



Legal Service  
Directorate for Institutional and Parliamentary Affairs  
Director

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**Note for the attention of Mr Bernd LANGE,**  
Chair of the Committee for International Trade

c/o Head of Unit of the Secretariat

**Re: INTA - Conflict minerals files**

On 17 June 2015 you requested a legal opinion<sup>1</sup> concerning the conflict minerals files.

In its opinion which you will find attached, the Legal Service has reached the following conclusions:

- "a) *To the extent that the interpretation of provisions of Parliament's Rules of Procedure (hereinafter 'RoP') is concerned by the present Legal Opinion, the Legal Service must underline that its legal conclusions are without prejudice to the interpretation of the competent parliamentary committee, pursuant to Rule 226(3) RoP.*
- b) *The answer to the first question is that INTA needs to vote in accordance with Rule 73(2) RoP on the opening of negotiations and the composition of the negotiating team. In the case of a positive vote on the decision to open negotiations, INTA would be bound by the outcome of the plenary vote of 20 May 2015, which would then constitute the mandate for negotiations.*
- c) *The answer to the second question is that, in the case of a negative vote concerning the opening of negotiations, Rule 61(2) RoP determines the next procedural steps to be taken. INTA shall report to Parliament within two months, no more committee amendments are possible and the plenary can then adopt Parliament's position at first reading by voting on the draft legislative resolution."*

<sup>1</sup> The request is annexed to the present legal opinion.

The Legal Service remains of course at your disposal for any further information you may require.

*By delegation of the Jurisconsult,*

Ricardo PASSOS  
Director

Annex

Legal Service

SJ-0394/15

25-05-2015

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## LEGAL OPINION

**Re: INTA - Conflict minerals - Interpretation of Rules 61 and 73 of the Rules of Procedure**

### I. Introduction

1. On 17 June 2015 the Legal Service received an email with a request for a legal opinion<sup>1</sup> from Mr Bernd LANGE, Chairman of the Committee on International Trade ("INTA"), concerning the proposal for a regulation on "conflict minerals", in particular with a view to clarifying some procedural matters.
2. The request includes two questions:

*"Following the vote on this file in plenary on 20th May, is INTA required to vote under rule 73(2) of the rules of procedure in order to be able to enter into trilogue negotiations with the Council and if so, would INTA need to vote on the mandate, the decision on the opening of negotiations and the composition of the negotiating team?"*

*"If INTA is required to vote pursuant to rule 73(2) and a majority of members do not support one or more of the decisions put to the vote, what would be the next steps in the procedure, who would be able to decide on them and by what majority?"*
3. The present opinion briefly outlines the background of the "conflict minerals" proposal and the procedure in Parliament thus far, identifies the applicable rules, provides an analysis of the situation in procedural terms and then, on that basis, provides replies to the two questions in the request.
4. To the extent that the interpretation of provisions of Parliament's Rules of Procedure (hereinafter 'RoP') is concerned by the present Legal Opinion, the Legal Service must.

<sup>1</sup> The email request is annexed to the present legal opinion.

underline that its legal conclusions are without prejudice to the interpretation of the competent parliamentary committee, pursuant to Rule 226(3) RoP.

## II. Factual background

5. On 5 March 2015 the Commission submitted the proposal for a regulation for setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas (the "conflict minerals" regulation).<sup>2</sup> The proposal is based on Article 207 TFEU (measures in the area of common commercial policy), which implies adoption according to the ordinary legislative procedure.
6. The main objective of the proposal is to reduce the financing of armed groups and security forces through mineral proceeds in conflict-affected and high-risk areas by supporting and further promoting responsible sourcing practices of EU companies in relation to conflict minerals originating from such areas. According to the explanatory memorandum, the proposal would introduce a voluntary mechanism of self-certification by defining the conditions for EU importers to be self-certified as responsible importers of the minerals and metals in scope.<sup>3</sup>
7. According to Article 1(2) of the proposal, the draft regulation "*lays down the supply chain due diligence obligations of Union importers who choose to be self-certified as responsible importers of minerals or metals containing or consisting of tin, tantalum, tungsten and gold, as set out in Annex I*".
8. On 14 April 2015, INTA adopted its report, including *inter alia* an amendment to Article 1(2) pursuant to which the regulation "*lays down the supply chain due diligence obligations of Union importers who choose to be self-declared as responsible importers of minerals or metals containing or consisting of tin, tantalum, tungsten and gold, as set out in Annex I*". INTA did not vote on the opening of negotiations pursuant to Rule 73(2) RoP.
9. On 20 May 2015, the plenary voted the amendments to the proposed regulation. The plenary adopted *inter alia* amendment 154 according to which Article 1(2) would be worded as follows: "*This Regulation lays down the supply chain due diligence obligations of all Union importers who source minerals and metals falling within the scope of this Regulation, in accordance with the OECD Due Diligence Guidance.*" With this and related amendments, the plenary made the mechanism mandatory.
10. According to the plenary minutes, after the voting on the amendments had been completed, Mr Bernd Lange, the Chair of INTA, requested that the sitting be suspended

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<sup>2</sup> Proposal for a regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas, COM/2014/0111 final, 2014/0059 (COD).

<sup>3</sup> *Ibidem*, p. 5.

for a short time to enable him, with the rapporteur, the shadow rapporteurs and the coordinators, to assess the result of the vote on the amendments.<sup>4</sup>

11. After the short suspension, "*Bernd Lange proposed that the vote on the draft legislative resolution should be postponed in accordance with Rule 61(2)*".<sup>5</sup> Accordingly, "*Parliament approved the proposal by EV: (343 for, 331 against, 9 abstentions)*. The matter was thus deemed to have been referred back to the committee responsible, for reconsideration."<sup>6</sup>
12. According to the verbatim report of debates, Mr Lange called, with reference to Rule 61(2) RoP, for the final vote on the legislative resolution to be suspended and to start the trilogue (in the German original version: "*Deswegen beantrage ich nach Artikel 61 Absatz 2, die Endabstimmung auszusetzen und mit dem Trilog zu beginnen*").<sup>7</sup> The verbatim report of debates also indicates that, after the vote, the President announced that the proposal to refer the file back to the Committee was approved (in the Italian original version: "*La proposta di rinvio in commissione è approvata*").<sup>8</sup>
13. On 16 June 2015, INTA was scheduled to vote on whether to open negotiations aimed at reaching an early first reading agreement with the Commission and the Council on the basis of Rule 73(2) RoP. The vote did not, however, take place due to disagreements about the nature of the decision adopted in plenary and the follow-up by the Committee.

### III. Legal framework

14. Two provisions of the Rules of Procedure are relevant to the situation described. Rule 61(2) RoP, on the basis of which the plenary vote took place on 20 May 2015, and Rule 73(2) and (3) RoP, on interinstitutional negotiations on legislative procedures or 'trilogues'.
15. Rule 61(2) RoP reads:

*"2. If the Commission announces that it does not intend to adopt all Parliament's amendments, the rapporteur of the committee responsible, or else the Chair of that committee, shall make a formal proposal to Parliament as to whether the vote on the draft legislative resolution should proceed. Before submitting this proposal, the rapporteur or Chair of the committee responsible may ask the President to suspend consideration of the item.*

*If Parliament decides to postpone the vote, the matter shall be deemed to be referred back to the committee responsible for reconsideration.*

*In this case, the committee responsible shall, orally or in writing, report to Parliament within a period decided by Parliament which may not exceed two months.*

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<sup>4</sup> CRE 20/05/2015 - 10.7.

<sup>5</sup> *Ibidem*.

<sup>6</sup> *Ibidem*.

<sup>7</sup> CRE 20/05/2015 - 10.7.

<sup>8</sup> *Ibidem*.

*If the committee responsible is unable to meet the deadline, the procedure provided for in Rule 60(4) shall be applied.*

*Only amendments tabled by the committee responsible and seeking to reach a compromise with the Commission shall be admissible at this stage."*

16. Rule 73(2) and (3) RoP reads:

*" 2. Such negotiations shall not be entered into prior to the adoption by the committee responsible, on a case-by-case basis for every legislative procedure concerned and by a majority of its members, of a decision on the opening of negotiations. That decision shall determine the mandate and the composition of the negotiating team. Such decisions shall be notified to the President, who shall keep the Conference of Presidents informed on a regular basis.*

*The mandate shall consist of a report adopted in committee and tabled for later consideration by Parliament. By way of exception, where the committee responsible considers it duly justified to enter into negotiations prior to the adoption of a report in committee, the mandate may consist of a set of amendments or a set of clearly defined objectives, priorities or orientations.*

*3. The negotiating team shall be led by the rapporteur and presided over by the Chair of the committee responsible or by a Vice-Chair designated by the Chair. It shall comprise at least the shadow rapporteurs from each political group."*

17. It must be noted at the outset that Rule 73 RoP concerning the interinstitutional negotiations in legislative procedures (title) was adopted specifically to govern the decision on entering into negotiations with the Council and Commission in view of an agreement (decision on "trilogues"). Rule 61 relates to the "adoption of amendments to a Commission proposal" (title). Its paragraph 2 is intended for the situation when the Commission does not agree with Parliament's amendments and Parliament decides on a postponement of the vote on the draft legislative resolution. This provision thus does not specifically govern the procedure for the opening of negotiations with the Council. It is true that Rule 61(2) RoP has been used in practice as a mechanism to involve the plenary of Parliament in trilogue negotiations (notably when the committees wish the plenary amendments to be used as the mandate for the negotiations). However, according to the Rules of Procedure - which are adopted by the Parliament by a majority of its members (Article 232 TFEU) -, only the committee responsible, by a majority of its members, is entitled to decide on the opening of these negotiations aiming at a possible early first reading agreement, in accordance with Rule 73(2) RoP. In case both provisions are applied - which is legally possible - it is understood, however, that they must be fully respected.

**IV. The answers to the two questions requested by INTA**

18. Before answering the questions, it is necessary to make some preliminary remarks. The structure of the decision to engage in and conduct a trilogue, which is usually referred to with the general expression "mandate for negotiations" has the following three elements:
- (a) the decision to open negotiations taken on a case-by-case basis by the committee

responsible, (b) the mandate for the negotiations (which consists of the amendments adopted by the committee responsible, possibly modified by the plenary, and (c) the negotiating team.

19. The three elements of the trilogue are covered by Rule 73 RoP, but require different successive decisions by the committee responsible. Rule 61(2) RoP concerns only amendments to be adopted and a possible decision to refer back to the committee responsible, but does not prejudice the latter's decision on the opening of negotiations with the other institutions. This means that if Rule 61(2) RoP is applied, it will only cover the possibility that plenary endorses or amends the second of the elements listed above (mandate). In case the plenary does take a decision on this particular aspect, the decision of plenary prevails over the decision of a committee as regards the mandate. However, under the current framework, the plenary cannot decide on the remaining two elements, that is, on the opening of negotiations and on the negotiating team. These are decisions pertaining to the committee responsible only.
20. In the procedure at hand, the decision relating to the mandate of negotiations was taken by the plenary on 20 May 2015, and amended the Commission's proposal differently to the report previously adopted by INTA. If INTA were to decide to enter into negotiations, the amendments adopted by the plenary would constitute the mandate for possible negotiations with the other institutions.
21. The vote in plenary was based on Rule 61(2) RoP as results from the minutes of the plenary session, so it did not concern the decision to enter into negotiations. This could not have been different, considering both the explicit wording of Rule 73 ("negotiations shall not be entered into prior to the adoption by the committee responsible, on a case-by-case basis for every legislative procedure concerned and by a majority of its members, of a decision on the opening of negotiations") and the absence of any reference to a power of decision on the opening of these negotiations by the plenary under Rule 61(2) RoP.
22. Consequently, a decision by absolute majority by INTA to enter into negotiations is necessary, because only the committee responsible can take this decision and not the plenary. Moreover, INTA has not yet decided on this matter, in accordance with Rule 73(2) RoP. Although it is preferable that the committee responsible decides on the opening of negotiations before calling on plenary to decide on the content of the legislative proposal, it is legally viable to proceed in an inverse order and consider the outcome of the vote as the binding mandate, in case the committee responsible votes afterwards in favour of the opening of negotiations.
23. It follows from the foregoing that the answer to the first question is that INTA needs to vote on the opening of negotiations, by a majority of its members, and on the composition of the negotiating team, by a majority of the votes cast. In the case of a positive vote on the decision to open negotiations, INTA would be bound by the outcome of the plenary vote of 20 May 2015, which would then constitute the mandate of negotiations.
24. The second question refers to the hypothesis of there being a negative vote by INTA concerning the opening of negotiations. In that case, there will be no negotiations with the other institutions and Rule 73 RoP will not be applicable to this legislative procedure at the first reading stage.

25. However, Rule 61(2) RoP becomes fully applicable. This provision provides that the next steps would be that INTA shall, orally or in writing, report to Parliament within a period of two months.
26. Since Rule 61(2), fifth subparagraph, RoP excludes any other amendment other than those tabled by the committee and seeking to reach a compromise with the other institutions, there will be no more amendments possible at that stage. The plenary will then be in a position to proceed to the adoption of Parliament's position at first reading by voting on the draft legislative resolution, whose adoption had been postponed (if the vote is positive, the procedure would be terminated at first reading, if the vote is negative, the proposal shall be referred back to the committee responsible pursuant to Rule 59(2), second subparagraph, RoP).

## V. Conclusions

27. The Legal Service reaches the following conclusions:
  - a) To the extent that the interpretation of provisions of Parliament's Rules of Procedure (hereinafter 'RoP') is concerned by the present Legal Opinion, the Legal Service must underline that its legal conclusions are without prejudice to the interpretation of the competent parliamentary committee, pursuant to Rule 226(3) RoP.
  - b) The answer to the first question is that INTA needs to vote in accordance with Rule 73(2) RoP on the opening of negotiations and the composition of the negotiating team. In the case of a positive vote on the decision to open negotiations, INTA would be bound by the outcome of the plenary vote of 20 May 2015, which would then constitute the mandate for negotiations.
  - c) The answer to the second question is that, in the case of a negative vote concerning the opening of negotiations, Rule 61(2) RoP determines the next procedural steps to be taken. INTA shall report to Parliament within two months, no more committee amendments are possible and the plenary can then adopt Parliament's position at first reading by voting on the draft legislative resolution.

Visa: *By delegation of the Jurisconsult,*

Ricardo PASSOS  
Director

Annex