



FAR FROM REALITY

How the EU falls short in preventing the illicit trade of conflict minerals

Report #80

**SWED
WATCH**

Swedwatch is a religiously and politically independent organization that examines Swedish companies' business operations abroad. The organization's purpose is to reduce adverse social and environmental impacts, encourage best practice, share knowledge and hold an open dialogue with Swedish companies so that the business community pays greater attention to these issues. Swedwatch has six member organizations: The Church of Sweden, Diakonia, the Swedish Society for Nature Conservation, Fair Action, Solidarity Sweden-Latin America and Africa Groups of Sweden.



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Executive Summary

In recent years, international efforts have sought to address issues related to the illicit trade of conflict minerals fueling conflicts across the globe. One such initiative is reflected in Section 1502 of the U.S. Dodd-Frank Wall Street Reform and Consumer Act, passed in 2010, which targets companies listed on the U.S. stock exchange using conflict minerals in their products. The provision requires such companies to carry out supply chain due diligence and to annually report on this issue. The Dodd-Frank Act has led to an increased application of various other international guidelines and norms, as well as new national legislation in the Democratic Republic of Congo (DRC), one of the most mineral rich countries in the world. Important developments in the DRC in recent years include: 1) requirements on mining operations to be validated in order to legally trade minerals, and 2) a traceability system designed to increase transparency in the supply chain. There are however severe challenges in the implementation of the new regulations, and much work remains to be done in order to establish functional and trusted frameworks.

Miners interviewed by Swedwatch during a field trip to the DRC tell of harsh and dangerous working environments and dire economic conditions. Government officials experience problems in regards to insufficient funding, and therefore lack the capacity to validate and monitor mining activities, and enforce the rule of law. Mining companies lose a substantial share of minerals to smugglers who circumvent the legal requirements. And NGO's report widespread corruption among government authorities, compromising the traceability and validation systems, as well as lack of engagement and tax avoidance by large mining companies. Despite their differences, key stakeholders in the DRC agree that EU legislation is needed to tackle the systemic flaws within the mining industry.

On 15 June 2016, after months of negotiations, the EU agreed an outline deal on a new regulation on conflict minerals due diligence. The agreement is a welcome step in the right direction, but the compromise fails to address key issues and this may undermine the purpose of the legislation itself. The main critical gap relates to the scope of the agreement only applying to upstream companies.

The agreed scope covers only a fraction of minerals that end up in the EU - requiring only upstream companies, i.e. smelters/refiners, to conduct due diligence. Downstream companies, placing minerals on the EU market in the form of finished products, such as mobile phones, laptops and cars, are exempt.

Already existing standards, such as the OECD Guidance, include clear provisions for both upstream and downstream companies to conduct on-going due diligence. Thus, the entire supply chain of minerals is covered and engages each actor in the chain. The EU agreement fails to live up to the existing standards.

Legislation requiring all companies to conduct due diligence was an opportunity for the EU to address the severe and pressing human rights risks in global supply chains of conflict minerals. Instead, the negotiations reached only a partial solution.



Artisanal miners washing sand and earth in deep trenches in order to extract tantalum. North Kivu, the DRC. PHOTO DIAKONIA

Recommendations

To EU institutions:

- Provide assistance for downstream companies on implementation of due diligence procedures in accordance with the OECD Guidance. By showing the feasibility of implementing such procedures, the scope of the regulation can effectively be revised;
- Incorporate the possibility of extending the mineral scope of the regulation during the revision, in order to include minerals such as cobalt, silver, jade and uranium;
- Engage with all relevant stakeholders in mineral producing countries in order to effectively implement the accompanying measures.

To EU Member States:

- Impose more far reaching regulations, than the agreement reached by EU institutions, by also requiring downstream companies to conduct conflict minerals due diligence - in accordance with the OECD Guidance.

To downstream companies:

- Apply the OECD Guidance and conduct on-going due diligence. The OECD Guidance is the internationally accepted standard for companies sourcing conflict minerals. Responsible enterprises should therefore go beyond weak legislation and adhere to best practice.

1. Introduction

Minerals and metals such as tin, tantalum, tungsten and gold are used for vital components in everyday products such as laptops, mobile phones and cars. These minerals, and many others, are often mined in conflict or high-risk areas such as Afghanistan, the Central African Republic (CAR), Colombia, the Democratic Republic of Congo (DRC), and Myanmar. In many cases, armed groups control mineral extraction businesses in order to finance their operations. This illicit trade contributes to violent conflicts and severe human rights violations. The above-mentioned minerals have therefore been classified as “conflict minerals”. The internationally recognized definition of conflict minerals includes tin, tantalum, tungsten, their ores and mineral derivatives, and gold (hereafter 3TGs).¹

In order to stop the flow of illegal conflict minerals, several international and national initiatives and regulations have emerged. The primary focus of these norms is minerals from the DRC and adjoining countries, mainly due to the so-called Second Congo War. See section 2. Background.

This report looks at the effects of current legislation on the mining and trade of conflict minerals from the DRC. The purpose of the report is to present the voices of effected stakeholders on the ground, and to present an analysis of the current EU agreement on a conflict minerals due diligence regulation, reached on 15 June 2016.

This report is the result of a joint research trip to the North and South Kivu provinces in the DRC, undertaken in December 2015 by Swedwatch, Diakonia, PMU and Atea.² The aim of the trip was to increase understanding of the challenges that exist in relation to sourcing of conflict minerals from the DRC. In order to inform debate around what would make EU legislation most effective, this report provides an overview of current regulations and initiatives.

The research team visited three mining sites in the Kivu provinces, interviewed management and miners, as well as local NGOs, traders, government officials and industry organizations. The report is structured around an analysis of current legislation on conflict minerals, as well as the conducted interviews - divided between the visits to the two Kivu provinces.

No single company or actor was scrutinized during this study. Results are therefore indicators of concerns among local actors from different sectors within the mining industry. Based on the interviews and identified gaps in current frameworks, this report provides an analysis of the upcoming EU conflict minerals legislation.

The names of the miners in the report have been changed in order to protect their identities.

1 OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, third edition, 2016.

2 Diakonia and PMU (Pingstmissionens Utvecklingssamarbete) are faith-based Swedish development organizations. Atea is a Swedish company specializing in IT infrastructure.

2. Background

Human rights abuses linked to the mining and trading of minerals in the DRC are well documented, as are the links between the devastating conflict and illicit trade flows of minerals.³ The Second Congo War began in 1998 and stretched to 2003, when a peace agreement was reached. However, unrest prevailed and by 2008 the war and its aftermath had claimed the lives of millions, many from disease and starvation. Approximately 2.8 million people remain internally displaced and some 450,000 have become refugees.⁴ In recognition of the role that natural resources, and in particular minerals, played in underpinning the conflict, the UN Security Council established, 2 June 2000, a Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo. Findings showed a direct causal link between the exploitation of minerals and the conflict, highlighting the use of minerals by stakeholders in their war-efforts.⁵ Despite the peace agreement of 2003, and despite the abundance of information regarding the role of the minerals-trade in DRC, the illegal trade of conflict minerals continues to contribute to the financing of armed groups in the country.

Adverse human rights impacts linked to conflict and mineral trade is a salient issue. Reports have shown that the minerals trade in the CAR, Colombia, and the DRC has partly been responsible for fueling conflicts that have displaced 9.4 million people.⁶ In CAR, the illicit trade of gold is estimated at 2 tons per year, amounting to approximately US\$60 million.⁷ The Revolutionary Armed Forces of Colombia (FARC) derive up to 20 percent of their economic resources from the control of Columbia's gold

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- 3 See for example: Global Witness, *Coming Clean – How supply chain controls can stop Congo's mineral trade fueling conflict*, 2012; Global Witness, *Putting Principle into Practice – Risk and opportunities for conflict-free sourcing in eastern Congo*, 2013; Swedwatch, *A Lot of Gold, A Lot of Trouble – A study of humanitarian impacts of the gold industry in DR Congo*, 2012.
 - 4 International Rescue Committee, *Measuring Mortality in the Democratic Republic of Congo*, http://www.rescue.org/sites/default/files/resource-file/IRC_DRCMortalityFacts.pdf; UNHCR, *DRC Regional Refugee Response*, <http://data.unhcr.org/drc/regional.php>; Internal Displacement Monitoring Centre, *Democratic Republic of Congo*, <http://www.internal-displacement.org/sub-saharan-africa/democratic-republic-of-the-congo/>.
 - 5 UN Expert DRC Panel Report S/2001/357 dated 12 April 2001 (para 215). "The role of the private sector in the exploitation of natural resources and the continuation of the war has been vital. A number of companies have been involved and have fueled the war directly, trading arms for natural resources, which are used to purchase weapons. Others have facilitated access to financial resources, which are used to purchase weapons. Companies trading minerals, which the Panel considered to be 'the engine of the conflict in the DRC', have prepared the field for illegal mining activities in the country."
 - 6 UN Refugee Agency, *Central African Republic Situation, Regional Update 30*, 2014; UNHCR Country Operations Profile for DRC, <http://www.unhcr.org/pages/49e45c366.html>; Ignacio Gómez G, The Center for Public Integrity, 2012, <http://www.publicintegrity.org/2012/03/04/8284/colombias-black-market-coltan-tied-drugtraffickers-paramilitaries>; Consultoria para los Derechos Humanos y el Desplazamiento (CODHES), June 2014, *El Desplazamiento Forzado y la Imperiosa Necesidad de la Paz: Informe desplazamiento 2013*.
 - 7 United Nations Security Council, *Final report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013), S/2014/762*, <http://reliefweb.int/sites/reliefweb.int/files/resources/N1453897.pdf>.





A tantalum mine in North Kivu.
At peak season 6000 artisanal miners
work at the site on a daily basis.

PHOTO DIAKONIA

trade. In Afghanistan, the Taliban make a 20 percent profit from mines located in areas under their control. In contrast, only 3.4 percent of government revenues in Afghanistan were from the mining sector in 2013, yet there is an estimate of 1400 illegal mines in the country.⁸ Amnesty International recently published a report exposing widespread child labor in mining of cobalt in the DRC, and highlighting the failure of major electronics brands to address these risks.⁹

3. Legislation and Initiatives

In recent years, international efforts have sought to address these challenges and mitigate the risks of adverse impacts in the supply chain of conflict minerals. Efforts have focused on requiring companies to take responsibility for increased transparency in their supply chains. This section provides a background to current legislation and guidelines.

3.1 The Dodd-Frank Wall Street Reform and Consumer Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act, passed by the U.S. Congress in July 2010, includes a provision – section 1502 – aimed at addressing the issue of illicit trade of conflict minerals from the DRC and adjoining countries (the so-called Great Lakes Region¹⁰). Section 1502 is a disclosure requirement that obligates companies, listed on the U.S. stock market, to determine whether their products contain conflict minerals, by carrying out supply chain due diligence. Due diligence processes and results must be reported to the Securities and Exchange Commission (SEC).¹¹

It is important to stress that Section 1502 is a reporting requirement, and places no ban or penalty on the use of conflict minerals. Hence, it is not illegal for companies to source conflict minerals from the DRC or adjoining countries, they must however report this to the SEC.

Initially, section 1502 required companies filing a SEC report to include information on whether their products were “DRC conflict free,” “having not been found to be ‘DRC conflict free,’” or “DRC conflict undeterminable”. This provision was challenged by the industry and the U.S. Court of Appeals for the DC Circuit ruled, in August of 2015, that such a requirement was in violation of the first amendment (freedom of speech). Companies are therefore not required to include such a statement but are,

8 Global Witness, *Country focus: the extent of the conflict resources problem*.

9 Amnesty International, *This is What We Die for – Human rights abuses in the Democratic Republic of the Congo power the global trade in cobalt*, 2015.

10 Burundi, the Democratic Republic of Congo, Kenya, Rwanda, Tanzania and Uganda.

11 Dodd-Frank Wall Street Reform and Consumer Protection Act, Sec. 1502.

nevertheless, under obligation to file an annual report to the SEC on the origin of conflict minerals in their products.¹²

The Dodd-Frank Act has also been criticized for contributing to the boycott of minerals from the DRC, as companies may prefer to not source from the country altogether in order to avoid the need to report to the SEC. Although mineral exports from the Great Lakes region dropped significantly after the implementation of the law, the main reason for this was a six-month suspension of artisanal mining by the Congolese government, from September 2010, in order to deal with illicit trade. Another important factor was the lack of guidance on implementing section 1502. The SEC published its Final Rule in August 2012, two years after the law was adopted, explaining how companies should act in order to adhere to the provision.¹³ The trade in minerals from the DRC has, however, recovered since then and, considering the global economic slowdown and the decline in the demand and price for minerals exported by the DRC, is contributing heavily to the continued economic growth of the country over the past five years at an average rate of 7.7%.¹⁴

3.2 Conflict-Free Smelter Program

The Dodd Frank Act has also led to an increased application of various international standards, guidelines and certifications regarding conflict minerals. One such initiative is the Conflict-Free Sourcing Initiative (CFSI), founded by the Electronics Industry Citizenship Coalition (EICC)¹⁵ in 2008. The main focus of the CFSI is the Conflict-Free Smelter Program (CFSP), a third-party audit scheme to identify smelters and refiners that have procedures in place to assure sourcing of conflict-free materials. The audited and approved smelters are then certified, assisting for example electronics companies in their sourcing decisions.¹⁶

An increasing number of companies are using this program in order to support conflict-free products claims. It is however important to note that “conflict-free” in this case refers to the Dodd-Frank Act and only focuses on minerals from the DRC and adjoining countries. The audit looks at the procedures a smelter has in place in order to determine “reasonable country of origin” of the processed minerals. A smelter can therefore be labeled as “conflict-free” whilst not dealing with risks related to, for example, Afghanistan, CAR, or Colombia. As is discussed in section 4. Voices from

12 *National Association of Manufacturers, et al., v. Securities and Exchange Commission, et al.*, U.S. Court of Appeals for the DC Circuit, August 18th 2015, No. 13-5252, [https://www.cadc.uscourts.gov/internet/opinions.nsf/7677C9E435244EC985257EA50054F3D4/\\$file/13-5252-1568402.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/7677C9E435244EC985257EA50054F3D4/$file/13-5252-1568402.pdf).

13 SEC, Conflict Minerals, 17 CFR PARTS 240 and 249b, <https://www.sec.gov/rules/final/2012/34-67716.pdf>.

14 The World Bank, Country Overview – The DRC, <http://www.worldbank.org/en/country/drc/overview>.

15 The EICC, founded in 2004, is a nonprofit coalition of electronics companies focusing on sustainability issues in the global supply chains of the electronics industry. EICC members commit and are held accountable to a common Code of Conduct.

16 Conflict-Free Sourcing Initiative, <http://www.conflictreesourcing.org/>; Conflict-Free Smelter Program, <http://www.conflictreesourcing.org/conflict-free-smelter-program/>.

the DRC, of this report, there are also severe cracks in the system due to corruption and lack of credibility of certification schemes in the DRC.

Intel, the world's largest chip manufacturer, stated in 2014 that all microprocessors that the company made from 2014 onward would be conflict-free. The method used for determining this was to identify and only source from conflict-free smelters. Statements such as this have on one hand been applauded for setting the bar for other companies to increase efforts to pursue more transparent supply chains, while on the other hand such declarations have also been criticized for relying on flawed methods and sending the wrong signal to consumers.¹⁷

Apple adopted a different approach in their 2015 annual report to the SEC. In its report, Apple stated that after five years of work, 100% of identified smelters and refiners in their supply chain took part in CFSP third-party audits. The company could, on the same grounds as Intel, therefore declare their products "conflict-free", but nevertheless chose not to do so. The reason being that they recognised the challenges and flaws in existing certification schemes:

"Apple does not believe that Third Party Audit program participation alone is sufficient to label products "conflict free." Apple believes it has more work to do. In 2016, Apple is turning its attention to two key areas: enhancing due diligence in the gold supply chain and helping improve local incident reporting and issue resolution."¹⁸

3.3 OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance), was first published in 2011 and recently updated in its third edition in April 2016. The OECD Guidance provides detailed recommendations to help companies respect human rights and avoid contributing to conflict through their mineral purchasing decisions and practices. The OECD Guidance applies to all companies potentially sourcing minerals or metals from conflict-affected and high-risk areas, and establishes due diligence procedures for both upstream and downstream companies.¹⁹

For the purpose of the OECD Guidance the term "upstream" concerns the mineral supply chain from the mine to smelters/refiners. "Upstream companies" include miners (artisanal and small-scale producing enterprises, rather than individuals or

17 Aljazeera America, Fault Lines, *Are Intel's microprocessors really conflict-free?*, November 14 2015, <http://america.aljazeera.com/watch/shows/fault-lines/articles/2015/11/14/are-intels-microprocessors-really-conflict-free.html>.

18 Apple Inc, Conflict Minerals Report for the reporting period January 1, 2015 to December 31, 2015, https://www.apple.com/supplier-responsibility/pdf/Conflict_Minerals_Report_2016.pdf.

19 Supra note 1.

informal working groups of artisanal miners, or large-scale producers), local traders or exporters from the country of mineral origin, international concentrate traders, mineral re-processors and smelters/refiners. “Downstream” refers to the minerals supply chain from smelters/refiners to retailers. “Downstream companies” include metal traders and exchangers, component manufacturers, product manufacturers, original equipment manufacturers (OEMs) and retailers. What is expected of a company, and the due diligence process, differs depending on whether the enterprise is an upstream or downstream actor.²⁰

The OECD Guidance calls on upstream companies to establish a system of internal control over the minerals in their possession (chain of custody or traceability) and establish on-the-ground assessments for generating and sharing verifiable, reliable, up-to-date information on the qualitative circumstances of mineral extraction, trade, handling and export from conflict-affected and high-risk areas. The results of such risk assessments are to be provided to downstream purchasers, and smelters/refiners should have their due diligence practices audited by independent and verified third parties. Downstream companies should identify and review the due diligence process of the smelters/refiners in their supply chain and assess whether they adhere to the standards for upstream actors.

The reason the OECD Guidance distinguishes between upstream and downstream due diligence is due to the fact that traceability of minerals is generally unfeasible after smelting. Downstream companies should therefore establish control over their suppliers and use their leverage to increase the traceability of their supply chain, while smelters and other upstream actors have better control of the actors in immediate connection to the mining of minerals. What is important to note is that the OECD Guidance acknowledges that due diligence will vary in complexity with the size of the business enterprise, and the nature and context of its operations. Due diligence is therefore not a one-size-fits-all exercise; due diligence processes for a small or medium sized enterprise will not be the same for a large multinational company.²¹

The OECD Guidance is the internationally recognized framework for due diligence of conflict minerals. The SEC refers to the OECD Guidance as the recommended framework for companies required to report under section 1502 of the Dodd-Frank act.²² The UN Security Council supports the OECD Guidance in their resolution 1952 from 2010, renewing the arms embargo for the DRC.²³ Furthermore, The Lusaka Declaration, signed by 11 heads of state of the International Conference on the Great Lakes Region (ICGLR) in December 2010, also supports the OECD Guidance.²⁴

²⁰ Ibid.

²¹ Ibid.

²² SEC, Fact Sheet – Disclosing the Use of Conflict Minerals, <http://www.sec.gov/News/Article/Detail/Article/1365171562058>.

²³ UN Security Council, Resolution 1952 (2010), S/RES/1952, 29 November 2010, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1952\(2010\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1952(2010)).

²⁴ ICGLR, Lusaka Declaration of the ICGLR Special Summit to Fight Illegal Exploitation of Natural Resources in the Great Lakes Region, 15 December 2010, <http://www.oecd.org/corporate/mne/47143500.pdf>.



Artisanal miners at a remote cassiterite mine in South Kivu. Such locations are prone to attacks from armed groups who steal the minerals or the labourers' food.

3.4 EU Conflict Minerals Due Diligence Regulation

In March 2014, the EU Commission published a draft proposal on conflict minerals due diligence. It proposed a voluntary self-certification scheme for upstream companies in the EU.²⁵ This approach was widely criticized as being ineffective and weak. Proposing a voluntary approach is seen by civil society and experts as insufficient in addressing the severe human rights risks linked to the trade of conflict minerals, especially due to the fact that a voluntary approach already exists with the OECD Guidance, a document endorsed by the majority of EU Member States.²⁶ Moreover, the draft legislation was also criticized for only targeting importers of minerals and omitting downstream companies. Estimates show that a law applying to the 300-

²⁵ European Commission, COM(2014) 111 final, 2014/0059 (COD), 5 March 2014, http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152227.pdf.

²⁶ See for example: IPIS Research, *IPIS Insights: The EU draft law on conflict minerals due diligence: a critical assessment from a business & human rights standpoint*, 30 April 2014; Amnesty International, Global Witness, EurAc et al., *Proposed EU law will not keep conflict resources out of Europe, campaigners warn*, March 5 2014, <https://www.globalwitness.org/sv/archive/proposed-eu-law-will-not-keep-conflict-resources-out-europe-campaigners-warn/>; Ruggie, John, *RE: The EU Proposal on Conflict Minerals Due Diligence*, March 4 2014, <http://business-humanrights.org/sites/default/files/media/documents/ruggie-letter-barroso-eu-conflict-minerals-04-03-14.pdf>.

400 importers of minerals on the EU market only covers around 4% of the minerals placed on the EU market. The vast majority enters the EU as part of assembled products, such as electronics and cars.²⁷

On 20 May 2015, the EU Parliament voted on the draft proposal and overturned the Commission's proposal by requesting mandatory certification and due diligence compliance of all importers to the EU. The Parliament also voted on an obligation for downstream companies to disclose their due diligence procedures. Due to the differentiating approaches between the Parliament on one hand and the Council on the other, the Parliament voted to initiate trilogue negotiations between the Parliament, the Commission and the Council.²⁸

The negotiations started on 1 February 2016 and the gap between the Parliament and the Council was wide. The main points of dispute were the issue of a mandatory or voluntary regulation, the scope of the legislation in regards to upstream and downstream companies, and how to define and identify conflict-affected and high-risk areas. Concerns were also raised regarding the Council's position on applying a weaker standard that falls short of the OECD Guidance, by only asking importers to look at available audits of other actors in their supply chain and not conducting on-going due diligence. After long negotiations, the trilogue reached an agreement on 15 June 2016. The legislation will include mandatory due diligence requirements, in accordance with the OECD Guidance, on upstream companies – but exempting downstream actors. A positive aspect of the proposal is that it will apply to conflict minerals regardless of origin, i.e. not only focus on the DRC and adjoining countries. The possibility of boycott will therefore be mitigated. Furthermore, the due diligence requirements will depend on the establishment of an exhaustive list of conflict-affected and high-risk areas, instead of requiring on-going due diligence in accordance with the OECD Guidance. The previously negotiated accompanying measures, which are of great importance if real change is to occur on the ground in countries such as the DRC, are included in the agreement. There is also a provision in the agreement for revising the effectiveness of the regulation in five years. The agreement now requires months of technical work before it can be implemented as EU law.²⁹

27 EurAc, *EU Responsible Mineral Sourcing Regulation: Civil society response to the council mandate agreed by coreper on 17 December 2015*, February 2016, <http://www.eurac-network.org/pdf/plaidoyers/ngo-coalition-briefing-council-mandate-feb-2016-english-web-version-.pdf>; Diakonia, *Tandlöst EU-förslag om konfliktmineraler*, <http://www.diakonia.se/Info/Nyheter-och-mediaservice/Nyheter-fran-Diakonia/konfliktmineraler/>.

28 European Parliament, *Conflict Minerals: MEPs ask for mandatory certification of EU importers*, 20 May 2015, <http://www.europarl.europa.eu/news/en/newsroom/20150513IPR55318/Conflict-minerals-MEPs-ask-for-mandatory-certification-of-EU-importers>.

29 Business & Human Rights Resource Centre, *Update on EU conflict mineral regulation negotiations*, 11 February 2016, <http://business-humanrights.org/en/update-on-eu-conflict-mineral-regulation-negotiations>; CIDSE, *EU member states are watering down proposal that would help stop conflict minerals*, 6 April 2016, <http://www.cidse.org/newsroom/eu-member-states-are-watering-down-proposals-that-would-help-stop-conflict-minerals.html>; Squire Patton Boggs, *EU Conflict Minerals Regulation – What's Going On?*, February 17 2016, <http://www.conflictmineralslaw.com/2016/02/17/eu-conflict-minerals-regulation-whats-going-on/>. Reuters, *European Union reaches outline deal to stem flow of conflict minerals*, 15 June 2016, <http://www.reuters.com/article/us-eu-conflictminerals-idUSKCN0Z12Oo>.

4. Voices from the DRC

Both Kivu provinces in eastern DRC are mineral-rich regions where 3TGs are mined extensively and where the countryside is scarred by both industrial and small-scale mining sites. Although the industry provides livelihoods for millions of people, the presence of conflict has severely impacted the region and the population of the DRC, which is often ranked as the poorest in the world.

This section reflects the stories and opinions of people working in, and effected by, the mining industry in the DRC. Told to Swedwatch, the accounts demonstrate how international efforts have impacted local populations and highlights what is needed from the international community in order to address the severe human rights impacts linked to the mineral trade.

4.1 North Kivu

Goma, the provincial capital of North Kivu was as late as in November of 2012, captured by the rebel group M23. The rebels were later pushed back by the Congolese army, but signs of armed conflict are still visible throughout the city.

One of the organizations in Goma involved in issues related to human rights and the mining industry is Pole Institute.³⁰ Dr. Nene Morisho at Pole explained that the mining sector relies heavily on artisanal mining. Approximately 80 – 90% of mining activities in the region are small-scale, and 500 000 – 2 million workers are engaged in the sector. The industry generates an economy vital to local communities, as the miners provide income for between 2.5 – 9 million people. The number differs depending on the season.³¹

The suspension of artisanal mining, enacted by the Congolese government in 2010, hit the industry hard and had serious socio-economic effects. Many laborers suddenly lost their income and were therefore unable to support their families. School dropout rates went up to 30%, and robberies increased in the region. Furthermore, the amount of minerals smuggled and illegally traded increased. The suspension was counterproductive and had to be lifted after six months.³²

Although the mining sector is largely informal, it is well organized and consists of three tiers of actors: the miners, the local agents buying minerals from the miners, and the traders selling the minerals for export. Each of these actors needs to pay an annual fee of authorization in order to operate. Since 2011, after the mining ban, artisanal miners also need to be organized in cooperatives.³³

Dr. Morisho views the requirement to organize mine workers in cooperatives as a positive development. However, in practice the cooperatives are mainly governed by local agents - the second tier:

30 Pole Institute, <http://www.pole-institute.org/>.

31 Interview with Dr. Nene Morisho, Pole Institute, 2 December 2015.

32 Ibid.

33 Ibid.

“Miners often have no say and lack any form of influence over the cooperative. What is needed are true cooperatives of miners.”

The basics of a cooperative are that the profits are split between the local agents managing the mine and the mine labourers. Miners are therefore not dependent on their own yield to the same extent as before. The cooperative is also responsible for providing equipment for the miners.³⁴

One of several local mining companies, based in Goma, is the family owned company SMB. The company holds mining rights to the Rubaya concession outside of Goma, mainly mining tantalum. The concession consists of seven mining sites, one is operated by the company itself and is semi-mechanized, while the other six are operated by a local cooperative. SMB and the cooperative have a memorandum of understanding stating that the cooperative must sell their yield to the company.³⁵

Ben Mwangachuchu, the CEO of SMB, met Swedwatch at their offices in Goma, where sealed bags of tantalum are sorted in the warehouse for export. Mr. Mwangachuchu described his business and how he returned to his home town after a long career in the U.S. in order to build a sustainable and industrialized mineral sector in North Kivu.³⁶ He described the dynamic in the mining sector:

“Many mining companies view artisanal miners as a nuisance and try to pay them to leave the concession. Our way is challenging, but I believe it’s the best way to deal with the diggers and have control over the situation.”

Miners at the Rubaya mine are organized in a cooperative and have a guaranteed buyer. An anonymous senior expert in mining in the DRC estimates that around 30% of the minerals mined at the sites are smuggled by artisanal miners across the border to Rwanda, and later sold as Rwandan origin, in order to receive a better price. Another persevering issue in the region are illegal road blocks. Even after the defeat of M23 in 2013, more than 60 armed groups operate in the Kivu provinces. These groups often set up road blocks and extort illegal taxes from mineral transports.³⁷

“Buyers need to stop buying from smugglers. As long as the smugglers know that they can get a better price from other buyers the problem will not stop. Better controls and stricter enforcement is needed”, said the anonymous expert.

The concession at Rubaya is located several hours, mostly on dirt roads, outside of Goma. The first site visited by Swedwatch was the semi-mechanized mine operated by SMB. Currently it has mechanized excavation, but the company has plans to fully mechanize the mine and a mechanized processing station is under construction. At

34 Ibid.

35 Interview with Freddy Nzonga, Head of Traceability and Community Development at SMB, 3 December 2015.

36 Interview with Ben Mwangachuchu, CEO of SMB, 2 December 2015.

37 Interview with an anonymous senior expert on mining in the DRC December 2015. As a result of a security risk assessment, Swedwatch has opted to maintain the confidentiality of the expert’s identity.





View of Bukavu. The provincial capital of South Kivu and a regional hub for the trade in minerals.

the moment, however, 242 employees mainly work in shifts separating the mineral from the sand. This is done in trenches where water is continuously pumped and the miners wash the sand and extract the minerals.

Freddy Nzonga, Head of Traceability and Community Development at SMB, accompanied Swedwatch to the mines and explained that the government committee for authorization of mining activities audits the mining sites once a year. In order to become an authorized mine there must be no presence of armed forces, no illegal tax, no child labour, and good working conditions. Freddy Nzonga stated that the company itself conducts daily checks and incidents are reported to the company management. The checks are done in partnership with the local cooperative in order to cover the artisanal mining sites as well.

Swedwatch's request to interview a selection of workers at the site was denied by the management, who stated that information regarding wages and other labour-related issues could not be disclosed. He added, however, that their employees do not work more than eight hours in a day. Unfortunately, Swedwatch was unable to verify this information or talk to any of the miners regarding their working conditions.

After the visit to the company site, Swedwatch visited mining sites operated by the cooperative. This mine is fully artisanal and a different sight from the mechanized operations of SMB. Water-filled trenches, where mine workers wash the excavated sand, run across the entire mining site. Planks are laid out in order to traverse the area and avoid the mud. During peak season, 6000 artisanal miners dig for tantalum in the vast pit on a daily basis. Here, the mine labourers were willing to speak to Swedwatch and tell of backbreaking working conditions. Even though the cooperative supplies equipment such as hardhats, boots and shovels to some of the workers - the manual labour takes its toll.

“After ten years in the mine your body can't take it anymore. I started working when I was 18, and I'm very happy not to work underground anymore”, said Devy Gakwandi, a 31-year-old miner now working for the cooperative.

Several of the miners stated that the visited mine is one of the better ones, thanks to the cooperative and the involvement of SMB, but that it is still difficult for the miners to make ends meet based on what they earn. The licenses required to be an authorized miner are expensive and need to be renewed annually. Moreover, the miners need to pay a member's fee to the cooperative.

4.2 South Kivu

Bukavu is the provincial capital of South Kivu, a province heavily dependent on the mining sector.

Safanto Bulongo, Program Coordinator at the NGO Max Impact, is a local expert on supply chain traceability in the mining sector. Mr. Bulongo is the civil society representative of the South Kivu provisional committee for authorization and follow up of

mining sites. He is currently involved in several projects evaluating the effectiveness of certification and traceability schemes.

Safanto Bulongo explained to Swedwatch that the current systems for the validation of mining sites are insufficient, and that the bagging and tagging procedure is not fully reliable. According to Congolese law, only minerals from certified so-called ‘green mines’ can be legally traded. When local authorities have surveyed a mine and classified it as green, a bag and tag system is put in place in order to trace the minerals from mine to export. Each link in the chain - the miners, the local agents and the traders - carefully weigh the bags of minerals, and are then provided with a tag from the local authority SESSCAM. The tag contains a barcode, which in turn is validated by the next link in the supply chain. The problem with the system is that at each stage, the bags are reopened in order to check the quality of the minerals and a new tag is applied. Consequently, at each stage of the chain, there is a risk of minerals from non-validated sites getting mixed in with legal minerals. Also, because of widespread corruption, buying a validated tag from the local authorizers has become common practice.³⁸

Together with Safanto Bulongo, Swedwatch also visited the offices of the Minister of Mines in South Kivu. Maitre Bundibulya is Legal Counsel to the Minister of Mines in the province and chairs the provisional authorization committee, consisting of himself as government representative, a business representative and Mr. Bulongo as civil society representative. Besides validating mines, the committee meets regularly to discuss relevant issues, manages a basket fund for community development, which mining companies are required to contribute to, and reports to the OECD and the ICGRL on progress.³⁹ Maitre Bundibulya explained that:

“Many companies stopped buying minerals from the DRC after the Dodd-Frank act because they wanted to be “conflict-free”. But the U.S. law has also contributed to changes in our legislation - the validation and traceability systems.”

According to Maitre Bundibulya, there are a lot of challenges with the certification and traceability systems in place. First and foremost, the local authorities, such as the committee itself, need better funding to be able to validate more mines. The committee could have the capacity to validate 25 mines per month, but lack the means to do so due to insufficient funding. This means that the party operating the mine has to finance the validation themselves in order to be allowed to legally trade the extracted minerals. This is generally not a problem for mining companies, but small cooperatives of miners struggle to put up the funds. Maitre Bundibulya explained that, out of approximately 900 mines in the province, the committee had only validated 46.

He added that the whole point of validating mines is to be able to introduce the bag and tag system. Currently, there is no tagging system for gold, only for tin tantalum and tungsten. Gold is traded in much smaller quantities and a different system needs to be devised. So far, only the 46 validated sites use the tagging system, none of which are gold mines. A new system is currently under development using geo-traceability.

38 Interview with Safanto Bulongo, Program Coordinator at Max Impact, 4 December 2015.

39 Interview with Maitre Bundibulya, Legal Counsel to the Minister of Mines in South Kivu, 4 December 2015.

As every mineral and mine has a unique geological fingerprint, samples taken and logged in a database can later be tested in order to check if they list the correct origin or if they have been smuggled.⁴⁰

“It takes time to implement new standards and procedures. EU legislation could provide needed pressure. Such a law must be mandatory, have a global scope and not only focus on the DRC, and there need to be sanctions. A voluntary law will change nothing”, Maitre Bundibulya stated.

After Swedwatch’s meeting with Maitre Bundibulya, Safanto Bulongo explained that the Legal Counsel also holds a position as Legal Advisor to a large Chinese gold mining company operating in the province. Government officials working for private companies is common practice in the DRC and create risks of corruption.

In Bukavu Swedwatch also met with the Bukavu Traders’ Association, represented by their President Basimine Dieudone. The association buys minerals from local traders and sells them for export. Mr. Dieudone explains that there are two types of traders; those who work in the city and those working in remote areas, buying directly from miners. The traders are only allowed to buy from certified miners or local agents and must compare the two tags in order to validate that the minerals are legal.⁴¹

“The mining ban in 2010 hit the industry hard and increased the trade of illegal minerals. The new tagging system is good and easier to validate. Before there were too many actors in the supply chain, and everyone wants their cut”, said Basimine Dieudone.

Even though the new laws have improved things, the trade of illegal minerals has not stopped.

“We know that local agents and traders mix illegal minerals with legal. The 46 validated mines cannot meet the demand and more needs to be done”, explained Mr. Dieudone.

Following meetings in Bukavu, Swedwatch also visited a cassiterite mine located outside the town of Nzibira. Cassiterite is the main source of tin, used as a solder and for lithium batteries. The mine is located in an even more remote location than the ones visited in North Kivu. Getting to the mine requires hours of driving on narrow dirt roads, which have a tendency to collapse due to landslides and heavy rain. The mining outpost is located near a small village in the mountains and is operated by a small cooperative of miners, approximately 10 – 15 labourers. While the tantalum in North Kivu is mined in open pit mines, this cassiterite mine consists of narrow shafts, up to ten meters deep, where the ore is extracted. The shafts can barely fit one worker at a time and heavy rocks are supported only by a flimsy piece of wood. Cave-ins are a common cause for injuries and even death.

40 *Ibid.*

41 Interview with Basimine Dieudone, President of South Kivu Traders’ Association, 7 December 2015.



Artisanal miner in a shaft, mining cassiterite. The narrow shafts go deep into the mountain and cave-ins occur frequently.

Everything is done manually at the mine, from dealing with explosives to breaking rocks by hand. Several of the miners Swedwatch met told of common injuries such as broken fingers and blast-related injuries.

“We have to work long hours to earn enough. But as soon as I am paid, the money is gone. The earnings are not enough”, said René Sematumba, one of the miners.

After extracting the ore from the shafts, the rocks are crushed and the sand is washed to extract the minerals. The bags, weighing 20 kg, are then carried back down the same arduous way to the outpost in the village.

“The work is hard. I will not be able to work in a mine my entire life. My pension are my children, they will have to start working when I am too old and support me, I hope”, said Didier Tchibagu, one of the older miners.

Remote areas such as the mine outside of Nzibira, are prone to attacks and extortion by armed forces. Both rebel groups and the Congolese military intimidate miners and force them to pay bribes.

“They have come several times. Sometimes they take our food, sometimes everything we have mined that day. We are not protected here”, said Emmanuel Gapira, another miner.

A local mining company representative, who prefers to remain anonymous, also stated that company personnel face the risk of confronting armed groups at the mining sites:

“It is too dangerous for us to put a stop to the armed groups and their illegal trade, we need help.”

The mining site is part of a concession belonging to the Canadian gold mining company Banro. The artisanal miners are allowed to operate within the concession as long as they are not digging for gold. The miners tell Swedwatch that their operations are validated but they lack the means of implementing the tagging system. This is partly because of associated costs, but the main reason is that the remote location makes it difficult for the authorities to reach the site.

In a subsequent meeting with Banro, representatives confirmed that they tolerate artisanal miners on their concession. They acknowledged that these miners often work under inadequate conditions and that the sites are not always legal. The minerals are, however, traded anyway.⁴² The tolerance of artisanal miners in the Kivu provinces is a stark contrast to previous studies conducted by Swedwatch in the Orientale Province, where artisanal miners were forced off the concessions by mining companies.⁴³

42 Interview with Koos Nel, Vice President, Stakeholders and Security, Banro Corporation, December 7th 2015.

43 Swedwatch, *A Lot of Gold, A Lot of Trouble – A study of humanitarian impacts of the gold industry in DR Congo*, 2012.

Many NGOs in the Kivu provinces are actively demanding more action, both from the government and the mining companies. Descartes Ponge is the Chair of a local umbrella organization of NGOs in South Kivu who also acted as a civil society expert during hearings in the EU Parliament on issues relating to conflict minerals. The coalition has worked actively on the issue of tax avoidance of multinational mining companies and claims, in a recent report, that Banro is not paying the required taxes as a result of loopholes in the national law.⁴⁴ As a result, local communities are not benefitting from the mining industry, this in turn leads to unrest. Mr. Ponge also explained that the lack of enforcement is common because of a decentralized government. Decisions made in the capital Kinshasa, in the western part of the country, are not always implemented by the local government in the eastern provinces. One example highlighted by Descartes Ponge involved a Chinese company associated with bribery. An employee of the company, a Congolese national, blew the whistle and was later found dead. The Prime Minister ordered the Governor of South Kivu to suspend the company's mining license, but in the end nothing happened and the company is still operating.⁴⁵

Mr. Ponge pointed out that the DRC cannot resolve these issues on its own, there is a need for international pressure and assistance:

“We need a strong and binding EU-legislation. But we also need the accompanying measures to focus on implementing international frameworks into national legislation, capacity building of both local NGOs and government as well as facilitating dialogue between all relevant stakeholders. The mining industry is important. We do not want to stop the trade of minerals. But we want you to buy “conflict-free”, not “Congo-free” minerals. A legislation must treat exporting countries the same.”

Maitre Bundibulya, from the office of the Minister of Mines in South Kivu, also pointed out that increased dialogue is needed and that NGOs need strengthening in order to participate in the discussion on the implementation of regulations. At the same time, he sees a risk with bilateral talks as they are often confined to Kinshasa and rarely include local governments and actors who are actually responsible for implementation and enforcement.⁴⁶

“Corruption is one of the main problems. The authority responsible for the tagging system, SESSCAM, is corrupt and compromises the whole system. The authorities and army are involved in the illegal trade as well. We cannot solve this on our own,” Descartes Ponge concluded.

44 La Maison des Mines du Kivu, *Analysis of Fiscal and Parafiscal Flows of the Twangiza Mining Project*, http://www.congomines.org/system/attachments/assets/000/001/124/original/MMKi-Twangiza-Analysis-Exec-Summary___Recommendations.pdf?1463855801, See also full French report, http://www.congomines.org/system/attachments/assets/000/000/951/original/MMKI_Rapport_sur_la_fiscalit%C3%A9_mini%C3%A8re_de_Twangiza_Mining.pdf?1452770544.

45 Interview with Descartes Ponge, NGO coalition in South Kivu, 7 December 2015.

46 *Supra* note 38 .



View of the countryside of South Kivu. The mines are often located in remote areas, accessed only on foot.

5. Conclusions

Swedwatch findings show that cheap electronics are paid for by mine labourers and local communities in the DRC. Mine labourers work under poor and dangerous conditions, far removed from the consumers in the EU. Even though some progress has been made in the DRC, with new initiatives on the validation of mines and traceability of minerals, much work remains to be done.

Every actor Swedwatch spoke to in the DRC, regardless if an NGO, a government representative or a company manager, clearly stated that legislation on the EU level is needed. The message from interviewed stakeholders was also clear on the point that such legislation needs to be binding and applicable on conflict minerals regardless of country of origin, in order to avoid boycotts and in order to create a level playing field. Legislation should also include accompanying measures to strengthen the capacity on the ground in effected countries.

It is also apparent that the Dodd-Frank act, overall, has had a positive impact on developments in the DRC. Opponents of a binding EU-regulation often refer to the decreased trade of minerals from the DRC after implementation of the U.S. law as an argument to avoid binding rules due to the risk of boycott. However, as has been

made clear by several relevant actors in the DRC, the decrease in trade was a result of the ban on artisanal mining, enacted by the Congolese government in 2010. If 80 – 90% of mining operations in a country are suddenly suspended, significant impact on the export of minerals is to be expected. Moreover, in order to avoid boycott of a single country, the EU-legislation is proposed to apply to conflict minerals regardless of country of origin. A company cannot boycott 3TG minerals altogether.

One of the main challenges identified is widespread corruption in the DRC and therefore a lack of reliability of the tagging system in place. The existing system to ensure traceability does not provide sufficient measures to tackle the illicit practice of traders buying tags from corrupt officials, or mixing in illegal minerals at different stages of the process. When international initiatives such as the CFSP to a large extent rely on these certificates, it undermines the effectiveness of such measures and brings into question the validity of companies' claims to have conflict-free products.

The development of a traceability system in the DRC is of course a welcome step, and might very well contribute to more stability in the trade of minerals. It is, however, apparent that the capacity, mandate and engagement of local actors needs strengthening. Local authorities must be able to validate more mines at a higher pace, and there needs to be stricter controls of the tagging system. With only 46 out of 900 mines certified to legally trade in minerals, it is reasonable to raise questions regarding the final destination of minerals from the 854 uncertified mines. Voluntary measures implemented by the EU will not address these challenges.

Legislation requiring all companies to conduct due diligence was an opportunity for the EU to show commitment to the severe and pressing human rights risks in global supply chains of conflict minerals. Instead, the negotiations have resulted in an agreement that falls short of existing standards, such as the OECD Guidance. The OECD Guidance was published in 2011 and is a voluntary mechanism, binding norms are clearly needed in order to get the majority of companies on board. A report from the Dutch NGO SOMO shows that 88% of EU companies in relevant sectors such as electronics, automotive and aerospace, do not mention any work on conflict-minerals in any policies or reports.⁴⁷

The agreement also stands in stark contrast to EU's rhetoric in general on responsible supply chains. In October 2015, the European Commission supported commitments by the G7⁴⁸ to foster sustainable global supply chains by stating that the EU seeks to ensure that its trading partners respect internationally accepted standards on human rights and the environment. The commission further states under its trade strategy that "responsible management of global supply chains is essential to align trade policy with European values". Relating to the context of conflict minerals, it commits to "building on the work of the OECD".⁴⁹

47 SOMO, Conflict Due Diligence by European Companies, SOMO paper, 2013.

48 The Group of 7 (G7) is a group consisting of Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. These countries are the seven major advanced economies as reported by the International Monetary Fund.

49 EU Commission, Trade for All – Towards a more responsible trade and investment policy, 2015, http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf.

It is therefore worrying that the agreement only applies to a fraction of the supply chain, instead of building on the OECD Guidance by requiring due diligence procedures from both upstream and downstream companies. It is important to note that the OECD Guidance was negotiated between governments, industry and NGOs, and is supported by the EU and a wide range of intergovernmental organizations. To apply a lower standard is counterproductive and sends the wrong message to companies and those affected by the trade in conflict minerals. Corporations in general want and need a level playing field and coherent standards, endorsing the OECD Guidance on one hand but not incorporating it, to a full extent, in the legislation is counterproductive and undermines comprehensive efforts to address the illegal trade of conflict minerals.

Opponents of binding requirements on downstream actors often refer to the costs and burdens of such provisions. However, referencing the OECD Guidance as the applicable standard for companies to apply would not incur unreasonable burdens. The OECD Guidance provides a flexible and progressive tool for companies to use when conducting due diligence. It provides companies with needed flexibility to tailor their due diligence to their own circumstances, such as size, capacity, leverage over business partners and position in the supply chain. Due diligence is also an ongoing process, not a one-off compliance exercise. Companies therefore need to engage proactively, on a case-by-case basis. The whole concept is based on companies taking reasonable steps to identify and mitigate risks in a given situation, and show continual improvement. It is therefore a much more flexible tool than rigid systems of certificates based on strict criteria, or requirements of 100% guarantees. Consequently, there is no risk of such a regulation being too burdensome for small and medium-sized enterprises.

Furthermore, due diligence requirements are not something new for companies; they are already applied through a wide range of EU and national legislation.⁵⁰ For instance, the EU Anti-Money Laundering Directive expects Member States to ensure that entities take “appropriate” steps to identify and assess money laundering and terrorist financing risks, and that such steps should be “proportionate” to the nature and size of the entity. The UK Bribery Act expects companies to put in place procedures to prevent bribery, proportionate to the bribery risks it faces and to the nature, scale and complexity of its activities. The EU Timber Regulation, similarly focusing on the illegal trade of natural resources, requires operators to have “adequate and proportionate” procedures to minimize risks, and to “maintain and regularly evaluate” their due diligence system. Requiring companies to take appropriate steps to mitigate the risk of financing armed groups through their trade of minerals should be the least the EU can expect of corporations.

By applying the OECD Guidance, the due diligence requirements will differ between upstream and downstream companies. A vast majority of conflict minerals enter the EU through products such as electronics. There is strong EU legal precedent for

50 For example, the EU Timber Regulation, the EU Anti-Money Laundering Directive, the EC Food Law Regulation, the UK Bribery Act, as well as requirements to report due diligence procedures in for example the EU Non-Financial Reporting Directive and the UK Modern Slavery Act.

the term “first placement on EU market”, which may be broadly defined as placing a product or material on the market for distribution or use in the course of commercial activity (whether in return for payment or free of charge). By applying the “first placement on EU market” principle, a much larger group of companies would be covered by the legislation than the reached agreement. Applying the regulation to more companies than just metal importers would cover a far greater portion of the sector and help create more transparent supply chains, enable companies to share information and apply joint leverage over suppliers, including those outside of the EU. Downstream companies such as electronics brands and automotive companies are huge multinational players with a unique position to set industry standards, drive the initiatives forward, and put pressure on upstream suppliers. Failing to include these companies severely limits the scope and effectiveness of such a regulation.

Another worrying aspect of the agreement is the fact that due diligence requirements on upstream companies will rely on establishing an exhaustive list of conflict-affected and high-risk countries, instead of requiring on-going due diligence in accordance with the OECD Guidance. Such a provision risks becoming rigid and unadaptable to constantly changing circumstances in conflict-affected and high-risk areas. Also, the list risk becoming used as a bargaining tool, with countries pushing for their exclusion from the list in negotiations on multilateral agreements.

It is however welcome that the agreement includes the previously negotiated accompanying measures. The Commission has identified a set of important measures such as: transposing the OECD Guidance into national due diligence frameworks, capacity building of local actors, supporting advocacy and political dialogues between relevant stakeholders. What is also needed are measures addressing how artisanal miners and the informal sector can be formalized without leading to unemployment and loss of livelihood.

The regulation will be limited to 3TGs as these minerals have been the focus of international efforts dealing with the illicit trade of minerals and financing of armed groups. It is understandable that the regulation for a start has a limited scope, but should nevertheless include provisions for possible extension to other minerals. Similar risks as the ones linked to 3TGs are present in mining of cobalt. Other relevant minerals are for example jade, silver, uranium, precious stones and chromite. Due to the fact that the agreement opens up for a revision of the regulation in five years, an opportunity to extend the mineral scope presents itself.

The EU needs to take a clear position and require all companies to work proactively in order to prevent the trade of minerals financing armed groups and contribute to violent conflicts and suffering. Voluntary guidelines, in different forms, have shown to have limited effects on addressing the issue of illicit trade of conflict minerals. Trade policies must be aligned with the respect of human rights and must ensure that minerals placed on the EU market have not contributed to conflict. Potential burdens placed on companies should not outweigh the lives of those working in the mining industry in the DRC, and other mineral rich countries. The agreement reached by the EU institutions is a welcome step in the right direction, but fails to provide a comprehensive approach to the challenges, and more work is therefore needed before an effective EU regulation is in place.





Washed cassiterite, ready to be bagged and sold at the local trading post. Cassiterite is the main source of tin, used as a solder and for lithium batteries.

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