



EUROPEAN PARLIAMENT

2014 - 2019

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*Committee on Development*

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**2014/0059(COD)**

7.1.2015

# **DRAFT 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: Mr Bogdan Brunon Wenta

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## **SHORT JUSTIFICATION**

The rapporteur fully supports the main objective of the legislative proposal, namely breaking the link between the conflict and illegal exploitation of the 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 the 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 States 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 the 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 the 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 the 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 6

*Text proposed by the Commission*

*Amendment*

**(6) *The Commission in its 2008 Communication<sup>8</sup> recognised that securing reliable and undistorted access to raw materials is an important factor for the EU's competitiveness. The Raw Materials Initiative (RMI) is an integrated strategy aimed at responding to different challenges related to access to non-energy non-agriculture raw materials. The RMI recognises and promotes financial as well as supply chain transparency, and the application of corporate social responsibility standards.***

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<sup>8</sup> *The Raw Materials Initiative – meeting our critical needs for growth and jobs in Europe, COM(2008) 699.*

Or. en

#### *Justification*

*EU Raw materials Initiative aims to secure undistorted access to non-energy raw materials for EU industry, pursued by trade and investment policies that risk reducing the needed policy space for achieving structural transformation, resource-based industrialisation and inclusive growth in partner countries.*

## Amendment 2

### 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 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

**(7) *In its resolutions of*** 7 October 2010<sup>1</sup>, of 8 March 2011<sup>2</sup>, of 5 July 2011<sup>3</sup> and of 26 February 2014<sup>4</sup>, 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

the Commission announced in its Communications of 2011<sup>9</sup> and 2012<sup>10</sup> 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.

Wall Street Reform and Consumer Protection Act; and the Commission announced in its Communications of 2011<sup>9</sup> and 2012<sup>10</sup> 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.

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<sup>1</sup> *European Parliament resolution of 7 October 2010 on failures in protection of human rights and justice in the Democratic Republic of Congo*

<sup>2</sup> *European Parliament resolution of 8 March 2011 on Tax and Development – Cooperating with Developing Countries on Promoting Good Governance in Tax Matters.*

<sup>3</sup> *European Parliament resolution of 5 July 2011 on increasing the impact of EU development policy.*

<sup>4</sup> *European Parliament resolution of 26 February 2014 on promoting development through responsible business practices, including the role of extractive industries in developing countries*

<sup>9</sup> Commodity markets and raw materials, COM(2011) 25 FINAL.

<sup>10</sup> Trade, growth and development, COM(2012) 22 FINAL.

<sup>5</sup> Commodity markets and raw materials, COM(2011) 25 FINAL.

<sup>6</sup> Trade, growth and development, COM(2012) 22 FINAL.

Or. en

### **Amendment 3**

#### **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 within its scope from conflict-affected and high-risk areas. The reports may be accompanied, if necessary, by appropriate legislative proposals,

Or. en

**Amendment 4**

**Proposal for a regulation  
Recital 16 a (new)**

*Text proposed by the Commission*

*Amendment*

***(16a) It is essential to avoid unintended market distortions and allow the responsible importers to put in place systems that are necessary for complying with due diligence obligations. As a consequence, this Regulation stipulates a one year transitional period in order to guarantee its smooth implementation.***

Or. en

**Amendment 5**

**Proposal for a regulation  
Recital 16 b (new)**

***(16b) The timely implementation of the accompanying measures outlined in 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) is of the utmost importance in order to enhance the effectiveness of the Regulation and offset any unintended negative impact.***

Or. en

## Amendment 6

### 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 forces<sup>12</sup> 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.

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<sup>12</sup> ***'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*

1. This Regulation sets up a Union system for supply chain due diligence self-certification ***that shall be mandatory*** in order to curtail opportunities for armed groups and security forces 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 7

### 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 **are** 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.

Or. en

## Amendment 8

### 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 who **is** to self-certify **in accordance with** the rules set out in this Regulation;

Or. en

## Amendment 9

### Proposal for a regulation

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

*Text proposed by the Commission*

*Amendment*

***(qa) "armed groups and security forces" as defined in Annex II of the OECD Due Diligence Guidance for Responsible***



**Amendment 10**

**Proposal for a regulation  
Article 3 – paragraph 1**

*Text proposed by the Commission*

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.

*Amendment*

1. Any importer of minerals or metals within the scope of the Regulation *shall* 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.

**Amendment 11**

**Proposal for a regulation  
Article 14 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 14 a*

*Article 14a*

*Accompanying measures*

*If appropriate, 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)*

Or. en

**Amendment 12**

**Proposal for a regulation**

**Article 16 – paragraph 1 – subparagraph 1 (new)**

*Text proposed by the Commission*

*Amendment*

*It shall apply from ... \**

*\* insert the date - one year after the entry into force.*

Or. en

