or culturally significant sites.

Amendment 3

Proposal for a regulation Recital 2

Text proposed by the Commission

Amendment

(2) The issue concerns resource-rich **regions** where the challenge posed by the desire to **minimise** the financing of armed groups and security forces has been taken up by governments and international organisations together with business operators and civil society organisations.

(2) The issue concerns resource-rich **areas** where the challenge posed by the desire to **prevent** the financing of armed groups and security forces has been taken up by governments and international organisations together with business operators and civil society organisations, **including women's organisations that are at the forefront of drawing attention to the exploitative conditions imposed by these groups, as well as to rape and violence used to control local populations.**

(The amendment resulting in the replacement of the word 'regions' by

*'areas' applies throughout the text.
Adopting it will necessitate corresponding
changes throughout).*

Justification

In the interest of internal legal consistency, all references to "regions" should be amended to "areas", to better reflect the definition contained in Article 2, which speaks only of "areas" rather than "regions."

Amendment 4

Proposal for a regulation Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) This Regulation is one of the ways of eliminating the financing of armed groups by means of controlling trade of minerals from conflict regions; this does not alter the fact that the European Union's foreign and development policy actions should focus on countering local corruption and the porosity of borders, and on providing training for local populations and their representatives in order to highlight abuses.

Justification

This regulation should be seen as a means rather than an end, with a view to combating trafficking.

Amendment 5

Proposal for a regulation Recital 7

Text proposed by the Commission

Amendment

(7) On 7 October 2010, the European Parliament *passed a Resolution calling for*

(7) In its resolutions of 7 October 2010, of 8 March 2011, of 5 July 2011 and of 26

the Union to legislate along the lines of the US 'conflict minerals' law alias Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and the Commission announced in its Communications of 2011 and 2012 its intention to explore ways of improving transparency throughout the supply chain, including aspects of due diligence. In the latter communication and in line with the commitment it had made at the May 2011 OECD Ministerial Council, the Commission also advocated greater support for and use of the OECD Guidelines for Multinational Enterprises, and of the OECD Due Diligence Guidance – even outside the OECD membership.

February 2014, the European Parliament *called* for the Union to legislate along the lines of the US 'conflict minerals' law alias Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and the Commission announced in its Communications of 2011 and 2012 its intention to explore ways of improving transparency throughout the supply chain, including aspects of due diligence. In the latter communication and in line with the commitment it had made at the May 2011 OECD Ministerial Council, the Commission also advocated greater support for and use of the OECD Guidelines for Multinational Enterprises, and of the OECD Due Diligence Guidance – even outside the OECD membership.

Amendment 6

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) Union citizens and civil society actors have raised awareness with respect to companies operating under the Union's jurisdiction for not being held accountable for their potential connection to the illicit extraction and trade of minerals from conflict regions. The consequence is that such minerals, potentially present in consumer products, link consumers to conflicts outside the Union. To this end, citizens have requested, notably through petitions, that legislation be proposed to the European Parliament and the Council holding companies accountable under the Guidelines as established by the UN and OECD.

Amendment

(8) Union citizens and civil society actors have raised awareness with respect to companies operating under the Union's jurisdiction for not being held accountable for their potential connection to the illicit extraction and trade of minerals from conflict regions. The consequence is that such minerals, potentially present in consumer products, link consumers to conflicts outside the Union. ***As such, consumers are indirectly linked to conflicts that have severe impacts on human rights, notably the rights of women, as armed groups often use mass rape as a deliberate strategy to intimidate and control local populations in order to protect their interests.*** To this end, citizens have requested, notably through petitions, that legislation be proposed to the European Parliament and the Council

holding companies accountable under the Guidelines as established by the UN and OECD.

Amendment 7

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) In the context of this Regulation, supply chain due diligence is an ongoing, proactive and reactive process through which *business operators* monitor and administer their *purchases and sales* with a view to ensuring that they do not contribute to conflict and adverse impacts thereof.

Amendment

(9) In the context of this Regulation, supply chain due diligence is an ongoing, proactive and reactive process through which *importers may* monitor and administer their *supply chains* with a view to ensuring that they do not contribute to conflict and adverse impacts thereof. ***This Regulation should ensure that the nexus between conflict and illegal exploitation is broken, without undermining the economic importance of the trade in tin, tantalum, tungsten and gold for the development of the countries concerned.***

Amendment 8

Proposal for a regulation

Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) Directive 2014/95/EU of the European Parliament and of the Council^{1a} requires companies with more than 500 employees to disclose information on a number of policies including human rights, anti-corruption and supply chain due diligence. That Directive provides for the Commission to develop guidelines in order to facilitate the disclosure of this information. The Commission should consider including in those guidelines performance indicators

with regard to conflict minerals.

^{1a} Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330, 15.11.2014, p. 1).

Justification

The directive on disclosure of non-financial and diversity information by certain large groups and companies (Directive 2014/95/EU), which was adopted by Parliament and Council in 2014 and which will be applicable in 2017, enhances business transparency on social and environmental matters and also covered supply chain due diligence. The Commission will need to draft the guidelines on the methodology in 2016 and use of international standards and non-financial performance indicators in order to assist undertakings in their reporting. In this context the rapporteur wants the Commission also to include reporting on supply chain due diligence in relation to conflict minerals. This reporting requirement for large groups and companies needs to be coordinated with the decision making on the Regulation proposed by the Commission.

Amendment 9

Proposal for a regulation Recital 11 b (new)

Text proposed by the Commission

Amendment

(11b) Many existing supply chain due diligence systems could contribute to achieving the aims of this Regulation. There already exist industry schemes aimed at breaking the link between conflict and the sourcing of tin, tantalum, tungsten and gold. Those schemes use independent third-party audits to certify smelters and refiners with systems in place to ensure responsible sourcing of minerals only. Those industry schemes could be recognised in the Union system. However, the criteria and procedures for such schemes to be recognised as

equivalent to the requirements of this Regulation need to be clarified to allow for respect for high standards and the avoidance of double auditing.

Amendment 10

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) Union companies have expressed their interest through the public consultation in the responsible sourcing of minerals and reported on current industry schemes designed to pursue their corporate social responsibility objectives, customer requests, or the security of their supplies. However, Union companies have also reported countless difficulties in the exercise of supply chain due diligence because of lengthy and complex global supply chains involving a high number of operators that are often insufficiently aware or ethically unconcerned. The cost of responsible sourcing and their potential impact on competitiveness notably on SMEs should be monitored by the Commission.

Amendment

(12) Union companies have expressed their interest through the public consultation in the responsible sourcing of minerals and reported on current industry schemes designed to pursue their corporate social responsibility objectives, customer requests, or the security of their supplies. However, Union companies have also reported countless difficulties *and practical challenges* in the exercise of supply chain due diligence because of lengthy and complex global supply chains involving a high number of operators that are often insufficiently aware or ethically unconcerned. The cost of responsible sourcing, *third party auditing, their administrative consequences* and their potential impact on competitiveness notably on SMEs should be *closely monitored and reported* by the Commission. *The Commission should provide micro- small and medium size enterprises with technical and financial assistance and should facilitate the exchange of information in order to implement this Regulation. SMEs established in the Union which import minerals and metals and which establish due diligence systems should receive financial aid through the Commission's COSME programme.*

Amendment 11

Proposal for a regulation Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) Responsible importers who opt in to the self-declaration system under this Regulation should be certified by means of a label.

Amendment 12

Proposal for a regulation Recital 12 b (new)

Text proposed by the Commission

Amendment

(12b) Companies established in the Union operating downstream of the supply chain that voluntarily establish a responsible sourcing system for minerals and metals should be certified by the Member States' competent authorities by means of a label. The Commission should rely on the OECD Due Diligence Guidance to set out the criteria for the granting of certification and, to that end, may consult the OECD Secretariat. The conditions for granting the 'European certification of responsibility' should be as stringent as those required by the OECD certification system. Companies benefitting from the 'European certification of responsibility' are encouraged to indicate this fact on their website and to include it in the information given to European consumers.

Amendment 13

Proposal for a regulation Recital 12 c (new)

PE546.838v02-00

12/74

RR\1059149EN.doc

Text proposed by the Commission

Amendment

(12c) In the Joint Communication of 5 March 2014^{1a}, the Commission and the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy outlined plans for the implementation of accompanying measures designed to encourage responsible sourcing and thus secure a high level of participation by companies, taking due account of the costs that due diligence entails, in particular for SMEs and micro-enterprises.

^{1a}Joint Communication of 5 March 2014 to the European Parliament and the Council on responsible sourcing of minerals originating in conflict-affected and high-risk areas (JOIN(2014)0008).

Amendment 14

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) 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.

Amendment

(13) 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. ***The same applies to recycled metals, which have undergone even further steps in the transformation process.*** A Union list of responsible smelters and refiners could therefore provide transparency and certainty to downstream companies as regards supply

chain due diligence practices. *In accordance with the OECD Due Diligence Guidance, upstream undertakings such as smelters and refiners should undergo an independent third-party audit of their supply chain due diligence practices, with a view to also being included in the list of responsible smelters and refiners.*

Amendment 15

Proposal for a regulation

Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Smelters and refiners which process and import minerals and concentrates thereof should have an obligation to apply the Union system for supply chain due diligence.

Justification

Smelters and refiners are key actors in the supply chain, as they are involved in the stage when minerals and their concentrates are processed. They are therefore in a better position to gather, communicate and verify information about the origin of minerals and the various operators that have been responsible for them. For this reason, compliance with the regulation should be mandatory for them.

Amendment 16

Proposal for a regulation

Recital 13 b (new)

Text proposed by the Commission

Amendment

(13b) All minerals and metals within the scope of this Regulation should be used in accordance with the requirements laid down herein. It is essential that importers comply with the provisions of this Regulation.

Amendment 17

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) In order to ensure the proper implementation of this Regulation, implementing powers should be conferred on the Commission. The implementing powers relating to the list of responsible smelters and refiners and the list of Member State competent authorities should be exercised in accordance with Regulation (EU) No 182/2011.

Amendment

(15) In order to ensure the proper implementation of this Regulation, implementing powers should be conferred on the Commission. The implementing powers relating ***to the list of responsible importers, the*** list of responsible smelters and refiners and the list of Member State competent authorities should be exercised in accordance with Regulation (EU) No 182/2011.

Justification

The rapporteur wants to include a list of responsible importers as annex to the Regulation. Since the Commission drafts these lists with little margin of discretion, not going beyond simple implementation, implementing acts seem to be the right choice.

Amendment 18

Proposal for a regulation Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) In order to guarantee the efficient implementation of this Regulation, provision should be made for a two-year transitional period to allow the Commission to set up a third-party audit system and for responsible importers to become familiar with their obligations under this Regulation.

Justification

The rapporteur is aware of the complex challenges involved, but hopes that the Commission will be able to put in place the structures needed to operate the system in two years.

Amendment 19

Proposal for a regulation Recital 15 b (new)

Text proposed by the Commission

Amendment

(15b) The Commission should regularly review its financial assistance and political commitments with regard to conflict-affected and high risk areas where tin, tantalum, tungsten and gold are mined, especially in the Great Lake Region, in order to ensure policy coherence, and in order to incentivise and strengthen the respect for good governance, the rule of law but above all ethical mining.

Amendment 20

Proposal for a regulation Recital 16

Text proposed by the Commission

Amendment

(16) The Commission should report regularly to the ***Council*** and the ***European Parliament*** on the effects of the scheme. ***No later than three years after entering into force*** and every ***six*** years thereafter, the Commission should review the functioning and the effectiveness of this Regulation, ***including*** as regards the promotion of responsible sourcing of the minerals within its scope from conflict-affected and high-risk areas. The reports may be accompanied, if necessary, by appropriate legislative proposals, which

(16) The Commission should report regularly to the ***European Parliament*** and the ***Council*** on the effects of the scheme. ***Two years after the date of application of this Regulation*** and every ***three*** years thereafter, the Commission should review the functioning and the effectiveness of this Regulation ***and the latest impact of the scheme on the ground*** as regards the promotion of responsible sourcing of the minerals within its scope from conflict-affected and high-risk areas ***and report to the European Parliament and to the***

may include mandatory measures,

Council. In carrying out its review, the Commission should fully analyse and evaluate all aspects of this Regulation, in the context of an integrated approach, and its effects and its costs, notably on smelters, refiners and importers who are in conformity with due diligence requirements, any possible trade diversion from mining areas and its impacts on livelihoods of people working on the ground, with a particular focus on artisanal miners. The review should include input from relevant stakeholders, including governments, businesses, SMEs and local civil society as well as those directly affected on the ground in conflict areas. The reports may be accompanied, if necessary, by appropriate legislative proposals, which may include further mandatory measures.

Amendment 21

Proposal for a regulation Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) In their Joint Communication of 5 March 2014, the Commission and the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy committed to the implementation of accompanying measures leading to an integrated EU approach to responsible sourcing in parallel with this Regulation, with the aim not only of reaching a high level of participation by companies in the Union system provided for in this Regulation but also ensuring that a global, coherent and comprehensive approach is taken to promote responsible sourcing from conflict affected and high-risk areas.

Justification

Conflict minerals are one aspect of driving armed conflict. Frequently, other political, economic and social causes are the main drivers, and these must be taken into account. It is essential, therefore, that this Regulation be located within a broader framework of actions and measures designed to prevent and end armed conflicts.

Amendment 22

Proposal for a regulation

Article 1 – paragraph 2

Text proposed by the Commission

2. This Regulation lays down the supply chain due diligence obligations of Union importers who choose to be ***self-certified*** as responsible importers of minerals or metals containing or consisting of tin, tantalum, tungsten and gold, as set out in Annex I.

Amendment

2. This Regulation lays down the supply chain due diligence obligations of Union importers who choose to be ***self-declared*** as responsible importers of minerals or metals containing or consisting of tin, tantalum, tungsten and gold, as set out in Annex I.

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout)

Amendment 23

Proposal for a regulation

Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Metals reasonably assumed to be recycled shall be excluded from the scope of this Regulation.

Justification

In line with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, metals reasonably assumed to be recycled are excluded from the scope of this Regulation.

Amendment 24

Proposal for a regulation Article 2 – point e

Text proposed by the Commission

(e) 'conflict-affected and high-risk areas' means areas in a state of armed conflict, fragile post-conflict as well as areas **witnessing** weak or non-existent governance and security, such as failed states, **and** widespread and systematic violations of **international law, including human rights abuses**;

Amendment

(e) 'conflict-affected and high-risk areas' means areas in a state of armed conflict, **with presence of widespread violence, collapse of civil infrastructure**, fragile post-conflict areas as well as areas **of** weak or non-existent governance and security, such as failed states, **characterised by** widespread and systematic violations of **human rights, as established under international law**;

Justification

The definition as proposed by the Commission remains vague and could give rise to uncertainty in implementation. Therefore, it is suggested, for the sake of legal clarity, to amend the definition.

Amendment 25

Proposal for a regulation Article 2 – point g

Text proposed by the Commission

(g) 'importer' means any natural or legal person **declaring minerals or metals within the scope of this Regulation for release for free circulation within the meaning of Article 79 of Council Regulation (EEC) No 2913/1992¹³** ;

Amendment

(g) 'importer' means any natural or legal person **established in the Union making a declaration for the release for free circulation of minerals and metals within the scope of this Regulation in his own name or the person on whose behalf such declaration is made; a representative making the declaration while acting in the name of and on behalf of another person or a representative acting in his own name and on behalf of another person are equally considered to be importers for the purposes of this Regulation**;

¹³ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

Amendment 26

Proposal for a regulation Article 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) 'recycled metals' means reclaimed end-user or post-consumer products, or scrap processed metals created during product manufacturing; 'recycled metals' includes excess, obsolete, defective, and scrap metal materials which contain refined or processed metals that are appropriate to recycle in the production of tin, tantalum, tungsten and/or gold; minerals partially processed, unprocessed or a bi-product from another ore are not recycled metals;

Justification

In line with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, metals reasonably assumed to be recycled are excluded from the scope of this Regulation.

Amendment 27

Proposal for a regulation Article 2 – point i

Text proposed by the Commission

Amendment

(i) 'self-certification' means the act of declaring one's adherence to the obligations relating to management systems, risk management, third-party ***audits*** and disclosure as set out in this Regulation;

(i) 'self-certification' means the act of declaring one's adherence to the obligations relating to management systems, risk management, third-party ***conformity assessment*** and disclosure as set out in this Regulation;

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout)

Justification

To speed up the legislative process this amendment introduces an idea proposed by the Netherlands which is under discussion in the Council at the moment. To allow this House an early discussion of this proposal and a respective positioning this amendment has been tabled.

Amendment 28

Proposal for a regulation

Article 2 – point p

Text proposed by the Commission

(p) 'responsible smelters or refiners' means smelters or refiners in the supply chain of the responsible importer;

Amendment

(p) 'responsible smelter or refiner' means any smelter or refiner that complies with the OECD Due Diligence Guidance and whose audited reports have been submitted in accordance with point (c) of Article 7(1) .

Justification

This definition includes global smelters, refiners and other upstream actors located outside the EU.

Amendment 29

Proposal for a regulation

Article 2 – point q a (new)

Text proposed by the Commission

Amendment

(qa) 'industry scheme' means a combination of voluntary supply chain due diligence procedures, tools and mechanisms, developed and overseen by relevant industry associations, including third-party conformity assessments;

Amendment 30

Proposal for a regulation Article 2 – point q b (new)

Text proposed by the Commission

Amendment

(qb) 'armed groups and security forces' means groups referred to in Annex II of the OECD Due Diligence Guidance;

Amendment 31

Proposal for a regulation Article 4 – point a

Text proposed by the Commission

Amendment

(a) adopt and clearly communicate to suppliers and the public its supply chain policy for the minerals and metals potentially originating from conflict-affected and high-risk areas,

(a) adopt and clearly ***and systematically*** communicate to suppliers and the public its supply chain policy for the minerals and metals potentially originating from conflict-affected and high-risk areas,

Amendment 32

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

Amendment

The responsible importer of the minerals or metals within the scope of this Regulation shall carry out ***audits via an independent third-party***.

The responsible importer of the minerals or metals within the scope of this Regulation shall ***request a notified conformity assessment body*** carry out ***a conformity assessment in accordance with the conformity assessment scheme referred to in Article 6a***.

Justification

To speed up the legislative process this amendment introduces an idea proposed by the

Netherlands which is under discussion in the Council at the moment. To allow this House an early discussion of this proposal and a respective positioning this amendment has been tabled.

Amendment 33

Proposal for a regulation Article 6 – paragraph 2

Text proposed by the Commission

Amendment

The independent third-party audit shall ***deleted***

(a) include in the audit scope all of the responsible importer's activities, processes and systems used to implement supply chain due diligence regarding minerals or metals within the scope of the Regulation, including the responsible importer's management system, risk management, and disclosure of information,

(b) determine as the objective of the audit the conformity of the responsible importer's supply chain due diligence practices with Articles 4, 5 and 7 of this Regulation,

(c) respect the audit principles of independence, competence and accountability as set out in the OECD Due Diligence Guidance.

Justification

To speed up the legislative process this amendment introduces an idea proposed by the Netherlands which is under discussion in the Council at the moment. To allow this House an early discussion of this proposal and a respective positioning this amendment has been tabled.

Amendment 34

Proposal for a regulation Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

Conformity assessment scheme

The Commission shall adopt an implementing act establishing one or more conformity assessment scheme(s) that:

a) covers all of the responsible importer's activities, processes and systems used to implement supply chain due diligence regarding minerals or metals within the scope of this Regulation, including the responsible importer's management system, risk management, and disclosure of information;

and

b) provides for the presumption of conformity with the requirements set out in Articles 4, 5 and 7.

That implementing act shall be adopted in accordance with the examination procedure referred to in Article 13(2a).

Justification

To speed up the legislative process this amendment introduces an idea proposed by the Netherlands which is under discussion in the Council at the moment. To allow this House an early discussion of this proposal and a respective positioning this amendment has been tabled.

Amendment 35

**Proposal for a regulation
Article 6 b (new)**

Text proposed by the Commission

Amendment

Article 6b

Notification of conformity assessment bodies

1. Member States shall notify the Commission and the other Member States of bodies authorised to carry out third-party conformity assessment tasks under this Regulation.

2. The Commission shall make publicly available the list of the bodies notified under paragraph 1, including the identification numbers that have been allocated to them and the activities for which they have been notified. The Commission shall ensure that that list is kept up to date.

3. Member States may notify only conformity assessment bodies which have satisfied the requirements laid down in Article 6c.

4. Conformity assessment bodies that are accredited in accordance with Regulation (EC) No 765/2008 against an appropriate harmonised accreditation standard for carrying out conformity assessments based on a designated conformity assessment scheme, shall be considered to comply with the requirements set out in Article 6c.

5. Where a notifying authority has ascertained or has been informed that a notified body no longer meets the requirements laid down in Article 6c, or that it is failing to fulfil its obligations, the notifying authority shall restrict, suspend or withdraw the notification as appropriate, depending on the seriousness of the failure to meet those requirements or fulfil those obligations. It shall immediately inform the Commission and the other Member States accordingly.

6. In the event of restriction, suspension or withdrawal of notification, or where the notified body has ceased its activity, the notifying Member State shall take appropriate steps to ensure that the files of that body are either processed by another notified body or kept available for the responsible notifying authority at their

request.

Justification

To speed up the legislative process this amendment introduces an idea proposed by the Netherlands which is under discussion in the Council at the moment. To allow this House an early discussion of this proposal and a respective positioning this amendment has been tabled.

Amendment 36

Proposal for a regulation

Article 6 c (new)

Text proposed by the Commission

Amendment

Article 6c

Requirements related to conformity assessment bodies seeking notification

1. A conformity assessment body shall be established under national law and have legal personality.

2. A conformity assessment body shall be a third-party body independent of the importer it assesses and the smelter or refiner, the smelter's or refiner's subsidiaries, licensees, contractors, suppliers and companies cooperating in the conformity assessment.

A body belonging to a business association or professional federation representing undertakings importing, melting or refining minerals which it assesses, may, on condition that its independence and the absence of any conflict of interest are demonstrated, be considered a conformity assessment body.

3. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks shall not be the importer, smelter or refiner of tin, tantalum and tungsten, their ores, and

gold.

A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks shall not be directly involved in the trade in and smelting and refining of tin, tantalum and tungsten, their ores, and gold or represent the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are notified. This shall in particular apply to consultancy services.

Conformity assessment bodies shall ensure that the activities of their subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of their conformity assessment activities.

5. Conformity assessment bodies and their personnel shall carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field and shall be free from all pressure and inducements, particularly financial, which might influence their judgement or the results of their conformity assessment activities, especially as regards persons or groups of persons with an interest in the results of those activities.

6. A conformity assessment body shall be capable of carrying out all the conformity assessment tasks assigned to it by Article 6d and in relation to which it has been notified, whether those tasks are carried out by the conformity assessment body itself or on its behalf and under its responsibility.

At all times and for each conformity assessment procedure in relation to which it has been notified, a conformity assessment body shall have at its disposal

the necessary:

(a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment tasks;

(b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the transparency and the ability of reproduction of those procedures; it shall have appropriate policies and procedures in place that distinguish between tasks it carries out as a notified body and other activities;

(c) procedures for the performance of activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

It shall have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and shall have access to all necessary equipment or facilities.

7. The personnel responsible for carrying out conformity assessment activities shall have:

(a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;

(b) satisfactory knowledge of the requirements of the assessments they carry out and adequate authority to carry out those assessments;

(c) appropriate knowledge and understanding of the essential requirements, of the applicable harmonised standards and of the relevant provisions of Union harmonisation

legislation and of its implementing regulations;

(d) the ability to draw up certificates, records and reports demonstrating that assessments have been carried out.

8. The impartiality of the conformity assessment bodies, their top level management and of the assessment personnel shall be guaranteed.

The remuneration of the top level management and assessment personnel of a conformity assessment body shall not depend on the number of assessments carried out or on the results of those assessments.

9. Conformity assessment bodies shall take out liability insurance unless liability is assumed by the State in accordance with national law, or the Member State itself is directly responsible for the conformity assessment.

10. The personnel of a conformity assessment body shall observe professional secrecy with regard to all information obtained in carrying out their tasks under Article 6d or any provision of national law giving effect to it, except in relation to the competent authorities of the Member State in which its activities are carried out. Proprietary rights shall be protected.

Justification

To speed up the legislative process this amendment introduces an idea proposed by the Netherlands which is under discussion in the Council at the moment. To allow this House an early discussion of this proposal and a respective positioning this amendment has been tabled.

Amendment 37

Proposal for a regulation Article 6 d (new)

Article 6d

Obligations of notified conformity assessment bodies

- 1. The notified conformity assessment body shall carry out the conformity assessment in accordance with a conformity assessment scheme established in accordance with Article 6a.***
- 2. Where a notified conformity assessment body finds that requirements of the conformity assessment scheme have not been met by an importer, it shall require that importer to take appropriate corrective measures and shall not issue a certificate.***
- 3. Where, in the course of the monitoring of conformity following the issue of a certificate, a notified conformity assessment body finds that a product no longer complies with the requirements of the conformity assessment scheme, it shall require the importer to take appropriate corrective measures and shall suspend or withdraw the certificate if necessary.***
- 4. Where corrective measures are not taken or do not have the required effect, the notified conformity assessment body shall restrict, suspend or withdraw any certificates, as appropriate.***

Justification

To speed up the legislative process this amendment introduces an idea proposed by the Netherlands which is under discussion in the Council at the moment. To allow this House an early discussion of this proposal and a respective positioning this amendment has been tabled.

Amendment 38

**Proposal for a regulation
Article 7 – paragraph 1 – point c**

Text proposed by the Commission

Amendment

(c) **independent third-party audits** carried out in accordance with Article 6 of this Regulation.

(c) **the certificate issued as a result of the third party conformity assessment** carried out in accordance with Article 6 of this Regulation.

Justification

To speed up the legislative process this amendment introduces an idea proposed by the Netherlands which is under discussion in the Council at the moment. To allow this House an early discussion of this proposal and a respective positioning this amendment has been tabled.

Amendment 39

Proposal for a regulation

Article 7 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) independent third-party **audits** regarding each of the responsible smelters or refiners in its supply chain carried out in accordance with the scope, objective and principles set out in Article 6 of the Regulation,

(b) **certificates of the independent third-party conformity assessment body** regarding each of the responsible smelters or refiners in its supply chain carried out in accordance with the scope, objective and principles set out in Article 6 of the Regulation,

Justification

To speed up the legislative process this amendment introduces an idea proposed by the Netherlands which is under discussion in the Council at the moment. To allow this House an early discussion of this proposal and a respective positioning this amendment has been tabled.

Amendment 40

Proposal for a regulation

Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

List of responsible importers

- 1. On the basis of the information provided by the Member States in their reports, as referred to in Article 15, the Commission shall adopt and make publicly available a decision listing the names and addresses of responsible importers of minerals and metals within the scope of this Regulation.**
- 2. The Commission shall adopt the list using the template set out in Annex Ia and in accordance with the advisory procedure referred to in Article 13(2).**
- 3. The Commission shall update and publish, including on the internet, the information included in the list in a timely manner. The Commission shall remove from the list the names of the importers that, in case of inadequate remedial action by the responsible importers, are no longer recognised as responsible importers by Member States in accordance with Article 14(3).**

Justification

The rapporteur wants to provide visibility to the efforts of companies taking on commitments in this domain. In order to achieve that, the Rapporteur wants the Commission to draw up a list of responsible importers on the basis of reports on the implementation of the regulation by the member states. This list can offer companies an additional incentive to participate in the system and following positive (media) attention a push for competitors to do the same.

Amendment 41

**Proposal for a regulation
Article 7 b (new)**

Text proposed by the Commission

Amendment

Article 7 b

*The ‘European responsible importer’
label*

1. Responsible importers shall be granted a ‘European responsible importer’ label by Member States’ competent authorities.

2. In case of non-compliance with this Regulation, the Member States’ competent authorities may withdraw or suspend the ‘European responsible importer’ label.

3. The graphic elements of the ‘European responsible importer’ label shall be laid down by the Commission.

Amendment 42

**Proposal for a regulation
Article 7 c (new)**

Text proposed by the Commission

Amendment

Article 7c

Industry schemes

1. During the transitional period, relevant industry associations may submit an application to the Commission to have an industry scheme recognised as equivalent to the requirements of this Regulation.

Such application shall be supported by evidence and information.

2. Applications referred to in paragraph 1 may only be made in respect of industry schemes existing at the time of entry into force of this Regulation.

3. Where, on the basis of the evidence and information provided pursuant to paragraph 1, the Commission determines that the industry scheme, when effectively implemented by a responsible importer, enables that responsible importer to comply with its obligations under Articles 4, 5, 6 and 7, it shall grant a recognition

of equivalence.

4. Interested parties shall inform the Commission of any changes or updates made to industry schemes for which a recognition of equivalence has been granted in accordance with paragraph 3.

5. The Commission shall withdraw the recognition of equivalence where it has determined that changes or updates to an industry scheme compromise a responsible importer's ability to comply with its obligations under Articles 4, 5, 6 and 7, or where repeated or significant cases of non-compliance by responsible importers relate to deficiencies in the scheme.

6. The Commission shall establish and keep up-to-date an internet-based register of industry schemes to which a recognition of equivalence has been granted.

7. Responsible importers of minerals and metals that can be proven to have been sourced exclusively from parties that have been certified by an industry scheme for which a recognition of equivalence has been granted or that have themselves been certified by an industry scheme for which a recognition of equivalence has been granted shall be exempted from the independent third party audit. The certification by the industry scheme shall be sent to the competent authorities.

Justification

The rapporteur wants to avoid duplication of audits and ensure coherence with the existing industry schemes, recognizing the responsible efforts already done by industry associations. To that end, the rapporteur wants to create a procedure for recognition of equivalence after verification by the Commission. A procedure for withdrawal of the recognition is included as well. For the sake of efficiency for the responsible importers, the rapporteur wants to give publicity to this list on internet. Your rapporteur also wants responsible importers that sourced from an industry scheme for which a recognition of equivalence has been granted to be exempted from the independent third party audit.

Amendment 43

Proposal for a regulation Article 7 d (new)

Text proposed by the Commission

Amendment

Article 7d

Due diligence obligations applicable to smelters and refiners

1. Smelters and refiners established in the Union which process and import minerals and concentrates thereof shall have an obligation to apply the Union system for supply chain due diligence or a due diligence system recognised as equivalent by the Commission.

2. The Member States competent authorities shall ensure the proper application of the European due diligence system by smelters and refiners. If there is a failure to comply with these obligations, the authorities shall notify the fact to the smelter or refiner, and shall ask them to take corrective measures in order to comply with the European due diligence system. In the event of a persistent failure to comply, the Member States competent authorities shall impose penalties for the infringement of this Regulation. These penalties shall cease when the smelter or refiner complies with the provisions of this Regulation.

Justification

European smelters and refiners are key actors in the supply chain, as they are involved in the stage when minerals are processed. They are therefore in a better position to gather, communicate and verify information about the origin of minerals and the various operators that have been responsible for them. For this reason, compliance with the regulation should be mandatory for them.

Amendment 44

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

1. On the basis of the information provided by the Member States in their reports as referred to in Article 15, the Commission shall adopt and make publicly available a decision listing the names and addresses of responsible smelters and refiners *of minerals within the scope of this Regulation*.

Amendment

1. On the basis of the information provided by the Member States in their reports as referred to in Article 15, the Commission shall adopt and make publicly available a decision listing the names and addresses of responsible smelters and refiners.

Justification

The COM list is defined as a list of all smelters and refiners in the supply chain of a responsible importer irrespective of whether or not those smelters or refiners, in or outside the EU, meet OECD Guidance standards. To make the list a genuine incentive, they should e.g. publicly report on their due diligence and make their audit available, in line with the OECD Guidance. This system should also be open to smelters/refiners that are not currently in the supply chain of European companies.

Amendment 45

Proposal for a regulation Article 8 – paragraph 2

Text proposed by the Commission

2. The Commission shall identify on the list referred to in paragraph 1 those responsible smelters and refiners that source – at least partially – from conflict-affected and high-risk areas.

Amendment

2. The Commission shall identify on the list referred to in paragraph 1 those responsible smelters and refiners that source – at least partially – from conflict-affected and high-risk areas. ***This list shall be drawn up taking into account existing equivalent industry, governmental or other due diligence schemes covering the minerals and metals within the scope of this Regulation.***

Amendment 46

Proposal for a regulation Article 8 – paragraph 3

Text proposed by the Commission

3. The Commission shall adopt the list *in accordance with* the template in Annex II and the *regulatory* procedure referred to in Article 13(2). The OECD Secretariat shall be consulted.

Amendment

3. The Commission shall adopt the list *using* the template in Annex II and *in accordance with* the *advisory* procedure referred to in Article 13(2). The OECD Secretariat shall be consulted.

Justification

The rapporteur changes the comitology language, using the right templates and bring Article 9, paragraph 2 in line with Article 13, paragraph 2, where the advisory procedure is being proposed.

Amendment 47

Proposal for a regulation Article 8 – paragraph 4

Text proposed by the Commission

4. The Commission shall update the information included in the list in a timely manner. The Commission shall remove from the list the names of the smelters and refiners that are no longer recognised as responsible importers by Member States in accordance with Article 14(3), or the names of the smelters and refiners in the supply chain of the no longer recognised responsible importers.

Amendment

4. The Commission shall update *and publish, including on the internet*, the information included in the list in a timely manner. The Commission shall remove from the list the names of the smelters and refiners that are no longer recognised as responsible importers by Member States in accordance with Article 14(3), or the names of the smelters and refiners in the supply chain of the no longer recognised responsible importers.

Amendment 48

Proposal for a regulation Article 9 – paragraph 2

Text proposed by the Commission

2. The Commission shall make a decision to publish, including on the internet, a list of competent authorities **in accordance with** the template in Annex III and the **regulatory** procedure referred to in **paragraph 2 of** Article 13. The Commission shall update the list regularly.

Amendment

2. The Commission shall make a decision to publish, including on the internet, a list of competent authorities **using** the template in Annex III and **in accordance with** the **advisory** procedure referred to in Article 13(2). The Commission shall update the list regularly.

Justification

The rapporteur changes the comitology language, using the right templates and bring Article 9, paragraph 2 in line with Article 13, paragraph 2, where the advisory procedure is being proposed.

Amendment 49

Proposal for a regulation Article 10 – paragraph 2

Text proposed by the Commission

2. The checks referred to in paragraph 1 shall be conducted by taking a risk-based approach. In addition, checks **may** be conducted when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning the compliance by a responsible importer with this Regulation.

Amendment

2. The checks referred to in paragraph 1 shall be conducted by taking a risk-based approach. In addition, checks **shall** be conducted when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning the compliance by a responsible importer with this Regulation.

Justification

The Rapporteur wants to ensure that a Member State competent authority doesn't abuse its discretionary power and will conduct checks when it is in the possession of relevant substantiated claims. The Rapporteur therefore wants to replace 'may' by 'shall'.

Amendment 50

Proposal for a regulation Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

Establishment of a "European certification of responsibility" for companies operating downstream of the supply chain of minerals by means of a label

- 1. Companies operating downstream of the supply chain and taking due diligence measures, based on the OECD Due Diligence Guidance or an equivalent due diligence scheme recognised under this Regulation, may be granted a "European certification of responsibility";*
- 2. Companies established in the Union operating downstream of the supply chain of minerals wishing to be certified may apply to the competent authorities of the Member States detailing the due diligence measures they have put in place.*
- 3. On the basis of criteria established by the Commission, the competent authorities of the Member States may certify companies established in the Union operating downstream of the supply chain of minerals. Industry schemes may be recognised as equivalent to the requirements of this Regulation.*
- 4. The graphic elements of the "European certification of responsibility" label shall be laid down by the Commission.*

Amendment 51

Proposal for a regulation Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

In order to create clarity and certainty for and consistency among economic operators, in particular SMEs, the Commission, in consultation with the European External Action Service and the OECD, shall prepare non-binding guidelines in the form of a handbook for companies, explaining how best to apply the criteria for those areas that may fall within the scope of this Regulation. This handbook shall be based on the definition of conflict-affected and high-risk areas as laid down in Article 2(e) of this Regulation and take into account the OECD Due Diligence Guidance in this field.

Amendment 52

Proposal for a regulation

Article 13 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.

deleted

Justification

The rapporteur is of the opinion that there is no justification for including the non-opinion clause in this report and therefore proposes to delete the second part of Article 13, paragraph 2.

Amendment 53

Proposal for a regulation

Article 13 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Justification

To speed up the legislative process this amendment introduces an idea proposed by the Netherlands which is under discussion in the Council at the moment. To allow this House an early discussion of this proposal and a respective positioning this amendment has been tabled.

Amendment 54

Proposal for a regulation

Article 15 – paragraph 3

Text proposed by the Commission

Amendment

3. **Three** years after the entry into force of this Regulation and every **six** years thereafter, the Commission shall review the functioning and effectiveness of this Regulation, including on the promotion and cost of responsible sourcing of the minerals within its scope from conflict-affected and high-risk areas. The Commission shall submit a review report to the European Parliament and to the Council.

3. **Two** years after the **date of application** of this Regulation and every **three** years thereafter, the Commission shall review the functioning and effectiveness of this Regulation **and the latest impact of the scheme both in the EU and on the ground**, including on the promotion and cost of responsible sourcing of the minerals within its scope from conflict-affected and high-risk areas. The Commission shall submit a review report to the European Parliament and to the Council.

Through the review process the Commission shall:

- evaluate the feasibility for downstream undertakings to identify, to the best of their efforts, and to review the due diligence process of the smelters and

refiners in their supply chain and assess whether they adhere to due diligence measures put forward in the OECD Due Diligence Guidance;

- analyse the possibility of adding new minerals and metals to the scope of this Regulation on the basis of a proper impact assessment, and where is sufficient experience and expertise in the supply chain due diligence for the given mineral or metal.

Amendment 55

Proposal for a regulation Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15a

Accompanying measures

1. The Commission shall submit a legislative proposal, as appropriate, within the transitional period setting up accompanying measures in order to enhance the effectiveness of this Regulation in line with the Joint Communication to the European Parliament and the Council entitled "Responsible sourcing of minerals originating in conflict-affected and high risk areas. Towards an integrated EU approach" (JOIN (2014)8).

Accompanying measures to ensure an integrated EU approach to the duty of responsible sourcing shall foresee:

(a) support for responsibly sourcing enterprises in the form of incentives, technical assistance and guidance to enterprises, taking into account the situation of small and medium-sized enterprises and their position in the supply chain, in order to facilitate compliance with the requirements of this

Regulation;

(b) ongoing policy dialogues with third countries and other stakeholders, including the possibility of harmonization with national and regional certification systems and cooperation with public-private initiatives;

(c) continued, targeted development cooperation with third countries, in particular aid for the marketing of non-conflict minerals and placing local enterprises in a better position to comply with this Regulation;

(d) close cooperation with Member States for the launching of complementary initiatives in the area of consumer, investor and customer information and further incentives for responsible business conduct and performance clauses in procurement contracts signed by the national authorities under the terms of Directive 2014/24/EU of the European Parliament and of the Council.

2. The Commission shall present an annual performance report of the accompanying measures implemented pursuant to paragraph 1 and of their impact and effectiveness.

Amendment 56

Proposal for a regulation

Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

This Regulation shall ***apply from...****

****OJ: Please insert the date: two years after the date of entry into force of this Regulation***

EXPLANATORY STATEMENT

On 5 March 2014 the European Commission presented a legislative proposal aimed at making it more difficult for armed groups in conflict-affected and high-risk areas to finance their activities through the mining of and trade in minerals. The focus of the approach is to make it easier for companies to source tin, tantalum, tungsten and gold responsibly and to encourage legitimate trading channels.

Historical context

This proposal is an EU contribution to international efforts to address the problems in countries rich with resources but vulnerable to armed conflict, such as the Great Lakes Region and learns from these efforts. The two best-known were adopted in 2011 and 2010 respectively: the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Due Diligence Guidance) and Section 1502 of the United States Dodd-Frank Wall Street Reform and Consumer Protection Act.

Content

The Commission proposes a draft Regulation, also as a reply to Parliament resolutions, setting up an EU system of self-certification for importers of tin, tantalum, tungsten and gold that choose to import responsibly into the Union. Self-certification requires EU importers of these metals and their ores to exercise 'due diligence' – i.e. to avoid causing harm on the ground – by monitoring and administering their purchases and sales in line with the five steps of the Organisation for Economic Cooperation and Development (OECD) Due Diligence Guidance. The Regulation gives EU importers an opportunity to deepen ongoing efforts to ensure clean supply chains when trading legitimately with operators in conflict-affected countries. To increase public accountability of smelters and refiners, enhance supply chain transparency and facilitate responsible mineral sourcing, the EU aims to publish an annual list of EU and global 'responsible smelters and refiners'. With more than 400 importers of such ores and metals, the EU is among the largest markets for tin, tantalum, tungsten and gold.

Support for the Commission proposal

Your rapporteur generally supports the proposal for Regulation of the Commission. The proposal focuses on the most effective level of the EU supply chain for these minerals, the smelters and refiners of minerals in order to facilitate the flow of due diligence information down to end users. Smelters and refiners are the last point at which the origin of minerals can be traced. Any information that can be obtained from smelters and refiners about their suppliers is important for due diligence. The Commission proposal enables EU companies to better comply with Dodd Frank requirements.

Your rapporteur also agrees to that this EU system (like the OECD Guidance) should cover all Conflict-Affected and High Risk Areas. Different from the US Dodd Frank Act which so far only focuses on the Great Lakes Area, the EU wants companies all around the world to avoid doing harm. Your rapporteur is of the views that the EU should not draw up a list of Conflict-Affected and High Risk Areas, but rather providing companies with the tools they need to do due diligence in a handbook.

Your rapporteur also supports the voluntary approach, which is reflected in the Commission proposal. Your rapporteur believes that market pressures in the small transparent market of importers and smelters and refiners should lead to high levels of participation. Your rapporteur welcomes the accompanying measures foreseen in the accompanying communication¹ to promote high levels of participation and hopes that not only these measures can be implemented in parallel with the Regulation, but that Parliament will also be kept informed of their implementation.

Moreover, your rapporteur is of the opinion that the choice for the voluntary approach enables the EU to work more effectively with supply chain due diligence schemes developed by business associations, which in line the OECD guidance have set global standards on their domains.

Responsible importers can only source from smelters/refiners with a third-party audit. Via those audits, the EU system will therefore give a good inside in the suppliers and mines. Gradual increase in the number of audited smelters will allow adaptation of the sector to the rules without supply shocks.

The voluntary approach will interest the avant-garde of responsible companies to participate. This group will gradually enlarge due to market competition pressures. Companies can choose to join at their own speed. A decision to join can be well-prepared and the costs and impacts limited.

Your rapporteur wants to work with responsible business to avoid temporary supply shortages, avoid reducing economic activity in conflict affected areas and to promote legitimate trade.

Non-Financial Reporting Directive

Your rapporteur favours the use of existing tools to promote reporting on supply chain due diligence of trade in minerals. The Directive on disclosure of non-financial and diversity information by large companies and groups requires large companies with more than 500 employees to disclose information on policies on human rights, anti-corruption and supply-chain due diligence. The Directive provides for the Commission to develop guidelines in 2016 in order to facilitate the disclosure of this information from the entry into force in 2017. Your rapporteur will contribute to convincing the Commission to including in those guidelines performance indicators with regard to disclosure obligation with respect to trade in minerals covered by this Regulation. Problems in relation to company's involvement in trade in conflict minerals, with as possible side effect the fuelling of conflict, is too important to ignore in this context. Once the Commission has committed to this, reporting requirements such as foreseen in the OECD Guidance will then also be operational for large EU companies.

Small and Medium Size Enterprises

Your rapporteur is of the opinion that SMEs should be put in the position to participate in the EU system if they want to be part of the avant-garde, but does not want to force them. Your rapporteur is of the view that also in this respect the Commission is right to choose for the

¹ Joint Communication on Responsible sourcing of minerals originating in conflict affected and high risk areas: Towards an integrated approach of 5 March 2014, (JOIN (2014) 8)

voluntary approach. With the right incentives and assistance, as foreseen in the accompanying measures, SMEs can be convinced to participate out of their free will and in line with their business logic.

Making the Regulation more efficient

Your rapporteur proposes more amendments with the aim to make the Regulation more efficient. In order not to punish the environmentally friendly operators, according to your rapporteur it is correct to follow the OECD and exclude metals that are reasonably assumed to be recycled. It does reflect both the practical wisdom of the OECD guidance as well as the due diligence that continuously will be needed to stop abuse.

Many other supply chain due diligence systems have been developed. Your rapporteur wants to avoid double auditing. A voluntary system should be as efficient and effective as possible. The Commission should develop the right tools to evaluate the work of the other supply chain due diligence systems. Clear criteria should be developed to decide which of those systems should be recognized.

Your rapporteur favours the three year review as an important moment to building the most efficient system. The timing of the review will however depend on when the system will be operational. Two yearly cycles need to have gone through before a review can be conducted seriously.

Increasing participation in the scheme with the right incentives

Your rapporteur wants to give maximum visibility to those companies that do the right thing. The smelters list should include a column with the mineral and group the smelters/refiners by mineral so that importers and others can easily consult the document.

In the same vein your rapporteur wants to establish a list of responsible importers. Those importers that decide to go the extra mile should get credit for that and have an opportunity to win in terms of public image because of that. A list of responsible importers could achieve that goal.

Your rapporteur is of the opinion that participation by importers and smelters/refiners is key for the success of this Regulation. Through accompanying measures, such as incentives for SMEs, many more importers will participate, what will improve the system.

Your rapporteur also wants the definition of importers to be widened to also enable traders to self-certify and participate in the new system.

Involvement of Parliament and comitology

Your rapporteur is aware that many practical issues will be dealt with in the context of handbooks and guidance documents. Your rapporteur wants to discuss in parliament amongst colleagues how to find the right balance regarding operational flexibility with regard to implementation and on the other correct involvement of the legislator on important practical issues, such as rhythm of required audits.

On top of that your rapporteur wants to propose some amendments regarding comitology. When the Regulation will indeed not let there be any discretionary power for the Commission,

only requiring it to implement, then implementing acts are appropriate. If however during the legislative procedure the nature of that relationship changes and Commission gets more discretionary power due to amendments, then delegated acts might become more appropriate.

Your rapporteur already now wants to reject the obsolete regulatory procedure and replace it by the advisory procedure as envisaged by the Commission in Article 13, paragraph 2.

Moreover, the inclusion of the non-opinion clause is not acceptable for your rapporteur.

23.3.2015

OPINION OF THE COMMITTEE ON DEVELOPMENT

for the Committee on International Trade

on the proposal for a regulation of the European Parliament and of the Council 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 (COM(2014)0111 – C7-0092/2014 – 2014/0059(COD))

Rapporteur: Bogdan Brunon Wenta

SHORT JUSTIFICATION

The rapporteur fully supports the main objective of the legislative proposal, namely breaking the link between conflict and illegal exploitation of minerals. Breaking the nexus is essential, as the so-called conflict minerals undermine governments' aspirations for inclusive socio-economic development, good governance, rule of law and the protection of human rights.

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas was adopted by the OECD Ministerial Council on 25 May 2011. Its objective is to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices. OECD Guidance is recognised as a voluntary international framework for due diligence measures to be undertaken by companies that are required to file a conflict minerals report under Section 1502 of the Dodd-Frank Act. In addition, it has received the support of the United Nations and also the Lusaka Declaration, signed by 11 Heads of State of the International Conference on the Great Lakes Region (ICGLR) states that the processes and standards of the OECD Guidance will be integrated into the six tools of the Regional Initiative against the Illegal Exploitation of Natural Resources. Despite this widespread support, the uptake of this voluntary due diligence framework by companies has been weak (just 12 %).

The Commission proposal as it currently stands, being based on "do no harm" approach, risks doing no good either. The rapporteur is of the opinion that the European Union should show leadership on this issue and set up a mandatory self-certification mechanism for refiners and importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas. This approach would be in line with option IV considered in the Commission's impact assessment.

This proposal for a regulation cannot be regarded as being solely a self-contained instrument

of commercial policy and it should be viewed from the broader international perspective, including development cooperation. In order to guarantee the efficiency of the implementation, it is essential that the accompanying measures outlined in the Joint Communication entitled "Responsible sourcing of minerals originating in conflict-affected and high-risk areas. Towards an integrated EU approach" (JOIN (2014) 8) will be enacted in parallel with this Regulation.

AMENDMENTS

The Committee on Development calls on the Committee on International Trade, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) Natural mineral resources in conflict-affected or high risk areas – although holding great potential for development – **can be** a cause of dispute **where** their revenues are fuelling the outbreak or continuation of violent conflict, undermining national endeavours towards development, good governance and the rule of law. In these areas, breaking the nexus between conflict and illegal exploitation of minerals is critical to peace and stability.

Amendment

(1) Natural mineral resources in conflict-affected or high risk areas – although holding great potential for development **when managed sustainably** – **are** a cause of dispute **and** their revenues are fuelling the outbreak or continuation of violent conflict, undermining national endeavours towards development, good governance and the rule of law. In these areas, breaking the nexus between conflict and illegal exploitation of minerals is critical to peace and stability.

Amendment 2

Proposal for a regulation

Recital 1a (new)

(1 a) Human rights abuses are common within the extractive industry and may include child labour, sexual violence, disappearance of people, forced resettlement and the destruction of ritually or culturally significant sites.

Amendment 3

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) ***On*** 7 October 2010, the European Parliament ***passed a Resolution calling*** for the Union to legislate along the lines of the US 'conflict minerals' law alias Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and the Commission announced in its Communications of 2011⁹ and 2012¹⁰ its intention to explore ways of improving transparency throughout the supply chain, including aspects of due diligence. In the latter communication and in line with the commitment it had made at the May 2011 OECD Ministerial Council, the Commission also advocated greater support for and use of the OECD Guidelines for Multinational Enterprises, and of the OECD Due Diligence Guidance – even outside the OECD membership.

Amendment

(7) ***In its resolutions of*** 7 October 2010^{8a}, of 8 March 2011^{8b}, of 5 July 2011^{8c} and of 26 February 2014^{8d}, the European Parliament ***called*** for the Union to legislate along the lines of the US 'conflict minerals' law alias Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and the Commission announced in its Communications of 2011⁹ and 2012¹⁰ its intention to explore ways of improving transparency throughout the supply chain, including aspects of due diligence. In the latter communication and in line with the commitment it had made at the May 2011 OECD Ministerial Council, the Commission also advocated greater support for and use of the OECD Guidelines for Multinational Enterprises, and of the OECD Due Diligence Guidance – even outside the OECD membership.

^{8a} ***European Parliament resolution of 7 October 2010 on failures in protection of human rights and justice in the Democratic Republic of Congo.***

^{8b} ***European Parliament resolution of 8 March 2011 on Tax and Development – Cooperating with Developing Countries on Promoting Good Governance in Tax***

Matters.

^{8c} European Parliament resolution of 5 July 2011 on increasing the impact of EU development policy.

^{8d} European Parliament resolution of 26 February 2014 on promoting development through responsible business practices, including the role of extractive industries in developing countries.

⁹ Commodity markets and raw materials, COM(2011) 25 FINAL.

¹⁰ Trade, growth and development, COM(2012) 22 FINAL.

⁹ Commodity markets and raw materials, COM(2011) 25 FINAL.

¹⁰ Trade, growth and development, COM(2012) 22 FINAL.

Amendment 4

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) In the context of this Regulation, supply chain due diligence is an on-going, proactive and reactive process through which business operators monitor and administer their purchases and sales with a view to ensuring that they do not contribute to conflict and adverse impacts thereof.

Amendment

(9) In the context of this Regulation, ***and in accordance with the OECD Due Diligence Guidance***, supply chain due diligence is an on-going, proactive and reactive process through which business operators monitor and administer their purchases and sales ***upstream and downstream of the supply chain*** with a view to ensuring that ***they respect human rights and*** do not contribute to conflict and adverse impacts thereof, ***both directly in the mining sector and indirectly in the wider communities.***

Amendment 5

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) Union companies have expressed their

Amendment

(12) Union companies have expressed their

interest through the public consultation in the responsible sourcing of minerals and reported on current industry schemes designed to pursue their corporate social responsibility objectives, customer requests, or the security of their supplies. *However, Union companies have also reported countless difficulties in the exercise of supply chain due diligence because of lengthy and complex global supply chains involving a high number of operators that are often insufficiently aware or ethically unconcerned. The cost of responsible sourcing and their potential impact on competitiveness notably on SMEs should be monitored by the Commission.*

interest through the public consultation in the responsible sourcing of minerals and reported on current industry schemes designed to pursue their corporate social responsibility objectives, customer requests, or the security of their supplies. *In accordance with the OECD Due Diligence Guidance it is recognized that due diligence in conflict-affected and high-risk areas presents practical challenges and that flexibility is therefore needed in the application thereof. The nature and extent of due diligence that is appropriate for an undertakings' individual circumstances depend on a number of factors, including its size and position in the supply chain, fully taking account of the challenges faced by SMEs.*

Amendment 6

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) *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.

Amendment

(13) *Importers* are an important point in global mineral *and metals* supply chains as they are typically *better placed to collect, disclose and verify* information on the mineral's *and metal's* origin and chain of custody. A Union list of responsible *importers* could therefore provide transparency and certainty to downstream *undertakings, which themselves must comply, depending on their position in the supply chain, with* due diligence practices *as defined in this Regulation and the OECD Due Diligence Guidance.*

Amendment 7

Proposal for a regulation Recital 14

Text proposed by the Commission

(14) The Member State competent authorities are responsible to ensure the uniform compliance of the **self-certification** of responsible importers by carrying out appropriate ex-post checks so as to verify whether the **self-certified** responsible importers of the minerals and/or metals within the scope of the Regulation comply with the supply chain due diligence obligations. Records of such checks should be kept for at least 5 years. **Member States are** responsible to lay down the rules applicable to infringements of the provisions of this Regulation.

Amendment

(14) The Member State competent authorities are responsible to ensure the uniform compliance of the **certification** of responsible importers by carrying out appropriate ex-post checks so as to verify whether the **certified** responsible importers of the minerals and/or metals within the scope of the Regulation comply with the supply chain due diligence obligations. Records of such checks should be kept for at least 5 years. **The Commission should be** responsible to lay down the rules applicable to infringements of the provisions of this Regulation **and to notify those rules to the Member States.**

Amendment 8

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) In order to ensure the proper implementation of this Regulation, implementing powers should be conferred on the Commission. The implementing powers relating to the list of responsible **smelters and refiners** and the list of Member State competent authorities should be exercised in accordance with Regulation (EU) No 182/2011¹¹.

Amendment

(15) In order to ensure the proper implementation of this Regulation, implementing powers should be conferred on the Commission. The implementing powers relating to the list of responsible **importers** and the list of Member State competent authorities should be exercised in accordance with Regulation (EU) No 182/2011¹¹.

¹¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States

¹¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States

of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Amendment 9

Proposal for a regulation Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) In order to ensure the effectiveness of this Regulation, by means of identifying, on an on-going basis, minerals and metals, the sourcing of which is used to finance armed groups and security forces in conflict-affected and high-risk areas, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending, as and when necessary, the list of minerals and metals as set out in Annex I. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

Amendment 10

Proposal for a regulation Recital 16

Text proposed by the Commission

(16) The Commission should report regularly to the Council and the European Parliament on the effects of the scheme. No later than three years after entering into force and every six years thereafter, the Commission should review the functioning and the effectiveness of this Regulation, including as regards the promotion of responsible sourcing of the minerals within its scope from conflict-affected and high-risk areas. The reports may be accompanied, if necessary, by appropriate legislative proposals, **which may include mandatory measures**,

Amendment

(16) The Commission should report regularly to the Council and the European Parliament on the effects of the scheme. No later than three years after entering into force and every six years thereafter, the Commission should review the functioning and the effectiveness of this Regulation, including as regards the promotion of responsible sourcing of the minerals **and metals** within its scope from conflict-affected and high-risk areas. The reports may be accompanied, if necessary, by appropriate legislative proposals;

Amendment 11

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

1. This Regulation sets up a Union system for supply chain due diligence **self-certification** in order to **curtail opportunities for** armed groups and security forces¹² **to trade in tin, tantalum and tungsten, their ores, and gold**. It is designed to provide transparency and certainty as regards the supply **practices of importers**, smelters and refiners sourcing from conflict-affected and high-risk areas.

Amendment

1. This Regulation sets up a Union system for supply chain due diligence **that shall be mandatory** in order to **eradicate trading in minerals and metals by** armed groups and security forces¹². It is designed to provide transparency and certainty as regards the supply chain **of minerals and metals, in particular smelters and refiners** sourcing from conflict-affected and high-risk areas.

¹² 'Armed groups and security forces' as defined in Annex II of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition, OECD Publishing (OECD (2013)).
<http://dx.doi.org/10.1787/9789264185050-en>.

Amendment 12

Proposal for a regulation Article 1 – paragraph 2

Text proposed by the Commission

2. This Regulation lays down the supply chain due diligence obligations of Union importers who ***choose to be self-certified as responsible importers of minerals or metals containing or consisting of tin, tantalum, tungsten and gold, as set out in Annex I.***

2. This 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. It is designed to guarantee transparency and traceability in respect of their sourcing practices in conflict-affected or high-risk areas, in order to minimise or prevent violent conflicts and human rights abuses by curtailing the opportunities for armed groups and security forces to trade in these minerals and metals.***

Amendment 13

Proposal for a regulation Article 1 – paragraph 2a (new)

Text proposed by the Commission

Amendment

2a. This Regulation shall apply to undertakings at all points in the minerals and metals supply chain which may supply or use minerals or metals from conflict-affected or high-risk areas.

Amendment 14

Proposal for a regulation Article 1 – paragraph 2b (new)

Text proposed by the Commission

Amendment

2b. In order to prevent unintended

distortions of the market, this Regulation shall draw a distinction between the roles of undertakings situated upstream of and those situated downstream from the supply chain. The exercise of due diligence must be tailored to the activities of the undertaking in question and its position in the supply chain.

Amendment 15

Proposal for a regulation Article 1 – paragraph 2c (new)

Text proposed by the Commission

2c. The Commission, working with certification bodies and in accordance with the OECD Guidance may provide further guidelines on the obligations to be met by undertakings, depending on their position in the supply chain, and to ensure that the system involves a flexible procedure that takes into account the position of SMEs

Amendment 16

Proposal for a regulation Article 2 – paragraph 1 – point a

Text proposed by the Commission

(a) ‘minerals’ means *ores and concentrates containing tin, tantalum and tungsten, and gold as* set out in the Annex I;

Amendment

(a) “minerals *and metals within the scope of the Regulation*’ means *all minerals and metals* set out in the Annex I;

Amendment 17

Proposal for a regulation Article 2 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) ‘metals’ means metals containing or consisting of tin, tantalum, tungsten and gold as set out in the Annex I;

deleted

Amendment 18

Proposal for a regulation

Article 2 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) ‘OECD Due Diligence Guidance’ means the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Second Edition, OECD Publishing (OECD (2013)), including all Council recommendations, annexes and supplements, which may be periodically modified or replaced.

Amendment 19

Proposal for a regulation

Article 2 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) ‘conflict-affected and high-risk areas’ means areas *in a state of armed conflict, fragile post-conflict as well as areas witnessing weak or non-existent governance and security, such as failed states, and widespread and systematic violations of international law, including human rights abuses;*

(e) ‘conflict-affected and high-risk areas’ means areas *identified by the presence of armed conflict, widespread violence or other risks of harm to people and, for these purposes, it is recognized that:*

(i) *armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may*

consist of wars of liberation, or insurgencies, civil wars; and

(ii) high--risk areas may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence, both of which areas are often characterized by widespread human rights abuses and violations of national or international law;

Amendment 20

Proposal for a regulation

Article 2 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(f a) ‘downstream undertakings’ means metal traders and exchangers, component manufacturers, product manufacturers, original equipment manufacturers and retailers;

Amendment 21

Proposal for a regulation

Article 2 – paragraph 1 – point g

Text proposed by the Commission

Amendment

(g) ‘importer’ means any natural or legal person **declaring** minerals or metals within the scope of this Regulation for release for free circulation within the meaning of Article 79 of Council Regulation (EEC) No 2913/1992¹³ ;

(g) 'importer' means any natural or legal person **placing on the market for the first time** minerals or metals within the scope of this Regulation for release for free circulation within the meaning of Article 79 of Council Regulation (EEC) No 2913/1992¹³

¹³ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the

¹³ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the

Community Customs Code (OJ L 302, 19.10.1992, p. 1).

Community Customs Code (OJ L 302, 19.10.1992, p. 1).

Amendment 22

Proposal for a regulation Article 2 – paragraph 1 – point h

Text proposed by the Commission

(h) 'responsible importer' means any importer who ***chooses to self-certify according to*** the rules set out in this Regulation;

Amendment

(h) 'responsible importer' means any importer of minerals and metals who ***complies with*** the rules set out in this Regulation;

Amendment 23

Proposal for a regulation Article 2 – paragraph 1 – point h a (new)

Text proposed by the Commission

Amendment

(ha) 'responsible undertaking' means any undertaking which complies with the due diligence as defined in the OECD Due Diligence Guidance;

Amendment 24

Proposal for a regulation Article 2 – paragraph 1 – point i

Text proposed by the Commission

(i) '***self-certification***' means the act of declaring one's adherence to the obligations relating to management systems, risk management, third-party audits and disclosure as set out in this

Amendment

(i) '***European responsible importer certificate***' means the document issued by the competent authorities to any importer who complies with the rules set out in this

Regulation;

Regulation;

Amendment 25

Proposal for a regulation

Article 2 – paragraph 1 – point n a (new)

Text proposed by the Commission

Amendment

(n a) ‘upstream undertakings’ means miners (artisanal and small-scale or large-scale producers), local traders or exporters from the country of mineral and metal origin, international concentrate traders, mineral and metal reprocessors and smelters/refineries;

Amendment 26

Proposal for a regulation

Article 2 – paragraph 1 – point o

Text proposed by the Commission

Amendment

(o) 'supply chain due diligence' refers to the obligations of responsible ***importers of tin, tantalum and tungsten, their ores, and gold*** in relation to their management systems, risk management, third-party audits and disclosure of information with a view to identifying and addressing actual and potential risks linked to conflict-affected and high risk-areas to prevent or mitigate adverse impacts associated with their sourcing activities;

(o) ‘supply chain due diligence’ refers to the obligations of responsible ***undertakings*** in relation to their management systems, risk management, third-party audits and disclosure of information with a view to identifying actual and potential risks linked to conflict-affected and high risk-areas to prevent or mitigate adverse impacts associated with their sourcing activities ***and ensuring that the latter does not contribute to the illegal trade in minerals and metals and the funding of conflicts and do not give rise to human rights abuses;***

Amendment 27

Proposal for a regulation

Article 2 – paragraph 1 – point q a (new)

Text proposed by the Commission

Amendment

(qa) "armed groups and security forces" means groups referred to in Annex II of the OECD Due Diligence Guidance;

Amendment 28

Proposal for a regulation

Article 3 – title

Text proposed by the Commission

Amendment

Self-certification as a responsible importer

Certification as a responsible importer

Amendment 29

Proposal for a regulation

Article 3 – paragraph 1

Text proposed by the Commission

Amendment

1. Any importer of minerals or metals within the scope of the Regulation *may self-certify* as responsible importer by declaring *to a* Member State competent authority that it adheres to the supply chain due diligence obligations set out in this Regulation. The declaration shall contain documentation in which the importer confirms its adherence to the obligations including results of the independent third-party audits carried out.

1. Any importer of minerals or metals within the scope of the Regulation *shall be certified* by *the* Member State competent authority as responsible importer *after* declaring that it adheres to the supply chain due diligence obligations set out in this Regulation. The declaration shall contain documentation in which the importer confirms its adherence to the obligations including results of the independent third-party audits carried out.

Amendment 30

Proposal for a regulation Article 3 – paragraph 2

Text proposed by the Commission

2. The Member State competent authorities shall carry out appropriate ex-post checks in order to ensure that ***self-certified*** responsible importers of the minerals or metals within the scope of this Regulation comply with their obligations pursuant to Articles 4, 5, 6, and 7 of this Regulation.

Amendment

2. The Member State competent authorities shall carry out appropriate ex-post checks in order to ensure that ***certified*** responsible importers of the minerals or metals within the scope of this Regulation comply with their obligations pursuant to Articles 4, 5, 6, and 7 of this Regulation.

Amendment 31

Proposal for a regulation Article 4 – title

Text proposed by the Commission

Management system obligations

Amendment

Management system obligations ***for importers***

Amendment 32

Proposal for a regulation Article 4 – introductory part

Text proposed by the Commission

The responsible importer of the minerals ***or*** metals within the scope of this Regulation shall:

Amendment

Each importer of the minerals ***and*** metals within the scope of this Regulation shall, ***in accordance with OECD Due Diligence Guidance***:

Amendment 33

Proposal for a regulation Article 4 – point a

Text proposed by the Commission

(a) adopt and clearly communicate to suppliers and the public its supply chain policy for the minerals and metals potentially originating from conflict-affected and high-risk areas,

Amendment

(a) adopt and clearly ***and systematically*** communicate to suppliers and the public its supply chain policy for the minerals and metals potentially originating from conflict-affected and high-risk areas,

Amendment 34

Proposal for a regulation Article 5 – title

Text proposed by the Commission

Risk management obligations

Amendment

Risk management obligations ***for importers***

Amendment 35

Proposal for a regulation Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5 a

Management system obligations and risk management obligations for undertakings

Among other things, downstream undertakings identify, to the best of their efforts, and review the due diligence process of the smelters/refiners in their supply chain and assess whether they adhere to due diligence measures put forward in the OECD Due Diligence Guidance. Downstream undertakings may participate in industry-wide schemes that assess smelters/refiners' compliance with the OECD Due Diligence Guidance and may draw on the information these

schemes provide to help them fulfil the recommendations in the OECD Due Diligence Guidance and make this information available to the public.

Amendment 36

Proposal for a regulation

Article 6 – paragraph 2 – point c

Text proposed by the Commission

(c) respect the audit principles of independence, competence and accountability as set out in the OECD Due Diligence Guidance.

Amendment

(c) respect the audit principles of independence, competence and accountability ***and any applicable audit scope, criteria and activities***, as set out in the OECD Due Diligence Guidance.

Amendment 37

Proposal for a regulation

Article 7 – paragraph 3 – point a

Text proposed by the Commission

(a) name and address of each of the ***responsible*** smelters or refiners in its supply chain,

Amendment

(a) name and address of each of the smelters or refiners ***and/or any undertaking*** in its supply chain,

Amendment 38

Proposal for a regulation

Article 7 – paragraph 3 – point b

Text proposed by the Commission

(b) independent third-party audits regarding each of the ***responsible*** smelters or refiners in its supply chain carried out in accordance with the scope, objective and principles set out in Article 6 of the

Amendment

(b) independent third-party audits regarding each of the smelters or refiners ***and/or any undertaking*** in its supply chain carried out in accordance with the scope, objective and principles set out in Article 6

Regulation,

of the Regulation,

Amendment 39

Proposal for a regulation Article 7 – paragraph 4

Text proposed by the Commission

4. ***The responsible importer of minerals or metals within the scope of this Regulation*** shall make available to its immediate downstream purchasers all information gained and maintained pursuant to its supply chain due diligence with due regard to business confidentiality and other competitive concerns.

Amendment

4. ***Any undertaking*** shall make available to its immediate downstream purchasers all information gained and maintained pursuant to its supply chain due diligence with due regard to business confidentiality and other competitive concerns.

Amendment 40

Proposal for a regulation Article 8 – title

Text proposed by the Commission

List of responsible ***smelters and refiners***

Amendment

List of responsible ***importers of minerals and metals***

Amendment 41

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

1. On the basis of the information provided by the Member States in their reports as referred to in Article 15, the Commission shall adopt and make publicly available a

Amendment

1. On the basis of the information provided by the Member States in their reports as referred to in Article 15, the Commission shall adopt and make publicly available a

decision listing the names and addresses of responsible *smelters and refiners* of minerals within the scope of this Regulation.

decision listing the names and addresses of responsible *importers* of minerals *and metals* within the scope of this Regulation.

Amendment 42

Proposal for a regulation Article 8 – paragraph 4

Text proposed by the Commission

4. The Commission shall update the information included in the list in a timely manner. The Commission shall remove from the list the names of *the smelters and refiners* that are no longer recognised as responsible importers by Member States in accordance with Article 14(3), or the names of the smelters and refiners in the supply chain of the no longer recognised responsible importers.

Amendment

4. The Commission shall update the information included in the list in a timely manner. *Every six months*, the Commission shall remove from the list the names of the *importers* that are no longer recognised as responsible importers by Member States in accordance with Article 14(3), or the names of the smelters and refiners in the supply chain of the no longer recognised responsible importers.

Amendment 43

Proposal for a regulation Article 10 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The competent authorities of the Member States shall publish a report detailing the full findings of any ex-post checks, together with a reasonable explanation for making those findings and any documentation on which the competent authority based its findings.

Amendment 44

Proposal for a regulation Article 12 a (new)

PE546.838v02-00

68/74

RR\1059149EN.doc

Text proposed by the Commission

Amendment

Article 12 a

Information on 'conflict area' or 'high risk area':

The Commission shall, in close cooperation with the European External Action Service, make available to the public and to the undertakings adequate information as to what is meant by 'conflict area' or 'high risk area' and how they are determined.

Amendment 45

**Proposal for a regulation
Article 14 – paragraph 2**

Text proposed by the Commission

2. In case of an infringement of the provisions of this Regulation, the competent authorities of Member States shall ***issue a notice of remedial action to be taken by*** the responsible ***importer***.

Amendment

2. In case of an infringement of the provisions of this Regulation, the competent authorities of Member States shall ***notify*** the responsible ***undertaking of the remedial action to be taken by him***.

Amendment 46

**Proposal for a regulation
Article 15 – paragraph 3 a (new)**

Text proposed by the Commission

Amendment

3a. This Regulation provides for a transitional two-year period to allow importers of minerals and metals to comply with the obligations of public reporting.

Amendment 47

Proposal for a regulation Article 15 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. Any changes to the OECD guidelines shall apply mutatis mutandis to this Regulation.

Amendment 48

Proposal for a regulation Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15a

Accompanying measures

1. The Commission will submit a legislative proposal within the transitional period setting up accompanying measures in order to enhance the effectiveness of this Regulation in line with the Joint Communication to the European Parliament and the Council entitled "Responsible sourcing of minerals originating in conflict-affected and high risk areas. Towards an integrated EU approach" (JOIN (2014)8).

- Accompanying measures to ensure an integrated EU approach to the duty of responsible sourcing:

(a) support for responsibly sourcing enterprises in the form of incentives, technical assistance and guidance to enterprises, taking into account the situation of small and medium-sized enterprises and their position in the supply chain, in order to facilitate compliance with the requirements of this Regulation;

(b) ongoing policy dialogues with third countries and other stakeholders,

including the possibility of harmonization with national and regional certification systems and cooperation with public-private initiatives;

(c) continued, targeted development cooperation with third countries, in particular aid for the marketing of non-conflict minerals and placing local enterprises in a better position to comply with this Regulation;

(d) close cooperation with Member States for the launching of complementary initiatives in the area of consumer, investor and customer information and further incentives for responsible business conduct and performance clauses in procurement contracts signed by the national authorities under the terms of Directive 2014/24/EU of the European Parliament and of the Council.

2. The Commission shall present an annual performance report of the accompanying measures implemented pursuant to paragraph 1 and of their impact and effectiveness.

Amendment 49

Proposal for a regulation Article 15 b (new)

Text proposed by the Commission

Amendment

Article 15 b

Delegation of powers

The Commission shall be empowered to adopt delegated acts in accordance with Article 15c to amend the list of minerals and metals as set out in Annex I.

Amendment 50

Proposal for a regulation
Article 15 c (new)

Text proposed by the Commission

Amendment

Article 15 c

Exercise of the delegation

The power to adopt delegated acts referred to in Article 15a shall be conferred on the Commission for a period of ... years from*. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the ...-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

****OJ: Please enter the date of entry into force of this Regulation.***

PROCEDURE

Title	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
References	COM(2014)0111 – C7-0092/2014 – 2014/0059(COD)
Committee responsible Date announced in plenary	INTA 13.3.2014
Opinion by Date announced in plenary	DEVE 13.3.2014
Rapporteur Date appointed	Bogdan Brunon Wenta 29.9.2014
Discussed in committee	10.11.2014 21.1.2015
Date adopted	9.3.2015
Result of final vote	+: 23 -: 2 0: 0
Members present for the final vote	Beatriz Becerra Basterrechea, Ignazio Corrao, Nirj Deva, Doru-Claudian Frunzuliță, Maria Heubuch, Hans Jansen, Stelios Kouloglou, Arne Lietz, Linda McAvan, Norbert Neuser, Maurice Ponga, Cristian Dan Preda, Lola Sánchez Caldentey, Elly Schlein, György Schöpflin, Pedro Silva Pereira, Davor Ivo Stier, Paavo Väyrynen, Bogdan Brunon Wenta, Rainer Wieland, Anna Záborská
Substitutes present for the final vote	Seb Dance, Paul Rübig, Judith Sargentini
Substitutes under Rule 200(2) present for the final vote	Hilde Vautmans

PROCEDURE

Title	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			
References	COM(2014)0111 – C7-0092/2014 – 2014/0059(COD)			
Date submitted to Parliament	5.3.2014			
Committee responsible Date announced in plenary	INTA 13.3.2014			
Committees asked for opinions Date announced in plenary	AFET 13.3.2014	DEVE 13.3.2014	BUDG 13.3.2014	ITRE 13.3.2014
Not delivering opinions Date of decision	AFET 9.3.2015	BUDG 25.6.2014	ITRE 22.7.2014	
Rapporteurs Date appointed	Iuliu Winkler 3.9.2014			
Discussed in committee	6.11.2014	23.2.2015	19.3.2015	
Date adopted	14.4.2015			
Result of final vote	+: –: 0:	22 16 2		
Members present for the final vote	William (The Earl of) Dartmouth, Maria Arena, Tiziana Beghin, David Borrelli, David Campbell Bannerman, Daniel Caspary, Salvatore Cicu, Marielle de Sarnez, Christofer Fjellner, Eleonora Forenza, Yannick Jadot, Ska Keller, Jude Kirton-Darling, Alexander Graf Lambsdorff, Gabrielius Landsbergis, Bernd Lange, Jörg Leichtfried, Marine Le Pen, David Martin, Emmanuel Maurel, Emma McClarkin, Anne-Marie Mineur, Alessia Maria Mosca, Franz Obermayr, Artis Pabriks, Franck Proust, Godelieve Quisthoudt-Rowohl, Inmaculada Rodríguez-Piñero Fernández, Tokia Saïfi, Marietje Schaake, Helmut Scholz, Joachim Schuster, Adam Szejnfeld, Iuliu Winkler, Jan Zahradil			
Substitutes present for the final vote	Reimer Böge, Klaus Buchner, Fabio Massimo Castaldo, Dita Charanzová, Nicola Danti, Danuta Maria Hübner, Stelios Kouloglou, Sander Loones, Frédérique Ries, Pedro Silva Pereira, Marita Ulvskog, Jarosław Wałęsa			
Substitutes under Rule 200(2) present for the final vote	Judith Sargentini			
Date tabled	24.4.2015			