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EU: Conflict Minerals agreement reached as exemptions added

The European Union (EU) has today taken a positive, but half-hearted, step towards cleaning up Europe's trade in minerals. EU legislators concluded their negotiations on a new law on so-called 'conflict minerals'—a Regulation which is meant to ensure that minerals entering the EU do not finance conflict or human rights violations. Certain EU companies will, for the first time, be legally required to take responsibility for their mineral supply chains and to take steps to prevent their trade being linked to conflict or human rights abuses. However, a string of concessions and last-minute loopholes could undermine the Regulation's impact, as they exempt a large number of companies from the law. Civil society organisations, including Amnesty International and Global Witness, are today calling on the EU and its Member States to show that they are serious about making sure these exemptions do not undermine the Regulation's stated aims.

"This Regulation is a welcome step forward," said Michael Gibb of Global Witness. "But while the EU has sent a strong signal to a small group of companies, it has ultimately trusted that many more will continue to regulate themselves. It is now up to these companies to show that this trust is well-placed and well-earned; and we expect our lawmakers to act if it is not."

The EU is a major destination for minerals, both as a market for raw materials and the everyday products that contain them, from laptops and mobile phones to engines and jewellery.

The Regulation will cover EU imports of minerals tin, tungsten, tantalum and gold from all countries in the world, and is the first mandatory law of this kind to be truly global in its scope. But while global standards on the minerals trade require all companies to check their supply chains for conflict financing or human rights violations, the EU's mandatory provisions will cover only a small part of the supply chain. In defiance of the European Parliament's more ambitious proposal in May 2015, only companies that import minerals in their raw forms—as ores and metals—will be covered. Companies that bring the very same minerals into the EU inside components or finished products are let off the hook. Late in negotiations EU Member States also successfully pushed for the inclusion of a series of import thresholds that will further reduce the number of companies required to comply.

"These volume thresholds, that exempt companies from complying with legislation, are dangerous loopholes," said Nele Meyer at Amnesty International. "They could let minerals worth millions of Euros enter the EU free of any scrutiny-- often those with the highest risk of being linked to conflict. This new law can only be the very first step forward. Additional measures will be needed to ensure that all companies will and can adequately check their supply chains. "

Even companies required to comply with the Regulation have been offered shortcuts. The European Commission has agreed to accredit private industry bodies to which companies have increasingly sought to outsource their obligations to check their supply chains. Members of accredited industry bodies will benefit from limited oversight. In addition, companies will be encouraged to source from a list of "responsible" smelters and refiners, despite few mechanisms being put in place to actually assess the behaviour of all smelters and refiners on the list.

The Regulation will not come into force immediately, with legislators opting instead to insert a lengthy phase-in period.

“Talk of a phase-in is a red herring. The regulation reflects responsibilities companies have had for many years, and they have all the tools and information they need to comply. Enough time has been wasted looking for ways to help companies shirk their responsibilities. Now the focus must be on making sure they meet them as soon as possible,” said Michael Reckordt of PowerShift.

By itself, this trade Regulation cannot bring peace and prosperity to communities blighted by the resource curse. Civil society has therefore welcomed the EU’s integrated approach intending to complement the new Regulation with diplomatic and development measures.

“Concluding these negotiations is an important achievement, despite the limited scope of the new law. But this is only the beginning of the process, not the end. Now is the time for companies to show that they are serious about meeting their responsibilities; for EU member states to show that they are committed to enforcing the standards which have now been established; and for the EU to make use of all its resources to promote a more sustainable and responsible sourcing of minerals worldwide.” said Frederic Triest of EurAc.

Notes to the Editor

The EU reached a “political understanding” in June 2016, which set the broad political contours for the Regulation. Technical discussions were then held to develop the final text of the Regulation. This “trilogue” process concluded today, with the European Commission, European Parliament, and Council reaching agreement on a final text. This text will now be voted on in the Council and Parliament.

The Regulation applies to companies whose imports of ores or metals of tin, tantalum, tungsten, or gold into the EU exceed certain specified annual thresholds. The law will require companies to conduct “due diligence” on their supply chains broadly in line with the requirements of the Organisation for Economic Cooperation and Development’s (OECD) “Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.” Unlike the EU’s Regulation, this OECD Guidance applies to all mineral resources and to the entire supply chain, including companies that buy or trade products containing those minerals.

Due diligence on mineral supply chains does not aim to discourage sourcing from fragile and high-risk areas. Rather, they seek to encourage and facilitate a more responsible and transparent trade with these regions.

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