

INTERNATIONAL LEGISLATION ON CONFLICT MINERALS. US AND EUROPEAN CASES

Recently, both national and international policy makers have implemented regulations on conflict minerals. In fact, after years of intense negotiations, the European Parliament voted in favour of the responsible 3TG supply law on 16 March 2017, which aims to ensure that revenues from the import of minerals into the EU do not finance human rights violations and armed conflicts around the world.

Even though we know that just because there is legislation in place does not mean that the problem will go away overnight, it does offer companies steps to break the links between conflicts and our lifestyles and electronic devices. Moreover, having a law in place gives citizens tools to demand that companies and the market comply with it, as well as the States where these laws are applicable, since government oversight can ensure compliance.

However, there are several gaps in the law that weaken the scope of its effectiveness, making it only the first step in the fight against the injustices caused by conflict minerals.

GAPS:

- 1- The law will be mandatory for importers of raw or processed ore, but not for companies that import finished products (e.g. tablets, mobile phones, batteries and jewellery).
- 2- Unnecessarily high import thresholds have been set to exempt companies that fall below these thresholds.
- 3- Covered companies may outsource the responsibility for testing their supply chains to third parties through the use of industrial schemes.
- 4- A list of refineries and ethical duties will be drawn up on the basis of a limited assessment.

The United States has pioneered legislation on conflict minerals. A financial market reform and consumer protection act, known as the Dodd Frank Act, was passed in 2010. Section 1502 defines conflict minerals and requires U.S. publicly listed companies to check their supply chains for 3TG and their source. If the minerals originate in the Great Lakes region in Africa, the company must take steps to ensure that no armed groups have been financed by their purchase, reporting what measures were taken to exercise due diligence on the origin and supply chain of these minerals.

However, this regulation had undesirable side effects: from 2010 to 2012, the incidence of crimes and violence increased markedly in those areas listed by law. When the mines closed, armed groups took advantage of the impact on the incomes and livelihoods of the people in the area to exploit them in other ways.

European regulation is based on the OECD guidelines for risk-based due diligence. Both the Dodd Frank Act and the regulation presented in Europe in March apply to the same minerals, 3TG.

Yet there are also several differences. In the European proposal, companies are given the freedom to decide whether to comply with the regulation, that is, its application will be voluntary. Compliance is mandatory in the United States. This is what raises the most concern among civil society organisations: if compliance is voluntary, companies can easily turn a blind eye and defeat the purpose of the fight against financing armed groups in conflict or high-risk regions.

The second difference is that the European proposal takes a global approach and is not limited to the Great Lakes region like the Dodd Frank Act is. Civil society organizations strongly support this feature of the European regulation; while the situation in the Congo and the Great Lakes is paradigmatic, it is unfortunately not the only place where the extraction and sale of minerals or other natural resources is financed or fuelling conflict. This approach is also focused on helping companies continue to buy ore from the Congo, an negative impact that many fear the Dodd Frank Act may have.

The third difference is that the draft proposes that the companies required to perform due diligence are the importers of ore (processed or otherwise) and not all companies listed on the stock exchange, as stipulated by the Dodd Frank Act.

Finally, the draft is based on the OECD Due Diligence Guidelines and focuses on the process followed to keep conflict minerals out of its supply chain. The Dodd Frank Act, on the other hand, is designed to make a classification according to outcomes, a risky approach that could make it possible for companies to stop sourcing minerals from the Great Lakes as a loophole for reporting the source of the minerals.

ACTIVITY PROPOSAL

THE COLTAN DEBATE

Objective: To learn and manage information related to conflict-free technology, transforming that information into arguments, and raising aware about the different public participation options available, depending on the level of privilege.

Materials: Square piece of paper with the coltan periodic table symbol.

Development: The town council in the town where you live, Coltan, has decided that it is time to replace the technological equipment in their offices. You, as citizens of Coltan, are responsible for ensuring that the new tech the town council buys is free from conflict minerals.









To that end,

1. Divide the class into two groups: councillors and citizens
2. Assign different roles to the group of citizens, which will limit the time each person has to speak. You can use to following examples:
 - Men: 2 minutes.
 - Women: 1 minute.
 - Young people: 30 seconds.
 - Seniors: 30 seconds.
 - Children: 10 seconds.
 - Foreigners: 10 seconds.
3. Each group will have 10 minutes to come up with the arguments they will use to convince the other group of their point of view.
4. Hold a debate for approximately 15 minutes.
5. At the end of the debate, the councillors must decide if the citizens' arguments have changed their minds and give a verdict on the upcoming purchase.

After the debate, invite participates to learn more about the cause on Visibles and sign and share the petition:

<https://www.visibles.org/es/causas/democracia-y-participacion/compra-publica-etica-pidele-tu-ayuntamiento-que-consuma-tecnologia>

RESOURCES FOR MORE INFORMATION

-  **The Power of Your Signature:** <https://www.youtube.com/watch?v=Um1PBwQFAcQ>
-  **EU proposal:** http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152227.pdf
-  **ODCE guidelines:** <https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=CELEX%3A32017R0821>
-  **Dodd Frank Act:** <https://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm>
-  **Section on Fairphone legislation:** www.Fairphone.com
-  **European regulation on conflict minerals:**
<https://op.europa.eu/en/publication-detail/-/publication/8b0e378b-3c59-11e7-a08e-01aa75ed71a1/language-en>
-  **Visibles request:**
<https://www.visibles.org/es/causas/democracia-y-participacion/compra-publica-etica-pidele-tu-ayuntamiento-que-consuma-tecnologia>
-  **File 3: For ethical public procurement**

A project from:



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www.tecnologia-libre-de-conflicto.org

Cooperate:

