When it comes to conflict mining regulation, should one size fit all?

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The much-debated European Parliament conflict mineral mining proposal has officially passed, and with the implementation of this corporate social responsibility regulation, it seems as though all eyes are on Europe. Businesses large and small will demonstrate how this new policy contributes to the improvement of human rights in Congo, as well as how the results from this unique approach differ from the regulations implemented in the United States of America.

Conflict mining remains an important issue, and one we are beginning to see governments step in to address in different ways. With the global economy as interconnected as ever, it's important to note that many of the products and technologies we use in our daily lives begin at the same source: mines. With leading companies across industries such as electronics, retail and jewelry, auto manufacturing, lighting aerospace, construction, and other industries relying on these commonly used 3TG metals – tin, tungsten, tantalum and gold – implementing effective regulation is essential in order to further advance support to eliminate or reduce human rights violation.

Before taking a deeper look at understanding why the latest EU proposal's passing is controversial, it's important to look at what's already been implemented here in the U.S. In the last three years, we've seen a bold move by the U.S. Securities and Exchange Commission with the implementation of the Dodd-Frank Act. This act came to be in September of 2012, and with the best intentions, put in place a new requirement that sought to both decrease the use and funding of violent groups who operate warlord mines in the Congo or nearby countries in Central Africa. In this case, Dodd-Frank required public companies in the United States to declare the origins of the 3TG metals they were using in their products.

Unfortunately, the Dodd-Frank Act did not immediately inspire or advance all companies; likely due to the complex ways in which this would impact their operations, supply chain, and bottom line. What is the ROI of devoting resources to putting these new checks in place? Is it the government's right to exercise power to regulate and

reform at this scale, enforcing a law which some deemed to violate free speech, requiring declaration of positions and actions by corporations? Many thought not, and we saw companies suit up in court to outline why these policies and the conflict mineral disclosure was a First Amendment Freedom of Speech violation. In the end, the law passed, and applicable public companies had no choice but to begin to take a closer look at their supply chains. We have begun, and will continue, to see most public companies release a Conflict Mineral Report annually.

In contrast, the International Trade Committee of the EU Parliament took a drastically different approach: they made reporting optional. The EU has struggled to come up with a law or a concept that is intended to allow companies to voluntarily disclose whether the minerals traded do or do not originate from the conflict mines. The EU has taken a bottoms up approach to allow for a certification for EU smelters and refiners and those who purchase the minerals for the production of goods such as mobile phones and other electronics. European gold, tantalum (materials that make mobile phones vibrate), tungsten and tin imports would be subject to the tougher regulation.

On the surface, these are the likely questions to have and comparisons to make. That is, until you realize there has been valid criticism and challenge as a result of the Dodd-Frank Act. For one thing, the U.S. Securities and Exchange Commission has been criticized for implementing a policy that is, perhaps, too vague and intrusive. For corporate giants who participate in billion dollar industries and high pressure, pop culture product launches (think everything from popular lines of consumer electronics, including smartphones, smart TV boxes, tablets and video game consoles to the latest redesign of an iconic sports car), the thorough investigation to determine the origin of minerals and metals used in the supply chain could not only cause great delays in product delivery, but also could put public companies at a disadvantage. Finally, at times the law offers general, umbrella guidelines, such as when discussing conflict-affected areas and armed conflict. Since this reads as more of a suggestion rather than definitive answer, corporations have found themselves required to seek out experts with deep knowledge to interpret these guidelines.

So, what policy makes the most sense? First and foremost, the EU Parliament should no doubt be recognized and commended. Any step taken to address prominent human rights violations that not only still exist in 2015, but are essential to so many product streams and corporations is something that contributes to the betterment of our society and world as a whole. Human rights violations persist in Democratic Republic of

Congo and neighboring regions. Therefore, it's important that we affect change to help influence better conditions for workers and avoid the unintended funding of a process that has no place in today's modern world – one where the basic freedoms and rights of workers are stripped. While Europe was arguably late to the table with its interpretation, the forward movement on this issue is another small step towards eliminating these practices globally.

What's next for the EU companies that are considering this rule? While US corporations look internally to gather data for annual conflict mining reports, EU corporations are obtaining data via the bottoms-up approach, directly from the smelters. While this does put the burden of accuracy on another source, it also presents the possibility that the data gathered and reported could be stronger in respect to accuracy. It may also make the process simpler, as companies do not need to investigate and incorporate new solutions, be it internal processes or expert hires, in order to obtain and report data. The fact that this process is opt-in could likely encourage uptake versus a mandated approach, as corporations may be able to learn best practices from how other corporations participate in and execute compliance with the regulation.

Not surprisingly, there are also reputational incentives to comply with the new mandate. Large and popular corporations have successfully used the platform of conflict mining and human rights violations as a way to contribute to CSR efforts and demonstrate their commitment to conflict-free products — a move that is typically met with praise from the industry and consumers alike. This is a powerful way to elevate a company's positioning and put a spotlight on leadership, while contributing in a tangible way to our global society and pioneering in government compliance. With those benefits in mind, EU's opt-in policy could lead to stronger uptake and innovation in unique processes by each corporation. If flexible policies help to raise adoption, we can hope to see increased pressure on other nations to join the movement and contribute to defunding human rights violations around the world.

Yes, the EU's conflict minerals law is seemingly lenient, with the opt-in approach and bottoms-up gathering of data. While it's a stark contract to the US's Dodd-Frank Act, it is a much-needed stepping-stone to identify and eliminate serious risks in the global supply chain. It is time EU corporations step up to the plate and start regulating their supply chains, even if it's not under a one-size-fits-all regulatory approach. I suspect that as we look to the future, we will see more accurate and powerful data and obtain innovative learnings from the personalized solutions these corporations put in place.

From this, the human rights movement can only continue to grow and corporations will benefit from positioning themselves as leaders in an increasingly competitive ethical landscape.

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