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Joint civil society statement in response to European Parliament report on conflict minerals

Weeks before the European Parliament votes on a law to address the trade in conflict minerals, its International Trade Committee has just published a report that threatens to undermine attempts to clean up the trade.

A backward step

In March 2014, the European Commission published a draft law on the responsible sourcing of minerals from conflict-affected and high-risk areas. The proposed regulation is narrow in scope and establishes a voluntary scheme. It covers just four minerals – tin, tantalum, tungsten and gold – and gives importers of those minerals the **option** of checking they are sourcing them responsibly. The law will apply to just 0.05% of the EU companies involved in trading and processing these minerals – companies that import products, such as laptops, cars and mobile phones, that contain these minerals are not covered.

The committee leading the European Parliament's response to this proposed law, the International Trade Committee, last week published a draft report with its suggested changes. The report offers an important but worrying insight into the direction the Committee hopes to take. Rather than showing leadership on this issue by strengthening the draft law, the Committee suggests weakening it even further—by giving companies two years to opt-in to an already entirely voluntary scheme. The Committee's Rapporteur, Mr Winkler MEP, suggests that EU companies be left to decide "at their own speed" whether to source their minerals responsibly. If it supports this approach, Parliament is at risk of taking a major step backwards in attempts to confront the trade in conflict minerals.

Calls for an effective response

Business leaders, investors, religious leaders, civil society and consumers have all called on the European Parliament to strengthen the Commission's proposal by legally requiring more companies along the supply chain into Europe to source minerals responsibly. Most recently, the 2014 Sakharov Prize winner, Dr Denis Mukwege of the Democratic Republic of Congo (DRC), made a passionate plea for stronger EU regulation as part of his acceptance speech before the Parliament.

The Trade Committee's response ignores the concerns of these diverse voices. It also ignores the urgent need for an **effective** response to help break the links between natural resources, conflict and human rights abuses. In parts of countries like Afghanistan, the Central African Republic, the DRC, Myanmar, Zimbabwe, and other countries where the EU provides development assistance, the trade in natural resources fuels violent armed groups and abusive security forces.

A phase-in period for a small part of the supply chain undermines existing standards

The Trade Committee's current approach frames responsible sourcing as a niche concern of only a few companies, and suggests those companies can forestall even voluntary compliance for several years. This undermines existing standards that the EU has already endorsed.

The UN's Guiding Principles on Business and Human Rights (UNGPs) were endorsed by the UN Human Rights Council in 2011, and make it clear that all companies have a responsibility to ensure they are not contributing to human rights abuses. The OECD's Due Diligence Guidance, widely

recognised as the international responsible sourcing standard, puts these principles into practice by providing businesses with a clear five-step framework for sourcing minerals responsibly from conflict-affected and high-risk areas. Companies are expected to check their supply chains and mitigate the risk that they contribute to conflict or human rights abuses – a process known as risk-based due diligence. The Guidance was developed in close collaboration with business and has been operational since 2010. The EU committed to promoting this Guidance in May 2011.

The Trade Committee's report also undermines a fundamental principle of due diligence by ignoring a whole section of the supply chain – the companies that import into the EU products containing these minerals. Due diligence is most effective when it involves companies at several points in the supply chain – they can share information, best-practices, and together can gain more influence and leverage over suppliers, whether located inside or outside the EU.

The OECD Guidance recognises this fact, setting out in detail what is expected of companies at different points in the supply chain and tailoring these expectations to ensure that due diligence is feasible for all companies. The type and extent of due diligence depends on the size of a company, its leverage over suppliers, and its position in the supply chain. For example, a downstream company is not expected to track a mineral to its country or mine of origin. Instead, it should make "reasonable" and "good faith" efforts to identify the smelters or refiners in its supply chain and assess their due diligence practices.

A voluntary approach hasn't worked in the past

The Committee's current voluntary approach ignores the fact that only a limited number of companies undertake due diligence on a voluntary basis.

Despite existing voluntary standards, few European companies choose to check that they are sourcing minerals responsibly. In 2013, the Dutch organisation SOMO surveyed 186 companies listed on European stock exchanges that make use of tin, tantalum, tungsten and gold. Of those companies not directly affected by mandatory regulation elsewhere, 88% made no mention on their websites of what they had done to avoid fuelling conflict or human rights abuses. In a separate survey, the European Commission found that only 7% of 153 EU companies surveyed refer to a due diligence policy for conflict minerals in their annual reports or on their websites.

In response to the failure of companies to take-up voluntary schemes, other countries have shown leadership by introducing mandatory measures. In the US for example, section 1502 of the Dodd-Frank Act now requires companies sourcing certain minerals from the DRC or its neighbouring countries to report publicly on their due diligence efforts. Domestic legislation in the DRC and Rwanda requires companies operating in those countries to undertake due diligence that meets the OECD standard. Ten other countries in the Africa Great Lakes Region have committed to introducing similar legal requirements.

Entrenching industry schemes

The Trade Committee's draft report also risks undermining a central principle of due diligence – that companies themselves are responsible for checking their supply chains to see if they are fuelling conflict or human rights abuses. The report suggests that certain existing due diligence schemes be recognised as "equivalent" to the law, meaning that a company is deemed to comply with the law if it complies with one of those schemes. Industry schemes are an important tool that can assist companies in doing their due diligence more effectively and efficiently, as recognised in the OECD

Guidance. However, reliance on an industry-regulated scheme cannot take the place of a company's own responsibility to undertake supply chain due diligence and be transparent about its efforts. And, by limiting this provision to the handful of schemes already in existence, the Trade Committee is discouraging much-needed innovation and competition in this sector.

The Parliament has an opportunity to put forward a proposal that will effectively address the link between natural resources, conflict and human rights abuses. The Trade Committee's draft report does not do this. The Committee votes on its final report between 13 and 14 April. If it will not strengthen the Commission's proposal, the Plenary of the European Parliament must do so when its turn to vote comes in the spring.

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