Drs. E.M.J. Ploumen, *De Minister voor Buitenlandse Handel en Ontwikkelingssamenwerking*

11 December 2015

Dear Minister,

We are writing to you in light of the Netherlands' upcoming Presidency of the EU Council, and in reaction to a brief (32852-30) addressed to the House of Representatives published by your office on 1 December 2015[1] in relation to the draft EU responsible mineral sourcing Regulation. We believe the argumentation in the brief is flawed and would like to take this opportunity to encourage you to revisit your position.

The Netherlands has stated that it will seek to promote sustainable global value chains during its EU Presidency. We welcome this commitment, in particular as the informal trialogue on the draft responsible mineral sourcing Regulation will take place under the Dutch Presidency. We hope and expect the Government of Netherlands will use this opportunity to lead a constructive dialogue aimed at developing an effective solution to the pressing problem. Our coalition of over 80 civil society organisations believes this must start with mandatory due diligence responsibilities for companies that first place minerals on the EU market, whether in raw form or as part of products.[2]

We were therefore concerned that the brief appears to argue that the proposed Regulation cannot be expanded to include companies that place products and components containing the relevant minerals on the EU market, as the European Parliament, numerous civil society groups, religious leaders and international investors have proposed. We believe that several of the arguments are inaccurate and we would therefore encourage you to revisit your position on this issue so as to ensure an informed and constructive dialogue.

The brief argues that adding importers of components or semi-finished products to the scope of the Regulation is not possible because there is no system available to determine who these importers are.

[1] Brief titled "Toezeggingen uit Algemeen Overleg Natuurlijke Hulpbronnen" dated 1 December 2015, http://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2015Z23213&did=2015D46902

[2] Further information can be found in coalition members' briefings dated October 2015 and June 2015, available at: https://www.globalwitness.org/documents/18087/NGO_Coalition_Briefing__EU_Regulation_on_Responsible_Mineral_Sourcing.pdf and https://www.globalwitness.org/documents/18063/GW_AI_Briefing__What_the_EP_Vote_Means_For_Member_States_June_2015_pngBWjA.pdf

It argues first that the relevant companies could identify themselves, but that this would only work in a voluntary system. Yet, there are several existing EU Directives and Regulations that cover a broad range of products and companies without an existing mechanism available to identify every company that is affected. There are also examples of EU legislation that require companies to register with a particular authority.

- The new **RoHS Directive** (2011/65/EU)[3] or 'RoHS 2' is one such example. It is a mandatory law that applies to companies and individuals that place electrical and electronic equipment on the EU market. Like many other EU product rules[4] it relies on company self-declaration and empowers market surveillance authorities to detect non-compliance. Economic operators must be able to demonstrate compliance by submitting an EU Declaration of Conformity and relevant technical documentation to the market surveillance authority upon request.

- There are also laws in the Netherlands that require companies to register with the appropriate national authority. For example, the Dutch transposition of the Directive on Waste Electrical and Electronic Equipment (**WEEE**) 2012[5] requires every company or individual that produces, sells or imports electrical or electronic equipment, processes electrical waste or exports discarded electrical equipment, to register with the National WEEE Register.[6]

- There are also examples of laws, such as **food safety rules** in the Netherlands, which apply to a broad range of companies without the need for a national register.

The brief also considers a second possibility of adding all the relevant products and components to the list of covered resources in the Regulation's Annex 1. This is dismissed as impractical on the grounds that the list would be unfeasibly long and require the creation of new CN codes for component parts.

Again, there are existing EU Directives and Regulations that cover a wide range of products without including a list of CN codes for each. Many of these also cover the component parts of products. The same is true of several international laws, including some that already affect EU companies both directly and indirectly.

- **RoHS 2** applies to electrical and electronic equipment falling under eleven categories—such as "large household appliances" and "IT and telecommunications equipment." In addition, the broad eleventh category captures relevant equipment not already included within one of the other ten categories. The Directive also explicitly covers *components* contained within products falling within scope the scope of the Directive.[7] In the **Netherlands**, the Regulation implementing

[3] Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02011L0065-20150624

[4] European Commission, "Blue Guide on the implementation of EU Product Rules", 2014, available at: http://ec.europa.eu/DocsRoom/documents/12661/attachments/1/translations/en/renditions/native

[5] See http://www.nationaalweeeregister.nl/assets/uploads/PDF/2014/EN/Dutch%20implementation%20WEEE%20Directive.pdf

[6] See http://www.nationaalweeeregister.nl/english/home/

[7] See Q7.3: "Do components have to comply with RoHS 2?" http://ec.europa.eu/environment/waste/rohs_eee/pdf/faq.pdf

the **WEEE Directive** (2012) includes within its definition of WEEE "all components, sub-assemblies and consumables which are part of the product at the time of discarding." These terms are left undefined and without reference to CN codes.

- Similarly, **section 1502 of the US "Dodd-Frank" Act**—the US's mandatory conflict minerals due diligence law—covers all US listed companies that manufacture or contract to manufacture "products" containing tin, tantalum, tungsten, or gold (3TG) that may have originated in the Democratic Republic of Congo (DRC) or one of its neighbouring countries. The legislation does not define "products." Companies themselves are required to assess whether their products contain the relevant minerals, and to self-declare through their reporting to the SEC if they do.

In the case of the draft EU Regulation on responsible sourcing, companies could assess their supply chains and products with the support of a list of sample products, product categories and affected sectors. The Commission has already listed fifteen such sectors in its Impact Assessment dated 5 March 2014. Companies are expected to take a risk based approach to determining which of their supply chains may be affected. This means they can show progress and improvement over time and need not immediately identify the contents of each of their products.

None of the arguments in the brief therefore provide a compelling reason to reject the European Parliament's position to make sure that companies placing minerals on the market, in whichever form, have sourced them responsibly.

At the heart of these arguments is a mischaracterisation of the aims of conflict minerals due diligence and supply chain due diligence more broadly. The due diligence process does not aim first and foremost to track or trace specific *products and material,* or to label such products. Its focus is on ensuring that *companies'* own *supply chain processes* are responsible. As in the food, textile, electronics, and financial sectors, learning more about your supply chain and the potential risks along it is an important part of being a responsible company.

The objective of the current legislative process is to establish an effective due diligence regime which engages companies in making relevant supply chains more transparent, sustainable, and responsible. Engaging "downstream" companies that place relevant products and components on the EU market is critical to this aim, and to upholding international standards the EU and the Dutch Government have already committed to promoting.

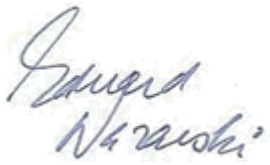
We were pleased to see this reflected in your Ministry of Foreign Affairs' recent announcement of a "European Public-Private Partnership (PPP) for Responsible Mineral Sourcing" which acknowledges that "Responsible, conflict-free mineral supply chains require cooperation from sourcing to assembly of end products."[8] We are therefore pleased to read that the PPP will support "the implementation of due diligence mechanisms along the entire supply chain". It is, in our view, critical that the Dutch Presidency uphold these core principles of supply chain due diligence during the trialogue process and does not preclude the inclusion of downstream operators within the scope of the Regulation.

[8] Ministry of Foreign Affairs, Government of the Netherlands, "European Public-Private Partnership (PPP) for Responsible Mineral Sourcing".

We would also encourage you to revisit the argumentation of your brief in your follow-up communication to the House of Representatives, which as we understand is currently being prepared.

We are at your disposal should you wish to discuss this matter further, or should your require any further information to support your discussions and deliberations of this urgent matter. We would in particular welcome an opportunity to further discuss practical models for the implementation of an effective due diligence regime that is feasible for both companies and implementing authorities.

Sincerely,



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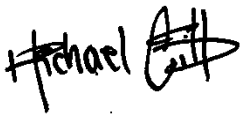

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