

Conflict Minerals

Position Paper and Background Paper of the Electrical Industry





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Position Paper of the Electrical Industry on Conflict Minerals

ZVEI Core Issues:

Presentation of the Problem

- Raw materials like minerals form the basis for all industrial production processes and are therefore vital for industry.
- In a few regions of the world, there is a risk that funds obtained from the extraction of raw materials could be used to finance armed conflicts.
- In the attempt to sever the connection between raw material extraction and the funding of conflicts, a series of initiatives has been introduced, which includes section 1502 of the US Dodd-Frank Act.
- Although the electrical industry supports the motivation of such initiatives (prevention of armed conflicts), a product-based approach and continuous certification is not considered as beneficial.

Main Arguments

- The demand for continuous, product-based certification from raw material to end product generates vast numbers of certificates and requires a burdensome management process which incurs disproportionate expenses at all stages of production.
- Product-based certification over the entire supply chain generates certificates whose truth and accuracy cannot be verified. By contrast, certification of the smelters would produce reliable results.
- Continuous, product-based certification over the entire supply chain adds no value compared with certification of the smelters that accept the raw materials for initial processing.

Key Message

- A solution approach to the problem should concentrate on what is practicable and verifiable. The electrical industry therefore suggests a systemic approach. Certification should be limited to the level of the smelters: this is because a geological proof of origin (fingerprint) is possible only until smelting.

Solution Approach to the Problem

1. Certification of the smelters through voluntary public-private partnerships with the support of national governments and the EU.
2. Contractual duty of suppliers to use conflict-free minerals, which are traced back to the certified smelter.

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Importance of Raw Materials for the Industry

Raw materials form the basic element of all manufactured products. They are therefore the base materials for all industrial production processes. Raw materials are extracted in the mining industry, in agriculture and forestry as well as in the fisheries sector. The majority of raw materials is made up of primary mineral and organic raw materials.

The extraction of minerals takes place in deposits. Minerals are non-renewable raw materials, which include metallic (e.g. iron, copper, tin, zinc, aluminium, silver and gold ores), non-metallic (e.g. stone, earth, salts and gemstones) and energy resources (primarily coal, crude oil and natural gas).

In Europe, raw material imports comprise energy resources, metals (ores and metals from the initial processing stage) and non-metals. Given that since the start of the 1990's there is no longer a classic metal ore mining industry in Europe, there is a high level of import dependence for all ores and concentrates. At the same time, raw materials form the indispensable basis for the subsequent value added stages in industrial production. However, the high level of recycling reduces this dependence on imports, particularly in the case of metallic raw materials.

The ten most significant raw materials for the electrical industry are copper, unrefined iron (steel/electrical sheets), aluminium, crude oil / natural gas, nickel, lead, cobalt, lithium, zinc and manganese.

Why Do Minerals Become Conflict Minerals?

It must be stated initially that the connections between raw materials and armed conflicts are extremely diverse and in no way unambiguous. Every violent dispute has its own conflict history and dynamics, which must be very precisely analysed, identified and categorised. No general 'conflict model' applicable for every location in the world can be derived, neither can motives and mechanisms be described in a uniform manner. In the same way, factors promoting conflict (financing, human rights violations, unstable political/social situation etc.) are dependent on the country and region and differ widely.

However, due to internal conflict situations in a few mining regions in the world, there is a risk of armed conflicts being financed by the proceeds from the sale of minerals: so-called conflict minerals. In the case of the Democratic Republic of the Congo (DRC), the following minerals are today defined as conflict minerals by the US Dodd-Frank Act:

- Columbite-tantalite ('coltan'; commodity for niobium and tantalum extraction), incl. as a component of condensers; used for the production of steel (Niobium)
- Cassiterite (black tin; commodity for tin extraction), incl. as a component of catalytic converters, semiconductors, alloys; used in soldering processes, as a stabiliser for PVC, in packagings (food cans)
- Wolframite (commodity for tungsten extraction), incl. as a component of alloys in the automotive industry; used in microelectronics, 'tungsten wire'
- Gold, incl. in jewellery making, the electronics, optical and medical industries, as coins and ingots in payment transactions

Two statements must be made here:

- 1. Raw materials are 'value-neutral' and therefore also 'conflict-neutral'**
- 2. Only the use of the funds obtained from commodity extraction can be subject to moral concerns.**

This statement gives rise to the question of how such a reprehensible use of funds can be countered.

Channels of the Conflict Minerals

Based on the example of minerals from the Democratic Republic of the Congo, the journey from mine to end product is traced below.

After the mining the minerals and ores are transported to large trading centres (generally Bukavu and Goma) in the country. Export companies purchase the minerals in the trading centres and in turn supply international dealers. These dealers sell the goods to smelters. Here, the minerals and ores are refined, i.e. melted down and e.g. tin, tantalum, niobium, tungsten or gold are extracted by means of physico-chemical processes.

In the smelters minerals and ores from the broadest range of Congolese areas, neighbouring states and other countries are concentrated, blended and processed. After refining, it is no longer possible to trace the origin of the element concerned (fingerprint).

Refining is followed by sale to dealers and manufacturers of primary products. In turn, these primary products are used throughout the many stages of components, parts etc. in industrial and private end products. **5 to 20 processing stages** can be recorded from the smelter to the finished end product.

Current Status of Discussions

The industry unreservedly supports the aim to sever the connection between the mining of minerals and the funding of armed conflict. However, with regard to implementation, there are numerous problems with the existing initiatives. On the international level, various approaches exist with the objective of curbing the trade in conflict minerals and guaranteeing that no conflict minerals are used within the international supply chains. The best known regulatory initiative is the US Dodd-Frank Act, which requires disclosure throughout the entire supply chain.

The 'US Dodd-Frank Act'

The US Dodd-Frank Act for the reform of US financial market law by means of improving responsibility and transparency was signed by President Obama in July 2010. Section 1504 of this act designates that companies traded on American stock exchanges must disclose payments to foreign governments in connection with the economic use of oil, gas and minerals in their annual reports to the U.S. Securities and Exchange Commission (SEC).

Section 1502 of the act specifically concerns conflict minerals from the Democratic Republic of the Congo and its neighbouring countries and explicitly mentions tin, tungsten, tantalum and gold. According to the Dodd-Frank Act, companies that process these substances and are listed on the US stock exchange need to demonstrate annually whether armed rebel groups have been supported by the mining of the stated minerals – if these are critical to the manufacture or function of the products. Ultimately, the companies concerned have a duty to disclose:

- Whether conflict minerals are used in their products (technical audit) and if so
- Whether they come from the DR Congo or neighbouring states.

If this applies then the company must compile and publish (reporting duty) an independently audited 'Conflict Minerals Report'. The report includes the:

- Description of the due diligence measures throughout the supply chain,
- Description of the products that are 'not DRC conflictfree',
- Description of the industrial processor (smelter/refinery),
- Specification of the country of origin and
- Description of the measures to determine the origin/locality of the conflict minerals as accurately as possible.

Because of the proof of origin, this act introduces extensive investigative obligations for suppliers and material flows for the first time. In practice, the consequence of the product-based approach of the Dodd-Frank Act translates into a disclosure of the entire supply chain.

The Dodd-Frank Act therefore follows a product-based approach of requiring disclosure of the entire supply chain.

Difficulties of Product-Based Certification

Influenced by the discussions on the Dodd-Frank Act, various approaches to dealing with conflict minerals in the supply chain are currently being discussed at European level. The electrical industry considers the option of product-based certification from mine to end product to be questionable, as a number of serious consequences are not taken into account:

- Foreign suppliers, particularly such as raw material and base material suppliers, can be neither compelled nor bound by EU legislation. The truth of the statements made is therefore very difficult to ascertain. An additional complication is the fact that continuous certification from raw material to end product at the start of the certification chain applies precisely to those companies that develop corrupt activities. What motivation should exist here to issue 'correct' certificates?
- It would be necessary to manage an incredible number of certificates. For a single jumbo jet (747), it would become necessary to manage around 1 million certificates. Such certificate management is bureaucratically very expensive and would be associated with high costs on all levels of production.
- One obvious consequence would therefore be that companies would avoid such a product-based duty of certification by boycotting the raw materials and countries concerned. In turn, a boycott would primarily affect the local population, which would be cut off from legal and inoffensive sources of income from the extraction of raw materials.

Conclusion:

- **The demand for continuous certification from raw material to end product creates high costs, which increase costs throughout the supply chain and therefore of the end product without ensuring 'correct/true' certification and is moreover harmful to the people in the mining areas, as it is likely to lead to a boycott of the concerned regions.**
- **Such compulsory regulation would moreover result in considerable competitive disadvantages for European companies, which would also restrict raw material security for the companies.**

The objective of 'preventing armed conflicts' can therefore not be achieved by continuous certification from mineral to end product.

View of the Industry

European companies are active in many countries of the world. Sustainable raw material security is very important for companies. The responsibility to act with integrity domestically and abroad is perceived and understood by the European companies that operate globally.

The German electrical industry supports the existing international initiatives such as the OECD due diligence guidelines, which create a framework for improving security throughout the supply chain. The due diligence guidelines offer companies a risk-based systemic approach, which presents a voluntary framework for specific implementation. The voluntary nature of the OECD framework allows companies to align the OECD requirements with the specific procedures and processes within the company. Mandatory implementation requirements, however, would result in the companies being subjected to standardised requirements that could severely impede the efficiency of the companies, which themselves know their management processes and procedures best. The German electrical industry is therefore arguing for finding a solution based on a voluntary and international approach. Moreover, the German Electrical and Electronic Manufacturers' Association (ZVEI) welcomes the already existing voluntary initiatives of industry and civil society such as the EICC-GeSI conflict-free smelter initiative.

Nevertheless, it has to be stressed that the limits of influence of the companies lie where there is no actual possibility of access for or by European companies.

In this regard, the primary task of a coherent foreign, security and development policy on a national and international level is to support the democratic and social development of these countries and to reinforce so-called 'institution building'. Companies can support

but not replace this process. They cannot be held responsible for regional conflicts.

Problem Solution Approach

1. Certification of the Smelters

Due to the complexity of supply chains, in which many production stages must be passed through until a product is processed by the original manufacturer (OEM), it is impossible for the final manufacturer to trace the individual components of a finished product back to the mine.

Given that the traceability from the end product all the way to the point of origin of the mineral cannot be guaranteed by the final manufacturer, certification initiatives and traceability systems should concentrate on specific areas within the supply chain.

Initially, it is important to create an effective control point at the start of the supply chain. The smelter level represents the ideal bottleneck within the supply chain. Existing initiatives such as the EICC-GeSI co-operation for the certification of smelters confirm the feasibility of this approach.¹ Chemical/geological proof of origin (fingerprint) is possible only before smelting. After smelting, the original ores can no longer be assigned, so the smelters are the last possible control point. Furthermore, this control point is optimal for reasons of feasibility and efficiency. The large number of artisanal and smaller mines in the African Great Lakes region alone can be estimated only with difficulty and is therefore virtually impossible to control. By contrast, the number of smelters is limited. The EICC-GeSI initiative estimates the number of smelters worldwide at 151 (OECD estimates around 200). An effective control mechanism at the level of the smelters would therefore be a substantial simplification for the provision of proof by companies in the downstream production chain. The number of smelters already certified and controlled

¹ <http://www.eicc.info/extractives.shtml>

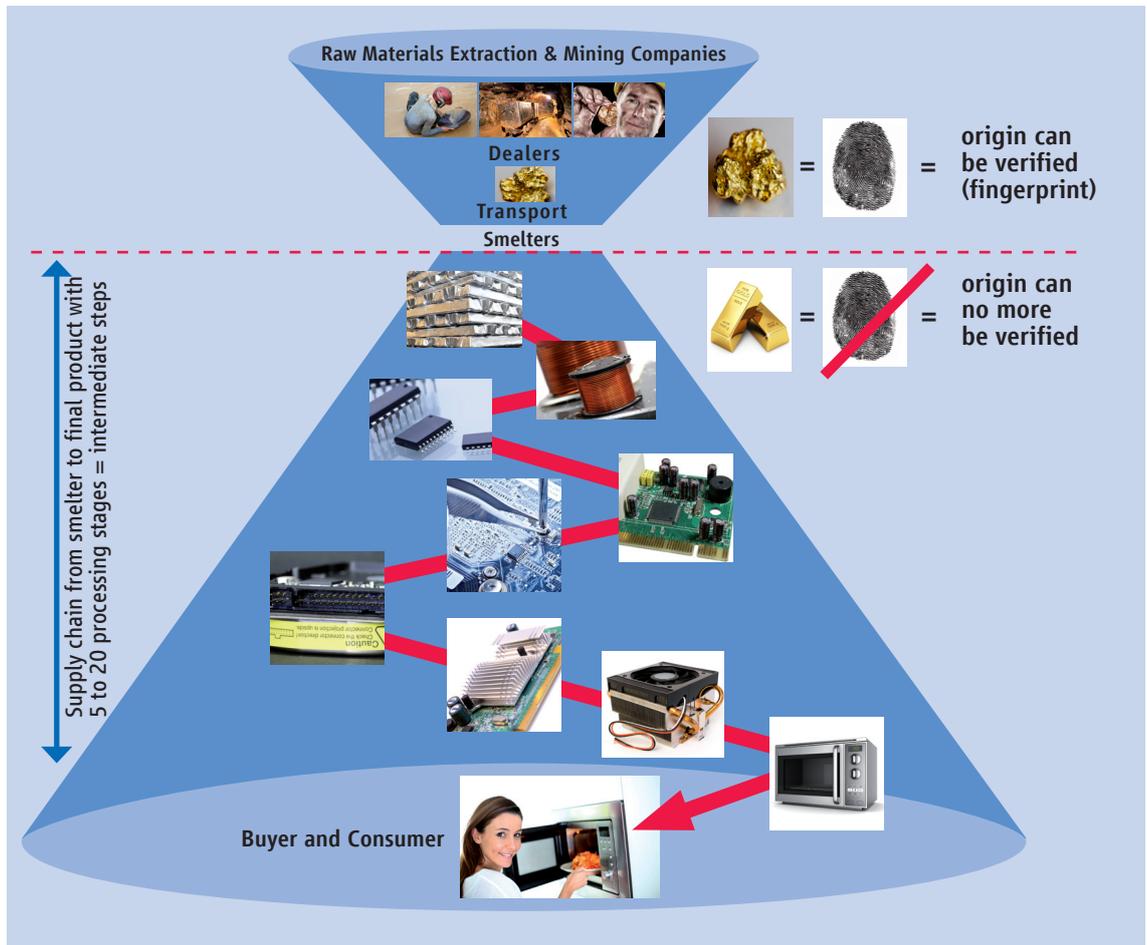
Certification on the level of the smelters concentrates on what is practicable and verifiable:

- Identifiability of the commodity origin = Mining Companies, Dealers, Smelters
- Use of the funds = Rebels/state
- Discernibility of the integrity of suppliers = Smelters
- Chemical/geological proof of origin = Smelters
- Certification of few (approx. 200) companies globally = Smelters
- Idea of certification at the bottleneck = Smelters
- Cost minimisation for certification = Smelters
- Possibility of cost transfer to customers = Smelters
- Agreement with suppliers = Manufacturers
- Contractual duty of suppliers = Manufacturers

through the EICC-GeSI co-operation with the aid of a multi-stakeholder process has already grown from 11 smelters to 29 smelters. This demonstrates the feasibility of such an approach, which is based on co-operation between industry and civil society.

Conclusion:

- **Certification of smelters as the bottleneck within the global supply chain makes sense, as certification extends to a manageable number of companies and certification at this level is comprehensible and verifiable given that the chemical/geological proof of origin (fingerprint) is possible only before smelting.**
- **Certification of the smelters is easier to implement and verify than a product-based certification over the entire supply chain. Such a systemic approach therefore offers considerable value added.**



2. Supporting Role of Governments and the European Union

The electrical industry also sees governments and the European Union as having an important supporting role. In order to expand the existing approaches and achieve exhaustive certification of the smelters, governments should act as facilitators and enter into dialogue with the state authorities at the location of the respective smelters. The approval and support of the governments concerned is required due to the principle of state sovereignty and the basic rules of international co-operation. The industry plays a supporting role here. However, certification of the smelters should be undertaken by independent third parties.

3. Configuration of Contractual Duties by the Companies

The approach of certification of smelters should be complemented by companies in the context of contractual duties.

In this respect, companies should demand the use of conflict-free minerals through requirements under contractual law. By passing on these requirements, a cascade system will be created, which extends from the end of the supply chain through to its commencement: the certified smelters. For companies, this approach is enforceable, as – unlike having to offer guarantees for the entire supply chain – they have direct control over the configuration of their contractual conditions.

At the same time, a major contribution is therefore made towards being able to prevent the absorption of conflict minerals into the supply chain. In this sense, the suggested approaches interact and support each other. The aim is for a synergy of these approaches, through which transparency is increased throughout the entire supply chain, effective control options are established, and it can therefore be guaranteed that the end products contain no conflict minerals.

This produces the following proposal to solve the problem:

- **Certification of the smelters through voluntary public-private partnerships and support from governments as well as the EU**
- **Contractual duty of suppliers to use conflict-free minerals**

We see this solution approach as consistent with the following initiatives and regulations²:

- OECD due diligence guidelines³
- EICC-GeSI conflict-free smelter initiative⁴
- EITI-initiative⁵
- 'Enough Project', which also supports verification of the smelters⁶
- EU regulation 1183/2005 freezing of accounts and economic resources⁷
- EU regulation 889/2005 arms embargo; ban on financial support⁸

We also see this solution approach as consistent with the activities of the German federal authorities and the German 'Mineral Certification at the BGR' initiative, which is already active⁹

- German Mineral Resources Agency (Deutsche Rohstoffagentur – DERA)¹⁰
- Federal Institute for Geosciences and Natural Resources (Bundesanstalt für Geowissenschaften und Rohstoffe – BGR)¹¹
- Mineral Certification at the BGR¹²

² In relation to DRC

³ http://www.oecd.org/document/36/0,3746,en_2649_34889_44307940_1_1_1_1,00.html

⁴ <http://www.eicc.info/Extractives.shtml>

⁵ <http://eiti.org>

⁶ http://www.enoughproject.org/conflicts/eastern_congo/conflict-minerals

^{7,8} <http://www.ausfuhrkontrolle.info/ausfuhrkontrolle/de/embargos/kongo/verordnungen/index.html>

⁹ http://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/Home/CTC_node_en.html

¹⁰ <http://www.deutsche-rohstoffagentur.de>

¹¹ http://www.bgr.bund.de/DE/Home/homepage_node.html

¹² http://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/Home/CTC_node_en.html



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