

THE EU RESPONSIBLE TRADING STRATEGY FOR MINERALS FROM CONFLICT ZONES:

- A path towards peace, stability and development? -

INTRODUCTION

In our modern high-tech society we, as consumers, own at least one mobile phone per person. As the use of electronic devices, such as mobile phones, laptops, and cameras, has increased over the last decade, an increase is also seen in the demand for rare minerals which are essential for the manufacturing of these electronic devices. Such rare minerals hold great potential for the development of a country, which possesses such resources within its territory. However, in many fragile areas of the world, the occurrence of rare minerals can be a cause of conflict when their revenues fuel the outbreak or continuation of violence, human rights abuses and undermine endeavours towards development, good governance and the rule of law.¹ These minerals are referred to as “conflict minerals”; ‘natural resources whose systematic exploitation and trade in a context of conflict contribute to, benefit from or result in the commission of serious violations of human rights, violations of international humanitarian law or violations amounting to crimes under international law.’² When conflict minerals are not globally regulated, conflict minerals end up in products we use every day, worldwide, and we, the consumer can be seen as contributing to the fuelling of violence in regions where these minerals are sourced.³ It is therefore necessary to break the nexus between conflict and the illegal exploitation of minerals, a critical element in guaranteeing peace, development and stability in conflict-affected and high-risk areas.⁴

In this context, on the 19th of May 2017, Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (EU Conflict Minerals Regulation), was published in *the Official Journal of the European Union*.⁵ The Regulation contains binding obligations for companies importing conflict minerals to the European Union (EU).

However, earlier this year, on the 7th of April, the US Securities and Exchange Commission announced that it is scaling back Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) of 2012. Under this section, known as the conflict minerals law, companies trading with the US are required to disclose whether their products contain conflict minerals from the Democratic Republic of Congo (DRC) and adjacent States.⁶

¹ Par. 1 of the Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (EU Conflict Minerals Regulation).

² Global Witness, proposed definition of conflict resources. See: https://web.archive.org/web/20100602192048/http://www.globalwitness.org/pages/en/definition_of_conflict_resources.html visited 17-04-2017.

³ S. van der Velde, The End of Conflict Minerals on the EU Market? *ASSER Policy Brief* 03. 2017-03.

⁴ Par. 1 of the EU Conflict Minerals Regulation.

⁵ OJ L 130, 19.05.2017.

⁶ S. Lazarus, Conflict Minerals Update: Perspectives on the SEC’S Latest Move, *Spend Matters*, 14-04-2017.

One of the arguments for scaling back the Dodd-Frank Act is the costly part of compliance of the rule and the unintended negative consequences. The conflict minerals law ‘increased looting of civilians and shifted militia battles toward unregulated gold mining territories’ according to Parker and Vadheim in their paper “Resource Cursed or Policy Cursed? US Regulation of Conflict Minerals and Violence in the Congo”.⁷ In addition, many companies found it challenging to comply with the rules and as a result shifted their supply chain from the DRC altogether, affecting the livelihoods of people in the DRC who depend on mining.

The difficulty of businesses to adhere to the rules was also seen in a critical research report by the NGOs Global Witness and Amnesty International in 2015.⁸ The report focussed on the compliance of the Dodd-Frank Act and discovered that out of the 100 companies who were analysed, 79 failed to adhere to even the minimum requirements of the Dodd-Frank Act. Questions therefore arise as to whether the Act is effective and successfully implemented and to what extent the new adopted EU Conflict Minerals Regulation will be able to accomplish more compliance and effectiveness than the Dodd-Frank Act of the US has done so far.

This paper is an attempt to explore the EU Conflict Minerals Regulation and tries to lay out the process that has led to the adoption of the Regulation and gives an overview of the scope and obligations of the new Regulation. The paper will first present an overview of the international context in which the EU Conflict Minerals Regulation was adopted and the process which led to its adoption. Secondly, the paper provides a closer look at the Regulation. What are the obligations and for who? What will be the external effects of the Regulation? The paper ends with a conclusion.

I. HISTORY AND INTERNATIONAL CONTEXT

This chapter provides a deeper insight of the context in which the EU Conflict Minerals Regulation was adopted. The first subchapter (1.1) sketches the international context which provided a base for the Regulation. The second subchapter (1.2) shows the process which led, after more than two and a half year of negotiations, to the adoption of the EU Conflict Minerals Regulation.

1.1 International context

In the last decade, there has been an increasing international focus on conflict minerals as a result of repeated atrocities resulting from conflict minerals. The international community has stressed the importance of dealing with this issue. As a result, various voluntary and regulatory measures have been implemented, this in order to ensure responsible sourcing of minerals and stem financing of related human rights abuses.⁹

For example, the United Nations (UN) called for regulations in its General Assembly Resolution 55/56¹⁰ in 2000, which led to the adoption of the Kimberley Process Certification Scheme (KP) in 2003. The KP is a process to banish blood diamonds from entering the global market. The EU is one

⁷ Parker and Vadheim, Resource Cursed or Policy Cursed? US Regulation of Conflict Minerals and Violence in the Congo, *Journal of the Association of Environmental and Resource Economists*, 2017 4:1, p. 1-49.

⁸ Global Witness and Amnesty International, *Digging for Transparency*, 2015. See:

https://www.globalwitness.org/documents/17915/Digging_for_Transparency_hi_res.pdf

⁹ <https://business-humanrights.org/en/conflict-peace/conflict-minerals/proposed-eu-regulation-on-conflict-minerals-commentaries-media-coverage> visited 17-04-2017.

¹⁰ E.g. UNGA Resolution A/RES/55/56.

of the 54 participants in the KP, with signatories currently representing 81 countries in the world.¹¹ The UN continued to call for the regulation of conflict minerals and the compliance of the existing guidelines.¹²

The most important guideline on conflict minerals, regarded as the international benchmark for supply chain due diligence, is the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance) of 2011. The OECD Guidance includes a supplement, specific on tin, tantalum, tungsten and gold (3TG). The Guidance is designed to assist companies with detailed recommendations in order for them to respect human rights and to avoid creating and fuelling conflict. The OECD Guidance has been referred to in the subsequent US conflict minerals law: the Dodd-Frank Act, and forms also the basis for the EU Conflict Minerals Regulation.

The EU Conflict Minerals Regulation is therefore not the first attempt to tackle the problem of minerals from conflict zones.

1.2 EU process of EU Conflict Minerals Regulation

The European Parliament called on several occasions in its resolutions¹³ for the EU to legislate along the lines of the Dodd-Frank Act, as did EU citizens and civil society through various petitions and reports.

On the 5th of March 2014, along the line of Article 294(2) of the TFEU, the European Commission submitted, together with the EU's High Representative for Foreign Affairs, a proposal to the European Parliament and the Council of the EU. This proposal sets out an approach to tackle the trade in minerals who are being used to finance armed groups in areas affected by conflict or are at high-risk of being affected.

The approach consisted of a draft Regulation and a joint Communication. Accompanying measures included: a development aid package, outreach to and dialogue with all trading partners (suppliers and buyers) and support for small businesses in the EU. The draft Regulation proposes the implementation of a compulsory system. However, the system would only be applicable to one part of the supply chain: to the companies which import raw minerals and metals. 'We should not forget that European companies, and particularly our SMEs, are currently not able to identify every step [in their supply chains], so we can't impose impracticable constraints,' the European Commissioner for Trade Cecilia Malmström said. 'This is what we saw with Dodd-Frank in the United States,' she added.¹⁴

The EU Conflict Minerals Regulation is based on a public consultation, an impact assessment and extensive consultations with the OECD, business, civil society, as well as with institutions in producer countries.¹⁵ The consultations took place between March and June 2013, followed by further in-depth consultations and an impact assessment.¹⁶ In September of the same year, a coalition of 59 civil society organizations published a report calling on the EU 'to pass a strong law to prevent European

¹¹ <https://www.kimberlyprocess.com/en/participants> visited 16-04-2017.

¹² E.g. UNSEC Resolution S/RES/1952 (2010).

¹³ In its resolutions of 7 October 2010, 8 March 2011, 5 July 2011 and 26 February 2014.

¹⁴ Barbière, EU institutions still divided over conflict minerals, *EURACTIV.fr*, 03-02-2017.

¹⁵ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1032> visited 17-04-2017.

¹⁶ <https://business-humanrights.org/en/conflict-peace/conflict-minerals/proposed-eu-regulation-on-conflict-minerals-commentaries-media-coverage> visited 17-04-2017.

businesses fuelling conflict and human rights abuses through their purchases of natural resources, such as tin, gold and diamonds.’¹⁷

On the 20th of May 2015, the European Parliament adopted amendments to the Commission's proposal which included a mandatory due diligence scheme for downstream and upstream companies that sell 3TG – in any form – in the EU. The European Parliament therefore increased the scope and legal force of the proposal of the Commission. Marie Arena, a Member of the European Parliament stated that ‘We want clean and responsible trade. That is why we are advocating a binding Regulation that applies not only to raw materials, but also to the finished products we consume in Europe’.¹⁸ Afterwards the Council of the EU, the European Parliament and the European Commission entered into informal "trialogue" negotiations behind closed doors.¹⁹

On the 22nd of June 2016, an agreement was reached between the European Commission, the European Parliament and the Council of the EU on the final package compromising both the text of the Regulation and the declarations by the Council of the EU and the European Commission.

This year, after more than two and a half years of debate both the European Parliament²⁰ and the Council of the EU²¹ adopted the legal text of the EU Conflict Minerals Regulation. On the 19th of May 2017 the official text of the Regulation was published in *the Official Journal of the EU*.²² The law enters into force 20 days after publication on the 9th of July 2017.²³ However, only after the 1st of January 2021 EU importers are obliged to comply with the due diligence scheme.²⁴ This in order to give companies plenty of time to adapt to the new set of rules. Nevertheless, companies are highly encouraged to carry out the supply chain due diligence scheme well before this date.

II. EU CONFLICT MINERALS REGULATION

This chapter provides a deeper inside of the EU Conflict Minerals Regulation. First, the chapter gives an overview of the scope of the Regulation (2.1) and secondly, the obligations for EU importers, smelters and refiners (2.2). The chapter ends with an analysis of the possible external effects of the Regulation (2.3).

2.1 Scope

The four minerals and metals

The EU Conflict Minerals Regulation applies to all importers of minerals or metals containing or consisting of 3TG into the EU.²⁵ The Regulation covers the same minerals and metals as the Dodd-

¹⁷ Global Witness, *Breaking the Links Between Natural Resources and Conflict: The Case for EU Regulation*, 16-09-2016. See <https://www.globalwitness.org/en/archive/new-eu-law-could-help-stop-natural-resource-trade-fuelling-conflict/>

¹⁸ Barbière, EU institutions still divided over conflict minerals, *EURACTIV.fr*, 03-02-2017.

¹⁹ <https://business-humanrights.org/en/european-parliament-votes-in-favour-of-binding-regulation-on-conflict-minerals> visited 17-04-2017.

²⁰ On the 16th of March 2017 with an overwhelmingly approval of 558 – 17 voted for (with 45 abstentions).

²¹ On the 3th of April 2017.

²² OJ L 130, 19.05.2017.

²³ Article 20(1) and (2) of the EU Conflict Minerals Regulation.

²⁴ Article 20(3) of the EU Conflict Minerals Regulation.

²⁵ Article 1 and Annex I of the EU Conflict Minerals Regulation.

Frank Act, and like the US, it does not cover recycled metals²⁶, with the exception of Article 7(4) of the EU Conflict Minerals Regulation. There is some critique as to the narrow scope of the Regulation to only cover four minerals and omits other resources, such as cobalt, which can be linked to serious human rights violations in conflict areas as highlighted by Amnesty International.²⁷ Also jade and coal are materials sourced from conflict areas where human rights are not being respected.²⁸

The EU explains that it focuses on 3TG because those minerals are mostly mined in areas affected by conflict or in mines that rely on forced labour. Moreover, this focus is also seen in the Dodd-Frank Act and OECD Guidance which has two sections specifically dealing with 3TG.²⁹

Upstream and downstream companies

Companies who fall under the scope of the EU Conflict Minerals Regulation include upstream³⁰ and downstream companies³¹ in so far as those importing metal-stage products. The companies operating beyond the metal stage do not have obligations under the Regulation. Upstream companies are companies that search for and extract raw materials, such as mining companies, raw material traders, smelters and refiners. Downstream companies are companies that process metals produced during the upstream stage into a finished product, like for example your mobile phone. This means that the majority of downstream companies fall outside the scope of the Regulation and could create loopholes in the system. It cuts the problem into parts.

‘Covering the whole supply chain will be a more effective use of the EU’s commercial leverage as this is more likely to lead to a change in behaviour of the big refining companies, making them more responsible’³² says Gibb from Global Witness. In addition, by not including downstream companies undermines the internationally recognized standard of the OECD Guidance which looks at the whole supply chain. The EU has previously pledged to uphold OECD’s standards. Lowering these standards well below the OECD ones could be damaging since it would set new low norms for the EU Member States and could be followed by the rest of the world.

Surprisingly, in the US, upstream and downstream companies fall under the scope of the Dodd-Frank Act as the Act includes the use of components containing 3TG. However, one can question whether including downstream companies would be workable, as the Dodd-Frank Act is only complied by 21% of the companies importing 3TG in the US.³³ This was also put forwards as one of the main arguments why the EU would not include downstream companies under the EU Conflict Minerals Regulation; the workability.³⁴ In addition, the EU maintains that upstream companies as importers are closer to the source of the minerals and conflict and targeting them would be more effective.

²⁶ Article 1(6) and 2(s) of the EU Conflict Minerals Regulation.

²⁷ Amnesty International, “*This is what we die for*”: Human rights abuses in the Democratic Republic of the Congo power the global trade in cobalt, Amnesty International Ltd, London, 2016.

²⁸ Global Witness, *Jade: Myanmar’s Big State Secret*, Global Witness, October 2015 and PAX, *The Dark Side of Coal*, June 2014.

²⁹ <http://ec.europa.eu/trade/policy/in-focus/conflict-minerals-Regulation/Regulation-explained/#Regulation-why> visited 22-04-2017.

³⁰ Article 2(j) of the EU Conflict Minerals Regulation.

³¹ Article 2(k) of the EU Conflict Minerals Regulation.

³² Hale, EU conflict minerals legislation risks being quietly shelved, *Equal Times*, 20-05-2016. See: <https://www.equaltimes.org/eu-conflict-minerals-agreement?lang=en#.WPVdzdKLTb3>

³³ Global Witness and Amnesty International, *Digging for Transparency*, 2015. See: https://www.globalwitness.org/documents/17915/Digging_for_Transparency_hi_res.pdf

³⁴ Barbière, EU institutions still divided over conflict minerals, *EURACTIV.fr*, 03-02-2017.

However, downstream companies are encouraged and assisted by the EU to take steps voluntarily to eradicate conflict minerals from their supply chains. Moreover, there is a review clause included in the Regulation, which will allow the law to be expanded in the future.³⁵ This clause makes it possible to include in the future downstream companies, when this is deemed necessary, in order to ensure sufficient leverage of the total EU market on the responsible global supply chain of minerals.

Geographical application

The EU Regulation applies to 3TGs extracted in “conflict-affected and high risk areas”³⁶ around the world and therefore its scope is wider than the Dodd-Frank Act, which only covers the DRC and its adjacent States. The European Commission will provide an indicative, non-exhaustive, regularly updated list of conflict-affected and high-risk areas, which will be compiled on the basis of expert opinion, Member States and the Handbook referred to in Article 14(1) of the EU Conflict Minerals Regulation.³⁷ However, there is a chance that companies will move their activities away from these regions, negatively affecting the areas this Regulation sets out to help, as we already have seen in the DCR with the Dodd-Frank Act. Nevertheless, companies which are extracting minerals from areas that are not on this list will still be responsible to carry out due diligence checks under the EU Conflict Minerals Regulation

2.2 Obligations

EU importers and their obligations

EU importers are defined under Article 2(1) of the EU Conflict Minerals Regulation as ‘any natural or legal person declaring minerals or metals for release for free circulation within the meaning of the EU Customs Code³⁸. The Regulation contains a threshold under which importers do not have to apply to the Regulation, this is if their import volume is below the mentioned threshold amount of Article 18 of the EU Conflict Minerals Regulation.³⁹ This in order to provide some relief to small enterprises, such as for example dentists.⁴⁰ The applied ‘volume thresholds are set at a level that ensures that the vast majority, but no less than 95 %, of the total volumes imported into the Union of each mineral and metal ... is subject to the obligations of Union importers set out in this Regulation.’⁴¹ The Regulation is estimated to apply directly to between 600 and 1,000 EU importers.⁴²

EU importers of 3TG must comply with the supply chain due diligence scheme in order to prove what they are buying is sourced responsibly and does not fund conflict.⁴³ The Regulation requires importers to follow a five-step framework based on the OECD Guidance, as is also true for the Dodd-Frank Act.⁴⁴ These steps are:

1. Establish strong company management systems, Article 4.
2. Identify and assess risk in the supply chain, Article 5(1)(a).

³⁵ Article 17 of the EU Conflict Minerals Regulation.

³⁶ Article 1(1) and 2(f) of the EU Conflict Minerals Regulation.

³⁷ Article 14(2) of the EU Conflict Minerals Regulation.

³⁸ Regulation (EU) No 952/2013.

³⁹ Article 18 and Annex I of the EU Conflict Minerals Regulation.

⁴⁰ EU press release 181/17 (03/04/2017) *Conflict minerals: Council adopts new rules to reduce financing of armed groups.*

⁴¹ Article 1(3) of the EU Conflict Minerals Regulation.

⁴² <http://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/#regulation-why> visited 17-04-2017.

⁴³ Article 3 of the EU Conflict Minerals Regulation.

⁴⁴ S. van der Velde, *The End of Conflict Minerals on the EU Market? ASSER Policy Brief 03*. 2017-03.

3. Design and implement a strategy to respond to identified risks, Article 5(1)(b).
4. Carry out an independent third-party audit of supply chain due diligence, Article 6.
5. Report annually on supply chain due diligence, Article 7.

EU Member States will establish competent authorities who will check these companies to ensure compliance and determine penalties if companies do not comply.⁴⁵

Smelters and refiners

Smelters and refiners are defined under the Regulation as ‘any natural or legal person performing forms of extractive metallurgy involving processing steps with the aim to produce a metal from a mineral.’⁴⁶ The obligations under the EU Conflict Minerals Regulation will indirectly affect about 500 smelters and refiners of 3TG, in and outside the EU.⁴⁷ The smelters and refiners located within the territory of the EU are covered by the Regulation and have to implement the required measures. The smelters and refiners located outside the EU can undergo a third-party audit on a voluntary basis. The Commission shall establish through an implementing decision, a list of the names and addresses of global responsible smelters and refiners.⁴⁸

2.3 Extraterritorial extension

The EU conducted the EU Conflict Minerals Regulation in light of its principles and objectives set out in the Treaty of Lisbon.⁴⁹ The Treaty of Lisbon, and more specifically Article 2, 21 and 22 of the TEU, provide the EU and its Member States with important guidelines for their actions on the international level. The EU seeks to advance in the wider world: ‘democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law’.⁵⁰ Norms that are shared values amongst the Member States and form the foundation of the EU.

Article 3(5) of the TEU provides the EU with the task of spreading these norms globally and as a result, these norms have become part of the EU’s external, international identity.⁵¹ Manners calls this the “Normative Power Europe” thesis; the role of the EU in which it ‘both serves as an example of normative standards and actively tries to disseminate its standards as a model for third countries or international actors.’⁵²

As a response to Manners’ Normative Power Europe, Damro wrote in 2012 an article suggesting that the EU is fundamentally a large, regulated single market with market influence on a global scale. Therefore its role can be best understood as a “Market Power Europe”.⁵³ As one of the biggest economic powers in the world the EU can, intentionally and unintentionally, unilateral force companies and third States to conform to EU standards. Standards which are often higher than the

⁴⁵ Article 10 of the EU Conflict Minerals Regulation.

⁴⁶ Article 2(h) of the EU Conflict Minerals Regulation.

⁴⁷ <http://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/#regulation-why> visited 17-04-2017.

⁴⁸ Article 9 of the EU Conflict Minerals Regulation.

⁴⁹ Article 207 TFEU as part of its Common Commercial Policy and in accordance with Article 21 and 22 TEU.

⁵⁰ Article 21(1) TEU.

⁵¹ I. Manners, Normative power Europe: a Contradiction in terms? *Journal of Common Market Studies*, volume 40 issue 2 2002, p.235-258.

⁵² B. Kleizen, Externalizing EU law, policy and values, *Renforce UU*, September 2015.

⁵³ C. Damro, Market power Europe, *Journal of European Public Policy*, volume 19, issue 5 2012, p. 682-699.

national standards in place. This mechanism is called by Bradford “the Brussels Effect”.⁵⁴

The goals of Market Power Europe most notably have an economic focus, but they can in addition provide strong leverage to impose more normative standards of the EU on third States and other international actors. In such a case the Normative Power Europe and Market Power Europe are not separated roles but overlap significantly.⁵⁵ This can be seen in the EU Conflict Minerals Regulation especially in the Preamble of the Regulation.

As stated in the Preamble of the EU Conflict Minerals Regulation, the Regulation promotes development, good governance and the rule of law by aiming at stopping conflict minerals and metals from being exported to the EU. Moreover it aims at preventing the use of conflict minerals by global and EU smelters and refiners, the abuse of mineworkers, and it also supports local development. This in order to guarantee peace, development and stability in conflict-affected and high risk areas.⁵⁶ The Regulation has therefore a clear normative undertone. The EU uses its Market Power Europe; the position it has in the market as one of the biggest importers of the 3TG minerals, as leverage to promote these norms in conflict and high-risk areas. The influence of the EU goes in this regard beyond its territory.

One of the mechanisms the EU employs to influence on the international level is the way the EU positions its internal market with regard to the EU Conflict Minerals Regulation. This process can be regarded as a process similar to the Brussels Effect. The EU Conflict Minerals Regulation primary concern is the regulation of trade of conflict minerals within the EU. The Regulation applies directly to companies based in the EU. In addition, the Regulation applies to smelters and refiners inside and outside the EU, to promote responsible sourcing. To comply with the due diligence scheme, importers to the EU need to make sure that they source from responsible smelters and refiners. Therefore, the Regulation imposes indirect obligations outside the EU its territory on smelters and refiners. The mandatory requirements on EU importers stipulates the incorporation of the set rules in the Regulation by smelters and refiners outside the EU, otherwise the EU importers will not adhere to the Regulation or will have to terminate their business relationship with that particular smelter or refiner. As a result, smelters and refiners are indirectly forced to comply with the rules under the EU Conflict Minerals Regulation.

Whether the EU leverage over smelters and refiners outside the EU will be sufficient to force this compliance remains to be seen. In this regard the EU relies heavily on the market power it has. However, since the Regulation has not yet come into force, the actual effect is not clear. The EU is, although the biggest market, not the only market in the world. To what extent other markets, like China and the US, play a role in limiting the power of the EU cannot yet be seen.

Nevertheless, if one wants to enter the European market it has to comply with the obligations set in the Regulation. Moreover, as the mining process is indivisible, these standards will be applied through the whole process of a company, even if it would also export next to the EU to a non-EU country.

⁵⁴ A. Bradford, the Brussels effect, *Northwestern University Law Review*, volume 107, issue 1 2012, p.1- 67.

⁵⁵ For a more comprehensive elaboration of the different roles and processes of the EU see: B. Kleizen, Externalizing EU law, policy and values, *Renforce UU*, September 2015.

⁵⁶ Par. 1 of the EU Conflict Minerals Regulation.

Another mechanism of the EU, to influence beyond its borders, is the so called “territorial extension”. This name is given by Joanne Scott for the practice of using the territorial connection of a State to justify the regulation of conduct taking place outside its territory; for its measures to be implemented in third States.⁵⁷ The extraterritorial extension finds its basis in the sovereignty of a State. The idea that a State has jurisdiction over people within its territory and conducts that occurs (partly) on its territory. The EU has the territorial extension largely due to its powerful single market, which forces external parties to adopt European legislation in order to enter the European market.

The due diligence norms of the EU Conflict Minerals Regulation, as stated in Article 3 to 7 of the EU Conflict Minerals Regulation, territorially extend the jurisdiction of the EU to include all importers of 3TG to the EU market and smelters and refiners. Since the minerals will be traded within the EU the effects are also noticed in the EU, providing a territorial connection, the necessary link for the EU to exercise its jurisdiction. The Regulation therefore bypasses non-EU governments by targeting its norms at the companies wishing to import into the EU. However, third States are still subject to EU norms as a result of the territorial extension of the due diligence requirement of the EU Conflict Minerals Regulation. So, either third States have to conform to the Regulation or companies wishing to import into the EU are obliged to implement the rules in order to be allowed to enter the European internal market.

CONCLUSION

Many organizations and individuals have been eager to see a strong European version of the US Dodd-Frank Act. One can say that this finally happened with the publication of the EU Conflict Minerals Regulation on the 19th of May 2017. Nevertheless, the process was long and complicated. The European Parliament fought hard in the negotiations with the Commission and Council to make the rules mandatory and to include both the upstream and downstream companies. It failed in the latter but managed to make the EU Conflict Minerals Regulation binding for EU importers. So, after two and a half years of debate, the EU agreed on a set of rules which will regulate the import of the conflict minerals tin, tantalum, tungsten and gold from conflict-affected and high risk areas. However, the Regulation’s compliance and reporting provisions will only become binding for EU importers after the 1st of January 2021.

The four minerals covered by the EU Conflict Minerals Regulation hold great potential for the development of a country which possesses these resources within its territory. However, in many fragile areas of the world, this can be a cause of conflict, there where their revenues fuel the outbreak or continuation of violence, pave the way for human rights abuses and undermine endeavours towards development, good governance and the rule of law.⁵⁸ Important principles and objectives of the EU which are laid down in Article 2, 21 and 22 of the TEU. These Articles provide the EU and its Member States important guidelines for their actions on the international level and are used to shape the EU’s External Policies. The EU Conflict Minerals Regulation is therefore an attempt to break the nexus between conflict and illegal exploitation of minerals in order to establish peace, stability and development in these regions. It has a clear normative undertone. The role for the EU in the Regulation has a Normative Power yet the mechanisms of Market Power Europe are being employed

⁵⁷ J. Scott, Extraterritoriality and Territorial Extension in EU Law, *American Journal of Comparative Law*, volume 62, issue 1 2013, p.89-94.

⁵⁸ Par. 1 of the EU Conflict Minerals Regulation.

to achieve this goal. The Regulation tries to not only to regulate the EU's internal market but also the global market by the processes of the Brussel Effect and territorial extension to influence third States and international actors to comply with the Regulation and the set norms.

The EU Conflict Minerals Regulation's primary concern is the Regulation of trade of conflict minerals within the EU. The Regulation applies directly to companies based in the EU. EU companies have to comply with the Regulation within the supply chain due diligence scheme. The system should improve transparency and ensure that the minerals traded by EU importers do not fuel conflict. The OECD Guidance formed the basis of the EU Conflict Minerals Regulation. In addition, the Regulation applies to smelters and refiners inside and outside the EU, in order to promote responsible sourcing. As a result, the Regulation imposes indirect obligations on smelters and refiners outside the EU.

The new EU Conflict Minerals Regulation was received with mixed reviews. By not including *inter alia* downstream companies, it was seen as undermining the internationally recognized standard of the OECD Guidance, standards the EU has previously pledged to uphold. This could be damaging as it risks locking in a standard well below the OECD standard. The Regulation was also called by some as a "simpler alternative to US Regulation"⁵⁹ or claiming it could "fail to spark change"⁶⁰. Some even went so far as to say that it in fact would worsen development outcomes as companies could, for example, move their activities elsewhere, affecting the livelihoods of people who depend on mining.⁶¹

The EU Regulation contains a review clause that will leave the possibility to expand the law in the future. Therefore, perhaps the scope of the Regulation will be broadened to include more minerals or its obligations will also apply to downstream companies. Only time will tell.

⁵⁹ I. Weekes, Conflict minerals: New EU rules simpler alternative to US regulation. *The Guardian*, March 26, 2014 . See: <http://www.theguardian.com/sustainable-business/blog/eu-regulations-conflict-minerals-trade>

⁶⁰ N. Murry, Why Europe's 'Opt in' rules on conflict minerals could fail to spark change. *The Guardian*, March 13, 2014. See: <http://www.theguardian.com/sustainable-business/european-commission-conflict-minerals-failure>

⁶¹ Pue, Iterative Non-State Governance in the Conflict Minerals Movement: An Anatomy of a Global Political Consumerism Campaign, *Conference Paper*, February 2017.