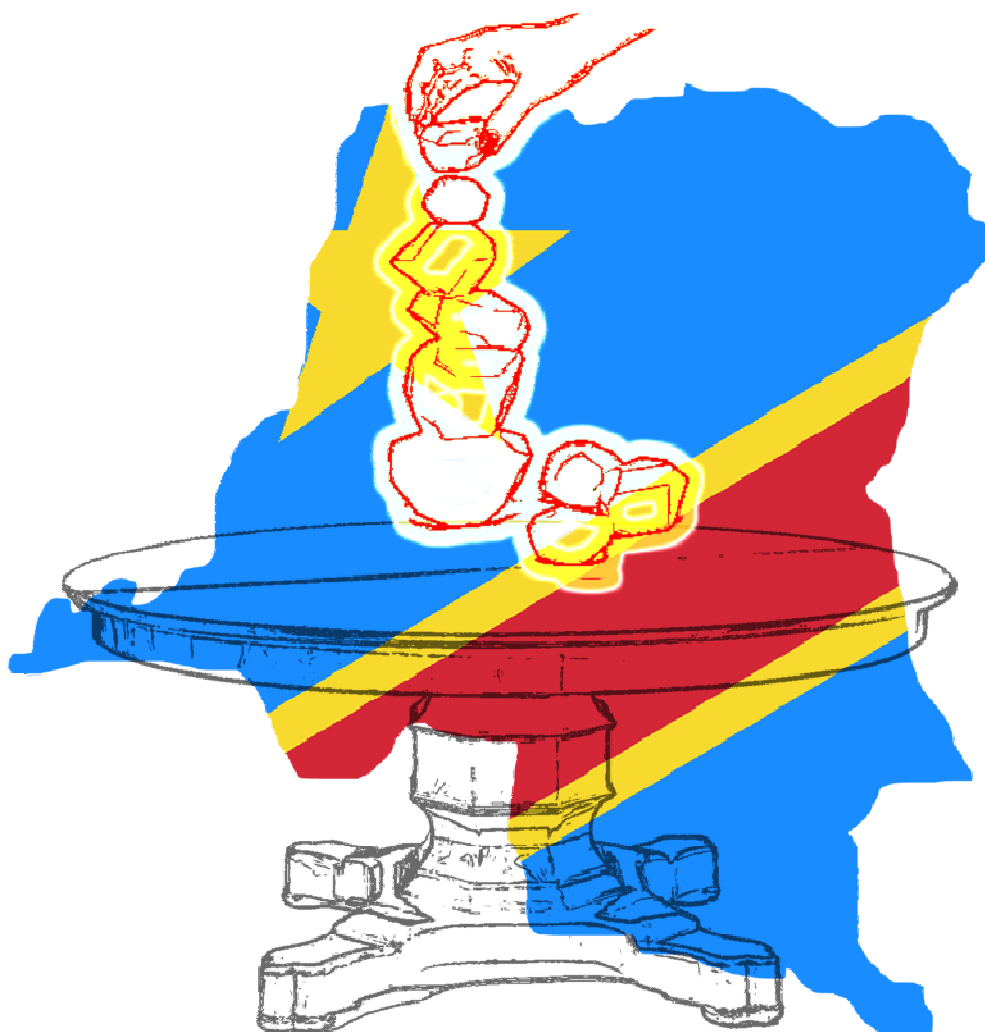


ROUNDTABLE ON CONFLICT MINERALS LEGISLATION

Towards prevention of trade in conflict minerals and promotion of
trade in clean minerals from Congo

Hosted by Judith Sargentini MEP & makelTfair
European Parliament, Brussels, 26 May 2011



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On 26 May, 2011, **Judith Sargentini**, Member of European Parliament for the Greens/European Free Alliance, and **makeITfair** organised a roundtable on the issue of conflict minerals from the Democratic Republic of the Congo (DRC).

The aim of this roundtable was to bring together experts and stakeholders from the European Parliament, the European Commission, international civil society and business, as well as a number of representatives from the civil society of the DRC, to share input with regard to new EU regulations concerning the issue of conflict minerals. The roundtable addressed various initiatives concerning conflict minerals from the DRC.

FOREWORD BY JUDITH SARGENTINI, MEP

It was my great pleasure to team up with with makeITfair to host the roundtable on Conflict Mineral Legislation in the European Parliament on 26 May 2011. We received valuable input from various stakeholders, including from activists from the Democratic Republic of the Congo, on what kind of legislation the European Union should introduce regarding conflict minerals.

This Roundtable marked the very important step of bringing representatives of African organisations, companies and politicians from the DRC to the table with other stakeholders in Brussels, to debate the opportunities and threats present in European legislation on conflict minerals. The variety of contributions by various stakeholders and experts was in itself overwhelming. We thank Global Witness who gave us special insight into the process of the drafting and implementation of conflict minerals legislation in the US. Also valuable were contributions from Philips, from the Canada EU Mining Coalition as well as from representatives of OECD and many other organisations and companies. Representatives of the European Commission were present to take note of the presented strategies, as were other representatives from the EU, the US, Africa and other regions.

Since the adoption of the Dodd Frank Act in the US I, as a Member of the European Parliament, have emphasized the need for European legislation to stop the trade in conflict minerals. In late 2010 an overwhelming majority of the European Parliament adopted a resolution inviting the European Commission to draft new legislation on this (following Dodd Frank Section 1502). But after and despite repeated calls from within the European Parliament, there has been a very long silence from the side of the European Commission.

In the Democratic Republic of the Congo armed groups still keep selling minerals that end up in European mobile phones and computers. It is unacceptable that European consumers can presently not get any guarantees concerning whether or not they are contributing to payments for rebel's weapons in conflict areas when they purchase products in stores around Europe.

In the week of the Roundtable, President José Manuel Barroso of the European Commission echoed Commissioner Barnier's earlier statement that companies will be obligated to publish more information about the way they do business. But while European legislation on reporting of payments made to governments in developing countries is currently being drafted, it is not clear if and when European legislation against conflict minerals will follow.

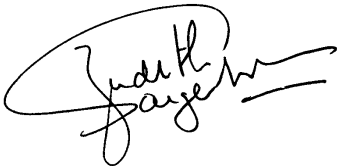
One of the participants of the Roundtable said: "I can find my way through the bush, but not through the European Commission." I sympathize with that sentiment and find that the European Commission is sending the wrong message. We should realise that the promotion of peace and human rights are put forward as core aims in the Lisbon Treaty of the European Union. To take action on this in a coherent way, we must make sure that companies and consumers on the European market can no longer indirectly finance armed groups in conflict areas with the products they produce and purchase. The Commission should use the opportunity of companies getting ready for the US conflict mineral legislation to present an ambitious directive on conflict mineral reporting, including supply chain accountability. It is our legal duty to ensure that European foreign policies do not harm poverty eradication (art 208 TFEU). Therefore, also in Europe's initiative for Raw Materials, fair trade and fair investment should be the basis of our policies.

This report of the Roundtable on Conflict Mineral Legislation in the European Parliament provides many valuable insights and recommendations. One of the Congolese participants urges: "Involve local people from the DRC's companies, NGOs, research and other sectors in drafting of new legislation." And as a

general ban on trade with the DRC would only make the local situation worse, it is important to realise that we want a ban on conflict minerals from the DRC, but not a ban on all minerals from the DRC. We should make sure that not whole countries will suffer, instead of the armed groups we want to target.

Now it is up to the European Commission to honour the requests made by the Parliament and by various stakeholders, in its legislative proposals on conflict minerals.

Judith Sargentini

A handwritten signature in black ink, appearing to read 'Judith Sargentini', with a large loop at the start and a horizontal line at the end.

Member of the European Parliament for the Greens / EFA

1. ABOUT THE ORGANISERS

JUDITH SARGENTINI, MEMBER OF THE EUROPEAN PARLIAMENT

Judith Sargentini MEP has raised the issue of conflict minerals and the DRC in European Parliament. In two joint resolutions, the European Parliament invited the European Commission to draft European legislation on conflict minerals.¹ After these resolutions, Judith Sargentini MEP has repeatedly urged the Commission to honour these requests by the Parliament.

Before entering the European Parliament, Judith Sargentini worked as international campaign coordinator for Fatal Transactions, a foundation highlighting issues relating to war economies and trade in conflict diamonds, oil, coltan and other strategic raw materials. She also served as a negotiator in the Kimberley Process scheme for worldwide certification of uncut diamonds.

MAKEITFAIR

makeITfair is a European awareness raising campaign that aims to enhance the sustainability of the supply chain of consumer electronics. The campaign focuses on all stages of this supply chain, from the mining of metals and the production of electronic components to the handling of electronic waste. In 2007, makeITfair confronted the large electronic brands with some of the issues present at the mining sites of metals used in their products, and engaged with these companies with regards to the responsibility they have to mitigate these issues.

In October 2010, makeITfair published a report on the local views on the mining sector reform in eastern DRC, concluding, like many other reports, that there is a need for increased Congolese involvement in the on-going efforts to curb the trade of ‘conflict minerals’ from the region.²

The campaign believes that the Dodd Frank 1502 is a milestone step towards closing the so-called ‘governance gap,’ regarding corporate involvement in human rights abuses. However, it is also aware of the danger of unintended negative consequences of such legislation and believes that such risks can only be mitigated by involving local stakeholders in such processes from the beginning.

The roundtable on Conflict Minerals Legislation in the European Parliament was organised to push for the development of a European version of Dodd Frank 1502, with explicit input from local viewpoints.

However, makeITfair also points out that the boundaries of the discussion at this roundtable do not reflect the boundaries of the issues that need to be addressed. Issues that need to be addressed simultaneously are:

- 1) Working conditions and the environment, in addition to conflict.
- 2) Good governance and security sector reform, in addition to the minerals.
- 3) Other mining regions in addition to the DRC.

¹ See the full resolutions online:

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0350&language=EN>
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0482+0+DOC+XML+V0//EN&language=EN>

² See the full report online; <http://makeitfair.org/the-facts/reports/voices-from-the-inside>

2. KEYNOTE SPEECHES

The Roundtable brought together almost 90 experts and representatives from the European Parliament, European Commission, civil society, business and the investment community to discuss a possible European version of the Dodd Frank Act Section 1502 on conflict minerals.

After introductory speeches by Judith Sargentini MEP and Tim Steinweg on behalf of makeITfair, the meeting started with four keynote presentations to assess the current state of affairs in the United States and Europe, and the perspectives of some of the Congolese stakeholders on these developments.

Next, an open discussion followed in which all stakeholders could present their viewpoints and make their suggestions. The meeting concluded with statements from the Congolese government and by Mr. Etienne Tshisekedi, Congolese presidential candidate for the opposition party UDPS.

2.1. A US PERSPECTIVE ON CONFLICT MINERALS LEGISLATION

Corinna Gilfillan (Global Witness)

Corinna Gilfillan is Head of the US Office for Global Witness in Washington D.C. She played a leading role to secure passage of both the conflict minerals provision and the extractive industry transparency provision in the Dodd–Frank Act in the US in 2010.

The Dodd Frank Act Section 1502, which is currently being implemented in the United States, addresses the concern that the trade in minerals from Congo fuels the war and leads to human rights abuses. Although there are many drivers for the conflict, minerals are one of them on which US companies have leverage. The US believes that by affecting the market, it can contribute to change.

The provision revolves basically around one single element: Do companies use minerals from Congo? And, once we know that they do: do they apply ample due diligence? It is not a ban on Congolese minerals, and it is also not the same as certification, but it can create clean mineral chains from the DRC. Global Witness and other groups are now fighting to develop good due diligence guidelines.

Although it is still early, the impact of the Act can already be regarded as promising. Global Witness supports some of the promising steps taken by the Congolese government. There are some shifts on the ground as well, such as demilitarisation of the Bisie mine.

But, to really resolve the issue and to eventually build up a clean trade in Congo, a global standard and global action is required. Global Witness therefore applauds the internationalisation of the efforts by now focussing on European conflict minerals legislation, a "European version" of Dodd Frank Section 1502. In response to a question by Judith Sargentini MEP, Gilfillan of Global Witness explained that the reason to focus on stock listed companies is that all major end using companies are listed, and that the Securities and Exchange Commission is a powerful tool to implement such legislation in the US.

2.2. A CONGOLESE PERSPECTIVE ON US CONFLICT MINERALS LEGISLATION

Aloys Tegera (Pole Institute)

‘If the EU wants to do something, then go to Congo and speak with locals. Make sure local efforts are integrated in international processes.’

(A. Tegera)

Aloys Tegera is Director of Research at Pole Institute, a research, action and capacity institute based in Goma, DRC. Pole Institute has become a recognized think tank in the Great Lakes region and works mainly on issues ranging from natural resources, governance issues and community identities.

The mining sector in Congo is a major sector, which accounts for 80% of the exports, 72% of the national budget and 28% of GDP according to the latest available statistics. Its output and sales are of major importance for the economy. Also other economic sectors, for example the agricultural sector, are influenced by the mining sector. Locally, everybody depends on mining! It is important to note that the minerals have been used in financing the war, but they are not the root cause of the war. The root cause is the fragility of the state and its absence in many areas of the national life and here lies one of the important challenges.

The US conflict minerals legislation in the Dodd Frank Act Section 1502 exacerbated the situation in the DRC, which arose after the government ban was announced in 2010. Before Dodd Frank, various other processes had started; the German Bundesanstalt für Geowissenschaften und Rohstoffe (BGR) had started a certification programme, the tin industry body ITRI had started tagging and bagging quantities of tin, UN organisation MONUSCO is set to starting up trading centres and the Congolese institution SAESCAM has done a tremendous amount of work in mapping mining sites. The Dodd Frank act has led to a de facto embargo in Congo. Some heavyweight companies withdrew from the local market, and as a consequence the mining and mining-related economies collapsed.

One of the main challenges for improving the situation in Congo is the demilitarisation of the mining sites and guaranteeing security. This would be the ideal measure, but the practical situation on the ground is very fragile. How can thousands of porters carrying 50 kilograms of tin ore each use bush roads without being attacked by armed groups? This is complex. On one hand there is a need to demilitarise mining sites and bush roads used by porters and on the other hand, who should secure the paths and mining sites? Here is a task for the police, but they need to be paid. A suggestion would be to invest part of the money allocated to MONUSCO to the police, in order to protect the civilian population. These police forces could then secure the mining sites and the population in the short and long term.

If the EU wants to do something then go to Congo and speak with locals, take into account local perspectives, and involve the private sector and civil society. It should make sure local efforts are integrated in international processes. In that way, a European law on conflict minerals might be able to fill the gaps Dodd Frank has left opened.

2.3. PRESENT STATE OF AFFAIRS AT EU LEVEL

Evie Francq (IPIS)

Evie Francq is a researcher at the independent research organisation International Peace Information Service (IPIS). IPIS discussed the current state of affairs regarding a potential legislative initiative on conflict minerals at EU level.

EURAC and Fatal Transactions, two European Civil Society networks working on this topic, have called on the EU to step up engagement on conflict minerals: *“European companies cannot continue to indiscriminately import minerals whose extraction and trade contribute to or benefit from conflict, instability and insecurity.”*

The European Parliament has equally expressed a clear demand to address this issue. In 2011 the Parliament adopted two resolutions in which they called upon the Commission to draft a proposal of law, and subsequently several parliamentary questions have been asked, adding to the pressure.

The European Commission has been silent. As the issue falls within the competence of various DGs, it is unclear who will or should come up with a proposal. However, there are already several related initiatives currently ongoing on the EU level, such as the Forest Law Enforcement, Governance and Trade (FLEGT) and the Kimberley Process Certification Scheme (KPCS). FLEGT aims to fight illegal logging of timber and works through Voluntary Agreements of producing countries with the EU. However, the programme has not proven to be very successful until now, because the incentive for producing countries to sign such an agreement was very low. Therefore, the programme was reviewed in 2010 and is now connected to a due diligence obligation for companies importing timber on the European market.

An initiative on conflict minerals should also be seen in the context of the CSR policy of the EU. Within this policy a review of the Reporting Directives, which will include non-financial reporting requirements, will take place in the fall of 2011. Several NGOs are calling for an inclusion of a general obligation to report on any risk of violation of international human rights in addition to an obligation to report on any steps taken to mitigate such risks and violations.

2.4. A CONGOLESE PERSPECTIVE ON LEGISLATION

Eric Kajemba (OGP)

Eric Kajemba is Director of Observatoire Gouvernance et Paix / Governance and Peace Observatory, DRC. OGP works to improve the transparency of the supply chain of artisanally mined minerals in South Kivu, and works on community rights around industrial gold mining areas. "At present, there is a de facto embargo in Congo. There is no money, no income and people have to take out credit and loans. Mineral traders are also trying to find illegal parallel markets."

OGP encourages the implementation of EU legislation because transparency in the mineral market is needed for peace. However, it is important to find a balance between transparency on the one hand, and access for Congolese minerals to world markets on the other, in order for locals to have a good livelihood.

It is important to note that we are not at point zero, that many initiatives, local and otherwise, are currently operative. For the last three years, many supply-chain debates have been taking place and things are happening at local, international and European levels. However, these processes take time and money and we need the means and funds to sustain those organisations that are involved. There is also a need for further communication and information sharing between local and international groups. There have been

some improvements already and the context has changed recently. We talked about rebel groups for example, but with the military operations we have undertaken, they have become fragile and hidden. Moreover, since 2008 the number of rebel groups in the mining areas is decreasing, so the context is improving.

‘We need a real and decent army and police at the service of the population.’
(E. Kajemba)

We should aim for an integrated approach. This should be done at a national level as well, thus we should not exclude certain groups. We need to involve security police, integrate ministries and make efforts to support all initiatives taken. It is most important to realise the construction of a good governance system and to take the local needs of the people who depend on mining into account.

The Dodd Frank Act and the efforts on a European level are important prerequisites because they will enhance transparency. But we also need a security sector reform. During elections we had support for security reform, so it is possible to get that. We need an army and police who are at the service of the population: a real and decent army free of corruption and willing to monitor the work at mining locations.

2.5. TWO ADDITIONAL CONGOLESE CIVIL SOCIETY VOICES

The public discussion started with comments from two Congolese civil society members. The most important points that were raised in the following public discussion are listed in the section below.

Comments by Delly Mawazo Sesete

(CREDDHO - Research Center on Environment, Democracy, and Human Rights, DRC)

The Dodd Frank Act is not a disaster, but an opportunity to create ‘clean’ minerals from the DRC. The Congolese government has not yet made use of this opportunity. We welcome the EU initiatives, but in addition to legislation it is important to acknowledge that Congo is fragile and that technical assistance is also needed.

Comments by Didier de Failly

(BEST - Bureau d'Etudes Scientifiques et Techniques, DRC)

We should create legislation in Europe that is binding, but not repressive, as the goal is to promote good mining. The Dodd Frank act should not be copied, as it has developed a de facto embargo that is currently in place. It is recommended that a real development programme in rural mining areas be set up, copying the example of the timber initiatives in Scandinavia in the 1990s.

‘I can find my way through the bush, but not through the European Commission.’
(D. de Failly)

EC response to parliamentary questions

In the period leading up to the roundtable, MEP Sargentini posed the following parliamentary question: *"Can the Commission indicate how it will honour the request by Parliament (...) to establish EU requirements on conflict minerals reporting (comparable to Section 1502 of the Dodd Frank Act)?"*

Shortly after the event, Commissioner Barnier responded as follows, on behalf of the European Commission: *"The Commission has noted Section 1502 of the US Dodd-Frank Act, and the relevant proposed rules (although the finalisation of the proposed rules has been postponed for the second half of 2011). Further analysis should be conducted on the impact of this policy since the process of identifying the supply chain of minerals is very complex."*

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2011-004340&language=EN>

3. KEY DISCUSSION POINTS

Certain topics emerged from the keynote talks and the ensuing public discussion as the key points of the day. This section gives an overview of these key points.

Broad consensus on the need for legislation

The Roundtable showed that there is a broad consensus on the need for EU legislation. Civil society, both from the DRC and from Europe, political actors and companies all agree on the need for such legislation. Mining companies also expressed their support for EU legislation, while Congolese civil society pointed out that the goal of legislation should not be that mining companies from other regions profit from it.



Mandatory regulation was advocated by various speakers. The participants urge the European Commission to come forward with a legal proposal to address the trade in conflict minerals in order to contribute to a peaceful future in the DRC.

Local stakeholders and local efforts

Many speakers emphasised that the decision making process should involve, and be fed by, local stakeholders and their viewpoints. This point was brought forward by Congolese civil society representatives, and one commenter underscored the importance of including local stakeholders in the process by pointing out that the mistakes made in the Kimberley Process can be avoided by integrating local concerns. Congolese civil society representatives called on international policy makers and civil society to not only include them in these processes, but also regularly visit the concerned areas to develop a better understanding of the effects of international efforts on the ground.

Brief speeches delivered by Étienne Tshisekedi - presidential candidate DRC for the UDPS party - and his mineral expert Samy Badibanga

Mineral exploitation in the DRC needs to be based on three pillars: a framework for investors; good governance; and technical development.

The application of the national mining code remains difficult, also because of the decentralised nature of the country. In the eastern DRC, the state is not present and mining is controlled by armed gangs.

It is important to underline the economic drivers of the conflict in the eastern part of the country, which is not only about minerals but also about land, a conflict that has existed before mining began in the region. But mining has been used as a means for the fighting groups to reach their goals.

Steps are already taken to develop due diligence and traceability of minerals, and the Dodd Frank act in the United States created legislation with a binding aspect. These processes need to take Congolese concerns into account, something that did not happen in the Kimberley Process. The approach of due diligence needs to be integrated in the efforts of the International Conference on the Great Lakes Region.

Embargo questions

One of the major concerns in developing EU legislation is that it might contribute to a de facto embargo of minerals from the DRC. As was pointed out by several of the keynote speakers, this de facto boycott has already become a reality, and it was reported that traders in Goma are already moving to other areas because of the de facto embargo by international companies. However, questions remain to what extent the fall in the trade of minerals from the DRC is caused by the ban of the DRC government, and to what extent this embargo will be a temporary or permanent development.

It was pointed out that a ban on minerals from the DRC was not the intention of the Dodd Frank Act. The question was raised: if a boycott exists, how can the Dodd Frank Act be the primary cause, as it has not yet come into effect? In any case, an embargo is not the only way for companies to apply their due diligence, and the Dodd Frank Act does provide the room to continue to source from the region.

As a representative from Philips argued, companies should not be penalised for sourcing from Congo, because then they will start sourcing somewhere else. It was suggested that an incentive should be created for companies to continue sourcing from the DRC. Global Witness calls upon companies to move into the DRC right now. There are some demilitarised zones and companies should use this opportunity to show that it is possible to source from Congo.

We need companies to source clean minerals and demonstrate that it is possible. That is the way we will slowly see positive change.

(A. Dunnebacke – Global Witness)

Legislation coupled with state building and security sector reform

Several participants argued that EU legislation on conflict minerals needs to be coupled with other forms of EU development work, mainly in the form of technical support to the DRC. The DRC is a fragile state and in order to succeed in building a clean trade in minerals, state development is key. Legislative measures should be complemented by larger development objectives and a larger European initiative of engagement within the Great Lakes region, to create conditions for effective due diligence processes. Such initiatives should focus on security sector reform and building capacity of state actors. UN organisation MONUC is one of the actors that could, to a certain extent, play a role in these complementary efforts. However, it should be noted that MONUC does not address the root causes of the problem and that the development of state institutions, such as the police and the army, would be more sustainable and lead to long-term solutions. A representative from the Congolese Ministry of Mines indicated that both security sector reforms and measures to increase transparency in the mining sector are currently underway on a national level.

Standards for Due Diligence

The suggestion was made that EU legislation should be based on internationally agreed standards, such as the OECD Due Diligence Guidance. This would avoid the development of alternative sets of rules for companies based in different regions. The OECD Guidance is process-based, rather than result-based and such an approach could avoid unintended consequences, and is more flexible for responding to changing situations on the ground. This is a clear difference with the Dodd Frank Act, which requires companies to report which of their products are not ‘conflict free’ and are therefore more result oriented. If the Dodd Frank Act could be rewritten, Global Witness indicated it would push for the OECD Guidance as the one standard for due diligence that companies would have to follow.

Embedding initiatives in a broader approach

The question was raised whether initiatives concerning conflict minerals should be placed in the context of the Great Lakes region, rather than solely focusing on the DRC. Several reactions confirmed this point of view and it was pointed out that the Dodd Frank Act also takes this broader approach. In addition, it was suggested that in this respect it is also important to look specifically at gold, and the gold-related issues in Rwanda and Burundi.

Response from DG Internal Market representative at the Roundtable

The European Commission is acting on country-by-country reporting, and president Barosso has committed to do something legally binding for extractive companies. In the view of DG MARKT, the External Action Service department, who is also in charge of the Kimberley Process, is responsible for the subject of conflict minerals. However, DG MARKT is responsible for the reporting requirements of companies and is currently reviewing accounting standards in an effort to reduce administrative burden. DG MARKT has not yet come to a conclusive position on the subject.

The EU CSR Communication, FLEGT and REACH

EU plans related to Corporate Social Responsibility and corporate accountability are currently being developed and will be presented soon. The Transparency Directive and the Reporting Directive's financial and non-financial requirements are the most relevant parts of these plans for the issue of conflict minerals. It needs to be assessed whether conflict minerals legislation can be incorporated into these efforts.

There are a number of other initiatives that place accountability for supply chain issues with the end user companies already. FLEGT for sustainable timber and REACH for toxic chemicals are two examples of such initiatives. It needs to be assessed what lessons can be learned from these initiatives and to what extent their approaches can be duplicated for conflict minerals from the DRC.

4. RECOMMENDATIONS FOR EUROPEAN LEGISLATION ON CONFLICT MINERALS

- **US legislation asks for a quick EU answer**

Europe has no time to waste to respond to the conflict minerals legislation currently being implemented in the United States. The Commission should use the opportunity of companies getting ready for the US conflict mineral legislation to present an ambitious directive of its own on conflict mineral reporting.
- **Incorporate local perspectives in the process**

The EU should involve the private sector and civil society of the DRC and other targeted countries when developing new conflict minerals legislation. Local perspectives need to be integrated into international processes in order to create local support and make use of local knowledge.
- **Avoid a de facto embargo**

Within the process of developing European legislation, all possible steps should be taken to avoid contributing, willingly or unwillingly, to a de facto embargo of minerals from eastern DRC, for example, as it pushes companies to source from elsewhere.
- **Couple conflict minerals legislation with other needed measures**

The EU should make the conflict minerals legislation part of in a larger effort to create peace in the region. Most importantly, EU should assess how it can contribute to the needed state building and security sector reform.
- **Mandatory, not voluntary**

European consumers have a right to know whether or not they are contributing to payments for rebels' weapons in conflict areas when they purchase products in stores around Europe. Mandatory reporting requirements for companies are more urgently needed than voluntary initiatives.
- **Make use of international standards**

OECD standards should be used as the standard for Due Diligence. An EU requirement to make use of the OECD Guidance would create the basis for one international standard that is process based rather than results based.
- **FLEGT & REACH**

Lessons learnt from FLEGT, REACH and other regulations involving supply chain accountability should be used in a proposal on conflict minerals.
- **CRS Communication, non-financial reporting, others**

It has to be made clear which EU directive would be the best instrument for conflict minerals legislation.

Doing nothing is impossible; the example from the US must be followed.
(J. Sargentini)

LIST OF PARTICIPANTS

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