



Brussels, 8 June 2015  
(OR. en)

8645/15

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**Interinstitutional File:**  
2014/0059 (COD)

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CODEC 667  
WTO 103  
COMER 64  
RELEX 343  
UD 107  
PE 90

## INFORMATION NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	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 – Outcome of the European Parliament's first reading (Strasbourg, 18 to 21 May 2015)

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## I. INTRODUCTION

The rapporteur, Mr Iuliu WINKLER (EPP, RO), presented a report on the abovementioned proposal on behalf of the Committee on International Trade (INTA). The report contained 56 amendments voted by the Committee.

In addition, 99 amendments were tabled by political groups or groups of 40 or more MEPs (amendments 57 – 59 by EPP, amendments 60 – 69 by ALDE, amendments 70 – 89 by EFDD, amendments 90 – 110 by EUL/NGL, amendments 111 – 130 by Greens/EFA, amendments 131 – 153 by S&D and amendments 154 – 155 by 40 or more MEPs). A number of these amendments were identical.

## II. DEBATE

The debate on the proposal took place on 19 May 2015.

The rapporteur, Mr Iuliu WINKLER (EPP, RO) opened the debate and:

- recalled that the aim of the proposal was to break the link between mineral extraction and trade and the financing of armed conflict by setting up an EU system of self-certification of importers of certain raw materials, modelled on the OECD due diligence guidelines for responsible supply chains of minerals from conflict-affected areas. Conflict areas were not defined in the regulation. The proposal followed a request by the Parliament for action;
- stated that the benchmark for his work as rapporteur was to have an efficient and workable regulation that was coherent with the integrated EU approach: 1) a trade regulation setting up the supply chain due diligence self-certification mechanism; 2) accompanying measures to assist companies in their uptake of the self-certification system, in particular SMEs; and 3) accompanying measures on the ground to be deployed through political, diplomatic and development cooperation, especially designed to support capacity-building, better governance and, first of all, education of all the stakeholders involved;
- argued that the compromise voted by the INTA committee fulfilled this objective, as it:
  - provided for the voluntary responsibility-based approach with mandatory due diligence obligations for EU smelters and refiners, and also importers of minerals;
  - was built on existing experience and functioning self-certification mechanisms;
  - introduced the European "responsible importer" label for the importers under the regulation and a list of responsible European importers as well as voluntary labelling for companies operating downstream;
  - did not unilaterally impose obligations on EU companies;
  - protected SMEs with the right incentives and assistance under the umbrella of the COSME programme;
  - contained a strong and clear review clause focused on assessing the effects of the regulation on the ground and enabling the adaptation to evolutions in the OECD due diligence framework, including as concerns the types of minerals included in the scope;

- warned that EU should not take over the failed practice of the mandatory US Dodd-Frank Act. It would amongst others create de facto embargoes and prohibitions, resulting in a surge in smuggling and illegal trade.

Commissioner MALMSTRÖM:

- stated that the challenge for regulation in this area was to harness the potential of economies while creating effective systems to avoid negative consequences, the issue of conflict minerals being a case in point. Developing countries should be provided with a vital source of stable income through trade in natural resources but the link between minerals and conflict also had to be broken. Therefore, the Commission, jointly with the High Representative, and on the basis of OECD work, put forward an integrated approach with the proposal being only one component. There was no silver bullet to deal with this problem. It had to be looked at from different angles – development, political, trade – all at the same time;
- recalled that EU was one of the world’s largest importers of the minerals in question and the approach taken by the EU would be important. The introduction of a mandatory scheme, without making sure that the conditions for its implantation on the ground were right, would run a high risk of creating negative consequences such as: trade diversion, plummeting prices for minerals from certain origins, thriving underground markets in conflict and high-risk areas and a prosperous smuggling sector, as well as severe shortage in the EU for companies. Proof of this was the situation in the Great Lakes region since the US mandatory scheme in the Dodd-Frank Act had come into effect;
- advocated that the Commission’s proposal was built on a solid foundation taking into account the above key considerations. It focused on smelters and refiners that were key in the supply chain, creating a “white list” and thus a ‘name and shame’ system for those that do not appear on the list. With no more than 40 smelters in the EU and external pressure, she believed that all would want to be on the “white list”. This was to be supported by an enforcement structure to be deployed by Member States’ competent authorities and a strong review clause to open the possibility for switching – in a staged manner – to a mandatory approach in the event that the current proposal did not deliver. In parallel, there would be a 20 million EUR package to further support capacity building in conflict regions;
- concluded that the voluntary, incentives-based approach, integrated for responsible sourcing, was the most appropriate one to achieve the common goal shared by all in the Parliament.

Mr Bogdan Brunon WENTA (EPP, PL), rapporteur for the opinion of the Development Committee:

- argued that the creation in the EU of a market of responsible trade in minerals gave hope for improving the situation of the people in the regions where minerals are sourced. It was therefore important to exchange information at the various stages in the supply chain, from extraction to the final product;
- recalled his proposals on obligations for upstream undertakings such as smelters, refineries and importers and due diligence for downstream undertakings in accordance with OECD guidance. It was important to take account of the situation of SMEs. He welcomed the 20 million EUR earmarked for accompanying measures and hoped that the proposed measures would be presented soon.

On behalf of the EPP group, Mr Daniel CASPARY (DE):

- called for focusing on the people in the region. Legislation should become effective quickly and not become something that would never be applied but rather suited some political activists in Europe;
- congratulated the Commission on the integrated approach. It was not only about regulation but also about the accompanying measures. In the INTA Committee some provisions had been strengthened and made obligatory, e.g. for the smelters. However, we should learn from the negative experiences of other countries. The Dodd Frank Act had not been unequivocally positive for the people on the ground;
- supported the text voted in the Committee and called upon the Council to move on with the file. He signaled the openness of his group to look at the approach again should it after some years become clear that things had not improved.

On behalf of the S&D Group, Mr Gianni PITTELLA (IT):

- stated that the clear link between extraction of minerals and financing of armed groups should be broken. Measures should also contribute to decreasing violence against women and children. Obligatory traceability throughout the entire supply and trading chain was needed;

- made it clear that the S&D would not support something that really would not affect major financial interests. A possible compromise was on the table. It represented a balance between the different political groups and took into account the requirement of SMEs. He called upon all to go for this compromise because the vote would affect the credibility of the Parliament.

On behalf of the ECR Group, Ms Emma MCCLARKIN (UK):

- feared that the mandatory approach proposed by some groups, although different from the US Dodd-Frank Act, would lead to similar similarly cumbersome requirements, particularly for the downstream supply chain. Many companies would begin to source elsewhere, creating de facto embargoes to the detriment of innocent miners and their families, as was the case in the Congo;
- advocated the approach of the INTA compromise to use the clear pinch point in the supply chain where there was a very realistic opportunity to determine the source of the minerals and apply a mandatory approach on that critical part. Further down the supply chain, it would become more and more unfeasible for companies to prove where minerals used in finished products came from;
- recalled that the approach taken did not exclude to take into account developments in the area of verification, e.g. the many industry schemes. A strong review clause would enable the assessment of the impact of EU legislation, in particular as concerns the voluntary uptake for the scheme for downstream companies and the real impact on the ground. This was better than rushing into creating a top-down scheme that may do more harm than good.

On behalf of the ALDE Group, Ms Marielle DE SARNEZ (FR):

- emphasized the common objective to break the link between the exploitation of minerals and armed conflicts. The Parliament should gather round a piece of ambitious legislation that could be applied, enter into force and change the situation in the areas of conflict. Thus, both Commission and the Council should be able to support it;

- stated that for the Parliament traceability should be mandatory for all key actors in the chain. That was the intention of the INTA vote. If that vote would be followed in the vote by the plenary, all importers, European smelters and refineries would have to present a certificate that their imported minerals were clean and did not come from a conflict zone. At the same time SMEs would benefit from financial aid to put in place traceability of minerals with a “conflict free” label. She had proposed amendments to the review clause allowing to extend the scope of the obligations and the minerals regulated;
- believed that the European legislation could serve as a model in order to create a positive dynamics in other regions of the world and that at UN level agreement should be found on the issue of sustainable sourcing of natural resources.

On behalf of the EUL/NGL Group, Mr Helmut SCHOLZ (DE):

- recalled that the reason for having this regulation was that people were the victims of conflicts that were carried out because of natural resources or at least financed from these. The chain of profits of the perpetrators extended into the EU. The aim of the regulation was to create transparency of the supply and thereby stop or at least make more difficult the trade in war, rape and child labour. Therefore, legislation had to be effective;
- asked that Denis Mukwege, the experts from the conflict regions, representatives of Church, even some voices from industry, be listened to. These had all said that a voluntary approach was not enough, what was needed was a mandatory regulation for all in the supply chain. The proposal voted by a slim majority in the Committee would only oblige 20 European smelters. 80 % of the raw materials that came from the Congo would not be affected by the regulation because the smelting mostly took place in Asia;
- urged to use the possibility to make the Regulation compulsory for the entire supply chain by voting for the proposed amendments. It was time to finally do something concrete for the victims and contribute to removing the reasons for why people fled from their homes.

On behalf of the Greens/EFA Group, Ms Judith SARGENTINI (NL):

- recalled that for hard wood certification was obligatory and the same was the case for diamonds. Since 2011 European companies have been able to use the OECD guidelines for certification of products containing conflict minerals but they did not use them;

- argued that the proposal of the Commission based on the voluntary approach would have the same flaw as the all other voluntary systems. The proposal would only affect 20 European smelters and refineries. For example, most phones were made in China and would not be covered by the Regulation and the consumers would not be able to find out where the raw materials were sourced from;
- stated that this was about the war in the Congo, about women being raped and about children working in mines and not about the German car industry and their problems with bureaucracy.

On behalf of the EFDD Group, Ms Tiziana BEGHIN (IT):

- stated that the technology that we use (telephone, computers) was covered in blood because the raw minerals contained therein came from conflict areas where human rights abuses took place. She and her colleagues had worked hard come up with a mandatory, effective system that would enable people to know which products came from conflict areas and which ones that did not. It would not be a burden on SMEs but oblige electronics multinationals to take on their responsibility;
- underlined the importance of the vote. If the Parliament embraced these amendments, it would at least have contributed to making the world a better place.

The focus of the interventions of the speakers that followed centered around around the voluntary versus the mandatory approach and on which parts of the supply chain should be covered by the measures. Most speakers followed the political group speakers with some differences and nuances.

Ms Maria ARENA (S&D, BE):

- argued that the Dodd-Frank Act from 2010 with its information obligations for American companies – contrary to what others had said in the debate – had brought about change in the countries of origin, even if this had taken time;
- stated that the proposal made by the Commission was timid and without ambition and not in line with what the Parliament had requested in 2010 and 2011. She wanted an ambitious Regulation here and now that imposed an information obligation on all companies using the three minerals throughout the supply chain.

Mr William DARTMOUTH (EFDD, UK):

- recalled the EU's role in creating the poverty, particularly in Africa, that had engendered armed groups and made illegal trading in metals so attractive in the first place. The EU should stop its protectionist and destructive trade policies that impoverished the African continent. The EU was behind the US on this issue and the Dodd-Frank Act had already reduced funds to groups that thrived on conflict minerals by almost two thirds;
- advocated a scheme, headed by the United Nations and working with individual African countries, and not a scheme under EU control.

Mr Louis MICHEL (ALDE, BE):

- recalled that doctor Mukwege, the Sakharov prize winner, had urged the Parliament to put in place a rigorous control on the exploitation of minerals that finance conflicts. Neither the Commission's proposal nor the rapporteur's compromise answered that call. To limit the due diligence obligations to smelters, refineries and importers without any information obligation on 879 000, or 99% of companies, downstream, represented more inconveniences than advantages for European companies. Without any obligations, the companies down stream would always have the choice to buy from other international operators not covered by the Regulation or through illegal chains. Therefore, there was an economic reason for imposing a minim of information for all companies;
- stated that these considerations lay behind the amendment he had proposed (amendment 155). It would suffice that other companies declared the identity of their supplier. The constraints would be minimal with no audit or reporting and thus no extra bureaucratic burdens for SMEs. There would thus be a differentiated treatment of smelters, refineries and importers (with more obligations) vis-a-vis other companies.

Mr Bernd LANGE (S&D, DE):

- stated that from the perspective of a value based Trade Policy it had to be ensured that the globalised chain of value creation functioned in fair manner. This would not achieved by voluntary approaches as had been seen in the textile industry. Mandatory requirements were needed. To only put obligations on 20 smelters and refineries and not on the 400 others was unbalanced. A clear obligation covering the chain from production to smelters was needed;



- recalled that the Council was always watering down the proposals of the Parliament, and therefore the Parliament shouldn't be accommodating the Council beforehand but be self confident in order to obtain something.

Ms Anna ZÁBORSKÁ (EPP, SK):

- stated that she could not vote for the INTA compromise. When comparing the issue of higher administrative burdens for certain European companies with the suffering of millions of people, the choice was clear;
- spoke in favour of mandatory certification covering the whole supply chain from extraction companies to final processors and covering all resources. Without adopting a truly efficient legislation, the EU should not proudly proclaim itself as the biggest global donor.

Mr Eric ANDRIEU (S&D, FR):

- recalled the plea of Dr Mukwege for an ambitious legislation and the resolution following the tragedy in Rana Plaza in Bangladesh, where the Parliament called for a binding legislation on traceability and transparency throughout the supply chains in order to improve the conditions of work, health and safety of workers. The Parliament should now take the occasion to translate words into action and vote for a text that would guarantee a responsible supply of the European market with a real and positive impact on the ground;
- in this context, asked in particular the colleagues from ALDE and EPP to be coherent and vote in favour of the proposed amendments to the INTA report and bring the EU towards more protection of rights and human beings in accordance with its principles and values.

### III. VOTE

The vote on the proposal took place on 20 May 2015. The Parliament adopted 60 amendments. On a number of amendments the votes were very tight.

36 of the 56 amendments voted in Committee were confirmed by the plenary (one only partly). Amendments 7, 8, 11, 13, 17, 22, 27, 28, 32 - 39, 41, 42, 50, 54 were rejected. In addition, 24 amendments were adopted (amendments 57, 59, 60, 66, 67, 71, 76, 77, 85, 91, 97, 98, 100, 112, 117, 118, 126, 135, 136, 138, 145, 151, 154 and 155). A number of these amendments were identical. The text of the adopted amendment is annexed to this note.

The vote on the legislative resolution was postponed to a later session, thereby not closing the first reading. The matter was then referred back to the Committee, pursuant to Rule 61(2) of the Parliament's Rules of Procedure.

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## Union system for self-certification of importers of certain minerals and metals originating in conflict-affected and high-risk areas \*\*\*I

Amendments adopted by the European Parliament on 20 May 2015 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))<sup>1</sup>

(Ordinary legislative procedure: first reading)

### 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 – can be a cause of dispute where their revenues are fuelling the outbreak or 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)

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<sup>1</sup> The matter was referred back to the committee responsible for reconsideration pursuant to Rule 61(2), second subparagraph (A8-0141/2015).

*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*

(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.

*Amendment*

(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).*

### **Amendment 4**

#### **Proposal for a regulation**

##### **Recital 5 a (new)**

***(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.***

## **Amendment 5**

### **Proposal for a regulation Recital 7**

(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 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.

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

## Amendments 71, 91 and 112

### Proposal for a regulation Recital 9 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(9a) The Regulation reflects the need for due diligence along the entire supply chain from the sourcing site to the final product, by requiring all companies who first place covered resources, including***

*products that contain those resources on the Union market to conduct and publicly report on their supply chain due diligence. In line with the nature of due diligence, the individual due diligence obligations contained in this Regulation should reflect the progressive and flexible nature of due diligence processes, and the need for obligations that are appropriately tailored to enterprises' individual circumstances. Obligations should be tailored to a company's size, leverage, and position in its supply chain.*

## **Amendment 57**

### **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<sup>1a</sup> 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 responsible sourcing of minerals and metals.*

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<sup>1a</sup> *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).*

## **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*

*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

(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



impact on competitiveness notably on SMEs should be monitored by the Commission.

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 12

### Proposal for a regulation Recital 12 a (new)

*Text proposed by the Commission*

*Amendment*

*(12a) 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 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.*

## **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 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.*

## **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 may include mandatory measures,

(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 Council***. 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.***

## Amendment 60

### Proposal for a regulation Article 1 — paragraph 1

*Text proposed by the Commission*

*Amendment*

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.

1. This Regulation sets up a Union system for supply chain due diligence ***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

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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>.

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 154

### 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 ***all*** Union importers who ***source minerals and metals falling within the scope of this Regulation, in accordance with the OECD Due Diligence Guidance. That guidance is designed to guarantee transparency and traceability in respect of importers' 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, as defined in Annex II to the OECD Due Diligence Guidance, to trade in those minerals and metals.***

## 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.***

**Amendments 76, 97, 117 and 135**

**Proposal for a regulation**

**Article 1 – paragraph 2 b (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, its size and its position in the supply chain.***

**Amendments 77, 98, 118 and 136**

**Proposal for a regulation**

**Article 1 – paragraph 2 c (new)**

*Text proposed by the Commission*

*Amendment*

***2c. The Commission, working with industry schemes 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, to ensure that the system involves a flexible procedure that takes into account the position of SMEs.***

**Amendment 155**

**Proposal for a regulation**

**Article 1 – paragraph 2 d (new)**

*Text proposed by the Commission*

*Amendment*

***2d. Under this Regulation and in accordance with the OECD Due Diligence Guidance, downstream companies shall take all reasonable steps to identify and address any risks arising in their supply***

*chains for minerals and metals coming within the scope of this Regulation. In this connection, they shall be required to provide information on the due diligence practices they employ for responsible supply chains.*

## 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;*

## Amendment 24

### Proposal for a regulation Article 2 – 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 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*;



## 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 2913/1992**<sup>13</sup> ;

*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;**

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

## Amendment 100

### Proposal for a regulation Article 2 – 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*

*deleted*

## Amendment 138

### Proposal for a regulation Article 2 – 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 Regulation;*

*Amendment*

*deleted*

*(This AM applies throughout the text)*

## 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*

(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,

## Amendments 85, 126 and 145

### Proposal for a regulation Article 4 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***Where any undertaking can reasonably conclude that resources are derived only from recycled or scrap sources, it shall, with due regard to business confidentiality and competitive concerns:***

***(a) publicly disclose its determination;  
and***

***(b) describe in reasonable detail the due diligence measures it exercised in making that determination.***

## **Amendment 67**

### **Proposal for a regulation Article 6 — paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***Certified responsible importers of smelted and refined metals shall be exempted from carrying out independent third-party audits pursuant to Article 3(1a) of this Regulation provided they submit substantive evidence that all smelters and refiners in their supply chain conform to the provisions of this Regulation.***

## **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).*

## **Amendment 43**

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

*Text proposed by the Commission*

*Amendment*

#### *Article 7b*

##### *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.*

## **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.

**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

*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

be consulted.

Secretariat shall be consulted.

#### **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.

#### **Amendment 151**

##### **Proposal for a regulation Article 10 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. The competent authorities of the Member States shall carry out appropriate ex-post checks in order to ensure whether responsible importers of minerals and metals within the scope of this Regulation comply with the obligations set out in Articles 4, 5, 6 and 7.

**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.

**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*

*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.*

*Amendment*

*deleted*

## **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.*

## 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)0008).***

***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<sup>1a</sup>.*

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

*<sup>1a</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).*

## **Amendment 56**

### **Proposal for a regulation Article 16 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

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

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

## **Amendment 59**

### **Proposal for a regulation Annex II – Column C a (new)**

*Text proposed by the Commission*

*Amendment*

***Column Ca: Type of mineral***

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