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# Bounded policy learning? EU efforts to anticipate unintended consequences in conflict minerals legislation

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## ABSTRACT

Inspired by the emerging literature on unintended consequences of EU external action, this article studies how the anticipation of negative unintended consequences factors into EU policy-making. Using policy learning analytical lens, case study research strategy and process-tracing method, this article examines EU policy-making on conflict minerals: when respective EU policy was drafted, the negative unintended consequences of the earlier US conflict minerals legislation figured prominently in the debate. The analysis shows why and how major differences between US and EU conflict minerals legislation have resulted from bounded lessons-drawing driven by two opposing transatlantic advocacy coalitions. Eventually, the EU designed its conflict minerals policy so as to mitigate perceived negative unintended consequences of the earlier US law. The article contributes to literatures on unintended consequences of EU external action, policy learning and specifically bounded lessons-drawing in EU context, and conflict minerals legislation.

**KEYWORDS** Advocacy coalitions; conflict minerals; EU external action; policy learning; unintended consequences

## Introduction

There is abundant evidence that European Union's (EU) external policies generate a host of unintended consequences, and recent studies have scrutinized these (Burlyuk [2017]; Burlyuk and Noutcheva [2019b]; Krasnodębska [2018]). This article takes a different approach: instead of focusing on unintended consequences of EU policies that *have occurred*, it focuses on how the EU aims to *anticipate* – and mitigate, if deemed necessary, – unintended consequences in its future policy. Using case study approach and process-tracing method, this

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article examines EU policy-making on conflict minerals: when respective EU policy was drafted, the perceived negative unintended consequences of the United States' (US) conflict minerals legislation from 2010 figured prominently in the debate. As a result, US and EU conflict minerals legislation differ on four main parameters: geographic scope, range of applicability to companies, approach (compliance- or risk-based) and enforceability.

This article asks: why and how did the EU learn from the unintended consequences of US conflict minerals legislation? The analysis draws on policy learning literature and specifically the advocacy coalitions lens (Sabatier [1988, 1998]). The findings reveal an interesting story. Two advocacy coalitions emerged in the US: advocating for and against state regulation of conflict minerals. The two coalitions eventually made their way to the EU policy-making debate (launched in 2011), influencing various EU institutions differently. Consequently, the EU designed its policy so as to mitigate the perceived negative unintended consequences of the earlier US law. It remains to be seen whether the EU has succeeded in pre-empting the negative side-effects it has anticipated. By way of a disclaimer, this article examines the role of policy learning in a policy outcome without suggesting that policy learning can or shall be solely credited for this outcome.

Methodologically, the analysis in this article draws on in-case process tracing. By systematically examining diagnostic evidence (selected and analysed in light of research questions posed by the investigator (Collier 2011)), we attempt to shed light on the relationship between policy learning and the differential legislative outcomes. The analysis is based on both document research and personal observations, which were possible as one of the authors was an 'insider' in the conflict minerals legislation process through his professional involvement.<sup>1</sup>

This article contributes to three strands of scholarship. First, it contributes to the emerging literature on unintended consequences of EU external action and international action more broadly (Burlyuk and Noutcheva [2019b]; Koch and Schulpen [2018]). Burlyuk and Noutcheva assert that most if not all unintended consequences in this context are or at least can be anticipated (2019a). By examining how learning about the unintended consequences of other actors' policies factors into one's policy-making, this article demonstrates that not only policies may cause unintended consequences, but also (concerns about actual or perceived) unintended consequences may and do steer future policies. Second, the article contributes to policy learning literature in several ways: by unpacking the role of (transatlantic) advocacy coalitions in EU policy-making; by bringing the notion of unintended consequences and the element of anticipation and proactive management of these into the study of policy learning; and, finally, by tracing policy learning in a recent and thus yet unstudied empirical case of EU conflict minerals legislation. Third, this article contributes to the literature on conflict minerals

legislation by comparing the legislation and policy-making debates of two important actors: the EU and the US. This article is also of relevance for public policy, because it looks at why and how the EU can learn from other actors' mistakes. Despite a wide acknowledgement of external action's side-effects, there is little insight into how to foster policy learning that would factor these into decision-making process.

The article is structured as follows. Section 1 introduces the concept of policy learning and why and how it occurs, focusing on advocacy coalitions. The US and the EU conflict minerals legislation are then compared in Section 2, setting the background for explaining differences through a policy learning lens. Section 3 traces and explains the emergence of two major transatlantic advocacy coalitions on conflict minerals legislation, and Section 4 reconstructs the policy-making process in the EU to analyse why and how policy learning occurred. The role that 'unintended consequences' (actual or perceived) played in various stages of the process and in the debates within and between relevant EU institutions is central to this analysis. Section 5 recaptures the potential effects of this policy learning on the actual regulation, followed by a brief conclusion.

## Analytical starting points

### *Defining policy learning*

An oft-used definition of policy learning states that it is a 'deliberate attempt to adjust the goals or techniques of policy in the light of the consequences of past policy and new information so as to better attain the ultimate objects of governance' (Hall 1988: 6). Some add that one can only speak of policy learning when beliefs about cause and effect change (Dobbin et al. 2007: 460). Such learning can occur among policy makers and other stakeholders (Dodds 2013: 250). Accordingly, this article maintains that policy learning is a deliberate process, is not confined to policy makers, and deals with changes in assumed causal chains on how policy works.

The distinction between the notions of policy transfer and policy learning is pertinent for this article as not all mechanisms of policy transfer involve learning: policies can be transferred (and diffused) not only through social construction and learning, but also through coercion and competition (Dobbin et al. 2007). We argue that in the case of EU conflict minerals legislation, policy *learning* was an important mechanism of policy transfer at work. The US policy was not copy-pasted blindly by the EU. In line with Dodds (2013: 253), we find this process to have been highly complex. In this transfer, stakeholders could draw lessons by observing the effects of the American policy, and they could engage in Bayesian updating by adding new bits of evidence

to the existing knowledge (Dobbin et al., 2007: 460). Yet, this ‘evidence’ was socially constructed by advocacy coalitions, among others, as will be argued below.

In their work on policy learning, Bennett and Howlett identify three types of policy learning different with respect to who learns, what is learned, and to what effect: government learning, lessons-drawing, and social learning (1992: 289). When it comes to government learning, state officials learn about process-related organizational ways to enhance the efficiency of existing policies and programmes, resulting in organizational change. In lessons-drawing, coalitions (groups of institutions and people that collaborate on policies) learn how they need to adapt the scope and size of programmes to enhance the effectiveness of the policy. Finally, social learning relates to policy communities (groups of like-minded policy makers and influencers). Here, paradigms shift and new norms emerge, leading to new types of policies. This research focuses on the latter two types of learning in the context of EU policy-making, leaving government learning out of consideration: EU conflict minerals policy will become operational in 2021, hence government learning cannot be detected yet.

### ***Mediators of policy learning: advocacy coalitions***

In our analysis, we assign a key role to advocacy coalitions and build on the advocacy coalition framework. Our aim is two-fold: first, to establish if learning takes place within advocacy coalitions, and, second, to establish to what degree advocacy coalitions stimulate policy learning in the EU. Advocacy coalitions comprise individuals who belong to different groups (e.g., civil servants, journalists, academics, politicians) but share underlying core principles. The advocacy coalition framework assumes that actors can be aggregated into a number of advocacy coalitions of actors from various governmental and private organizations. These actors share a set of normative and causal beliefs and engage in coordinated activity over time (Sabatier 1988: 139).

### ***Policy learning within advocacy coalitions***

Because advocacy coalitions learn as they strive to find better ways to achieve their preordained objectives, learning mostly takes place, according to Sabatier (1998), *within* these like-minded advocacy coalitions (as opposed to advocacy coalitions learning from each other). Sabatier considers that ‘social learning’ (i.e., learning leading to paradigm shifts) rarely occurs, as people cherish their core beliefs and deep norms and do not alter these because of new academic or technical insights. Perceptual filtering is a fundamental component contributing to the lack of learning within advocacy coalitions: coalition members will resist information suggesting that their core beliefs may be invalid and/or unattainable and usually will use formal policy analyses

to buttress and elaborate those beliefs or attack their opponents' views (Sabatier 1998: 104, 120).

In this article, we hypothesize that individuals and organizations within advocacy coalitions will display different levels of learning. A reluctance to learn is particularly strong in ideologically dominated parts of organizations and advocacy coalitions, where acknowledging failure and learning from it would entail fundamental rethinking of core and ideological values, which is unlikely (Sabatier 1998: 150). However, for the outer layers of an advocacy coalition, these constraints might be less pronounced. Sabatier argues that there is a lot of lessons-drawing within advocacy coalitions, as there is increased sophistication in challenging the validity of data used by opponents, countering opponents' causal arguments, mobilizing political opposition to opponents' proposals, and enlarging the coalition (1998: 149).

### *Policy learning from advocacy coalitions*

Advocacy coalitions aim to stimulate other actors to 'learn' as this might advance their objectives. In this study, EU institutions, notably the European Commission, the European Parliament and the Council of Ministers, have been targets or recipients of the 'teaching' by advocacy coalitions. However, it cannot be assumed that these are mere neutral absorbers. As Dobbin et al. state (2007: 252), 'policy makers learn lessons that are supported by their beliefs'. In addition, the degree to which they are influenced by the lessons depends, for instance, on the success with which advocacy coalitions engage in framing (Kurzer and Cooper 2012: 731). Kurzer and Cooper (2012: 724) show that lessons are more likely to be taken on board if an advocacy coalition belongs to the dominant lobbying group. What can be deduced from this, and what is not researched regularly, is that advocacy coalitions can be very dynamic in terms of their composition. We expect that to boost the effectiveness of their 'teachings', advocacy coalitions will integrate new members. In the case at hand, both advocacy coalitions aimed to expand their membership, especially with members from areas potentially affected by the unintended consequences of the envisaged legislation.

To stimulate learning (and to prevent the 'wrong' lessons from being learned), advocacy coalitions will aim to contribute to a shift in the problem-solution logic, so that a policy is no longer seen to contribute to solving the problem (Skogstad 2017). The aim is to terminate a policy sequence, indicating policy change. In this study, we aim to detect similar efforts to deconstruct causal chains. Policy-oriented learning, especially across belief systems, is most likely when there is a forum prestigious enough to force professionals from different coalitions to participate and dominated by professional norms (Sabatier 1998: 106). We hypothesize that advocacy coalitions engage in these prestigious fora and aim to influence the policy makers in those fora.

This article explores the hypothesis that lessons-drawing takes place within certain clear limits, or boundaries. Bounded lessons-drawing corresponds to the 'political' learning as described by Radaelli (2009). Learning is used to support a specific regulatory policy paradigm, and not necessarily because of a desire to deliver optimal solutions. Analysing the usage of regulatory impact assessments in Europe, Radaelli concludes that the extent to which policy learning takes place is often exaggerated (2009: 1147). Because of an overreliance on qualitative interviewing, notions of e.g., power politics are underestimated, as interviewees make reference to learning to protect their organizations from critique. In line with Radaelli, we recognize that this benevolent, non-political view of learning can be a source of bias that needs to be overcome (which this study aims to achieve by in-case process tracing).

### **Differences between the US and the EU conflict minerals legislation**

There are significant similarities between US and EU legislation on conflict minerals, as both address the same human rights issues: forced labour, forced resettlement, and various forms of violence. However, there are significant differences between the two. This conforms to Dodds' observation that 'hybrid transplants' are more likely than 'pure transplants' (2013: 265).

First, compared with the US approach, the EU regulation encompasses conflict minerals from a more expansive geographic area. The US law applies to a defined set of 'covered countries': the Democratic Republic of Congo (DRC) and its nine neighbouring countries. In contrast, the EU regulation has a potentially broader geographic scope, because it will apply to a yet undefined set of 'conflict-affected' and 'high-risk' regions.

Second, the EU regulation will cover a narrower set of companies than the US law. The US law applies to any domestic or foreign issuer listed on the New York Stock Exchange and using any tin, tungsten, tantalite, and gold (3TG) in a product the company manufactures or contracts to manufacture. Conversely, the EU regulation is restricted to importers of 3TG into the EU, as well as smelters and refiners that process 3TG from 'conflict-affected' and 'high-risk' areas. Unlike the US law, the EU regulation does not require downstream manufacturers and sellers to engage in mandatory due diligence. Instead, these companies will be encouraged to report voluntarily the use of 3TG in their products.

Third, the US opted for a compliance-based approach, while the EU opted for a risk-based approach. Thus European companies are not asked to claim that their products are 'conflict free', but need to show that they have a due diligence system in place in line with the OECD due diligence guidance on mineral trade from conflict-affected and high-risk areas. In the initial

**Table 1.** Differences between the US and EU conflict minerals legislation.

	US conflict minerals law (2010)	EU conflict minerals regulation (2017)
Geographic scope	DRC and surrounding countries	All conflict-affected and high-risk areas across the globe
Applicability to companies	Upstream and downstream companies	Importers of 3TG into the EU
Approach	Compliance-based approach (in original version it was required to declare products 'conflict-free')	Risk-based approach, in line with OECD guidance
Enforceability	Mandatory	Mandatory for large importers, voluntary for smaller importers

regulation, American companies were required to mention that their product could be considered 'conflict-free'.

Finally, unlike the US, the EU proposed exemptions for smaller importers, making the regulation voluntary for small and medium enterprises, while it remains mandatory for the larger importers. See a comparative overview in [Table 1](#).

The puzzle that this article addresses is the following: whether and to what extent the differences between the US and the EU regulation resulted from policy learning with respect to unintended consequences. To repeat our earlier disclaimer: by putting policy learning forward as an important factor in the policy outcome, we do not wish to suggest that it is the only or the most important one.

## Two opposing advocacy coalitions on conflict minerals legislation

### *The emergence of two opposing advocacy coalitions*

In the US in mid-2000s, two advocacy coalitions emerged: pro- and against-regulation of conflict minerals (Koch and Kinsbergen 2018). The 'against-regulation coalition' consisted mainly of business representatives, Republican Party officials, and certain journalists. Their underlying belief was that businesses are not responsible for the ills of the world: governments are. This coalition used three arguments against potential conflict minerals law: (1) global supply chains make it impossible to trace mineral sources; (2) the idea that trade in conflict minerals is the root cause of conflict is disputable; and (3) such a rule would be too costly and futile. Conversely, the 'pro-regulation coalition' consisted mainly of NGOs, Democratic Party officials, and certain celebrities (Reinecke and Ansari 2016). Their underlying belief was that the negative excesses of capitalism can and need to be controlled by the state. Accordingly, conflict minerals legislation would be key to reducing



instability and violence against women in the DRC. Together with NGOs, they lobbied to have a law on conflict minerals.

During the financial crisis of 2008–2010, the Obama administration sought to develop extra regulation to reduce risks in the financial sector and drafted the 2010 Dodd-Frank Act. As part of this wider regulation, Article 1502 with respect to conflict minerals originating from the DRC was introduced after intense lobbying by the pro-regulation coalition (Seay 2015). Article 1502 obliges stock-listed companies in the US to declare which due diligence they exercised to prevent 3TG in their supply chain from contributing to conflict in the Great Lakes region of Africa. It is estimated that about 6000 stock-listed companies fall under this regulation.

Both coalitions had strong and deep beliefs about what the policy should be, and as Sabatier predicted, new information on the effectiveness and unintended consequences of the law would be soon subjected to different perceptual filters by the two groups, based on their pre-existing beliefs. The same would become clear in the EU debate on the unintended consequences of the Dodd-Frank Act. Because of the activist stance of both advocacy coalitions, lessons-drawing on conflict minerals legislation and its unintended consequences became political. ‘Substantiating’ learning, that is using the knowledge to support a specific regulatory policy paradigm, dominated (Radaelli 2009: 1157).

### ***The against-regulationists: the de facto embargo was unanticipated and hurts the Congolese***

Public discussion on the unintended consequences of the Dodd-Frank Act seemingly have been launched in earnest by a 2011 op-ed in *The New York Times* titled ‘How Congress Devastated Congo’, written by David Aronson (2011). The narrative of an unintended de facto embargo became increasingly dominant, as exemplified by publications in *Foreign Policy* (2015) and the *Washington Post* (2014). Increasingly, lobbying organizations started to use this narrative in their submissions to policy consultations. The submission on conflict minerals by the IPC (Association Connecting Electronics Industries), to the EU in 2015 is a clear example:

The unintended consequence of the Dodd-Frank legislation has been a de facto embargo on the DRC region, causing extreme financial hardships to those depending on the minerals trade for their livelihoods. EU conflict minerals legislation could help mitigate these unintended consequences . . . (IPC 2015)

In the terminology of unintended consequences scholarship, the against-regulation coalition framed the effects of the Dodd-Frank Act as unanticipated (that is, unforeseen by policy makers) and clearly undesirable (see Burlyuk 2017: 1012–1013).

When the against-regulation coalition came to power in the US with the election of President Trump, unintended consequences arguments were used to suspend the application of the law. For instance, the acting chair of the Securities Exchange Commission (SEC), Michael Piwowar (2017) argued that Article 1502 needed to be dropped urgently because of ‘the tide of unintended consequences that is washing over the Democratic Republic of the Congo and surrounding areas’.

### ***The pro-regulationists: the de facto embargo was anticipated and is over***

The pro-regulation advocacy coalition did not deny the existence of a de facto embargo, which Aronson signalled in 2011. On the contrary: they argued that this targeted embargo was anticipated and perhaps even necessary. To flush out the rebels, a temporary ban was needed and was a deliberate choice of the DRC government. However, according to this advocacy coalition, the negative unintended consequences were now over (Koch 2017). The submission to the EU by the European Network for Central Africa (EURAC), an NGO heavily involved in the responsible minerals trade, is a good illustration:

The detractors of the Dodd-Frank Act generally omit to mention that its adoption in July 2010 was followed between September 2010 and March 2011 by the suspension of artisanal mining activities decided by President Kabila. [...] Although it is true that the de facto embargo has had negative economic consequences locally [...], it has also led to decreased revenue for the armed groups and an improved security situation for certain mining sites. (EURAC 2014)

The pro-regulation coalition framed unintended consequences of the Dodd-Frank Act as anticipated, possibly undesirable in the short-term but desirable in the long-term (‘the necessary evil’). Indeed, the de facto boycott was over in 2017, with levels of export of the targeted minerals higher than in 2011 (Schütte 2018). Our analytical framework suggests that advocacy coalition members will resist information that does not support their deep core (policy) beliefs, which apparently was the case here: information on the decrease of unintended consequences was systematically filtered out by the against-regulation coalition.

### ***The transatlantic nature of the two advocacy coalitions***

Since this article takes as a prime unit of analysis these two rival advocacy coalitions, it is important to examine the composition of the advocacy groups in the US and the EU. In line with Kurzer and Cooper (2012), we compared the organizations that submitted comments to the European Commission when it was preparing its proposal to the organizations that submitted comments to the revision of the Dodd-Frank Act (2017). We noted a substantial

overlap: 34% of the organizations that made submissions as part of the pro-regulation in the EU also submitted letters to the US authorities. The most influential members of the pro-regulation coalition (judging by the number of times they met senior level officials of the rotating presidency of the Council of the EU) were Global Witness, Amnesty International and Action Aid. Of these three organizations, two were very active around the Dodd-Frank Act, indicating that the advocacy coalitions were transatlantic in nature and could relate the lessons from policy measures in one jurisdiction to another.

### **Unintended consequences of conflict minerals legislation: the EU drawing policy lessons**

The frame shifts that had occurred in the US were being transferred to Europe. In October 2010, four months after the adoption of the Dodd-Frank Act, the European Parliament called upon the EU to legislate along the lines of the US 'conflict minerals law'. Subsequently, in 2011, the European Commission announced its intention to explore ways of improving due diligence throughout supply chains. Our analysis suggests that this was a clear case of 'social learning'; new norms took over older norms, giving larger responsibility to the private sector. Additionally, our analysis suggests that lessons-drawing has been occurring in the transfer of the US policy to the EU, as changes with respect to the size and scope of the policy were adopted. This article now focuses more specifically on lessons-drawing with respect to unintended consequences. Why was the US law modified when it was transposed to Europe, and what role did the anticipation of unintended consequences play in this?

#### ***Why did policy learning with respect to unintended consequences occur?***

Our analytical framework highlights the catalytic role of advocacy coalitions in promoting policy learning. This section demonstrates that the pro-regulation coalition in the EU (with the underlying belief that the rough edges of free market capitalism ought to be reined in by regulation) understood and communicated the unintended consequences in a different way than the against-regulation coalition (who held the underlying belief that business could not be held responsible).

An illustrative example can be found in the public consultation on the potential EU conflict minerals regulation. The European Commission organized a public consultation prior to the publication of the proposal of the regulation. Over 250 companies, NGOs, and researchers completed the questionnaire. In the summary report the divergent views on unintended consequences of the two advocacy coalitions came to the fore. The against-

regulation coalition highlighted the prevalence of negative unintended consequences: 'as a result of the US Dodd-Frank Act, the minerals trade in the Great Lakes region has gone underground, making it even more difficult to improve living/labour standards in the region because of falling export levels' (European Commission 2013). One of the problems that had contributed to the unintended embargo was the compliance-based approach of the Dodd-Frank Act (European Commission 2013: 14). Forty-nine respondents used the term 'trade embargo' when describing the consequences of the Dodd-Frank Act. The pro-regulation advocacy coalition was virtually silent on potential unintended consequences in the public consultation.

After the public consultation, the European Commission conducted ex-ante impact analysis performed by its own staff to stimulate lessons-drawing. In this forward-looking impact analysis of the proposed measure of the EU regulation, the authors noted:

The US Dodd-Frank Act has created an incentive to avoid sourcing from that region, and in particular from DRC ... The probable unintended result is that DRC minerals continue to be exported, yet informally and at very low prices, to countries from which sourcing is considered conflict free. (European Commission 2013: 29)

As part of this impact analysis, the Oeko Institute, an independent think tank, was asked to perform an analysis of the Dodd-Frank Act. The Institute argued that 'it is of high importance to use the lessons learnt from the first years after the Dodd-Frank Act came into force' (Manhart and Schleicher 2014: 6). It stated that experiences of regulating conflict minerals show that it is very difficult to achieve the desired ban of conflict minerals without accepting a general embargo situation. The final report stated that the EU had a chance to develop an approach that would effectively contribute to stabilizing the DRC without running the risk of creating unintended and adverse side-effects. It was proposed that, rather than investing in costly downstream chain-of-custody systems across the supply chains (as the Dodd-Frank Act), these resources would be better used to directly support responsible mining within the DRC.

Our analytical framework stipulated that advocacy coalitions will absorb and promote knowledge that helps them to achieve their deeply held beliefs. With respect to conflict minerals, the two coalitions were pushing for their own understanding of the unintended consequences and for EU policy makers to learn from the US experience. Hence, EU institutions sought ways to accommodate such lessons.

### ***How did policy learning occur in the EU?***

It took six years before the final conflict minerals regulation was adopted by the EU in May 2017. As suggested in the analytical section, policy learning

across belief systems is most likely when there is a forum prestigious enough to force professionals from different coalitions to participate. The OECD-UN group of experts-ICGRL (International Conference of the Great Lakes Region) appears to have been such a forum. Between the start of the negotiations in Brussels and the actual outcome, 10 of these forums were organized, with an ever increasing number of participants from European business associations, local mining organizations, advocacy NGOs and authorities from the Great Lakes region. About 750 participants attended, including European parliamentarians and the relevant European Commission staff. A similar emulation-facilitating role was played by the Extractive Industries Transparency Initiative with respect to oil, gas and mining accounting rules in the US to Europe (Keizen 2018). The secretariat of the OECD succeeded in developing norms together with the opposing advocacy coalitions, resulting in the OECD due diligence guidance for responsible mineral trade from conflict-affected and high-risk areas (OECD 2012). Political differences were overcome by developing very specific annexes for specific minerals at the technical level (OECD 2010). The OECD due diligence guidance for responsible mineral trade was considered the new normal of what could be expected of companies. While the guidance was not yet ready when the Dodd-Frank Act was adopted, it was available when the EU was deliberating. Consequently, the proposed European system mirrored closely the OECD guidance.

How did the OECD-UN group of experts-ICGLR forum become such a key player? For one, it was accepted by both advocacy coalitions and the relevant policy makers. The OECD achieved this by organizing a Multi-Stakeholder Steering Group (MSG) in which upstream and downstream industries, civil society and governments from producing and consuming countries were represented. This steering group was chaired by a government representative (e.g., Canada in 2015) and the vice-chairs came from the opposing advocacy coalitions (e.g., Amnesty International and the London Bullion Market Association in 2015) (OECD 2015). This MSG organised monthly conference calls, attended by dozens of participants simultaneously, to determine joint priorities, share relevant new developments and plan conferences. The EU started to fund the OECD for this work and chaired the MSG from 2016 onwards.

EU policy-making is consensual and therefore lengthy, as agreement is needed between the European Commission, the European Parliament, and the Council of Ministers. It is interesting to note how the three institutions took up the unintended consequences discussions differently and to reveal that there were clear internal divisions within those institutions, based on their allegiance to different advocacy coalitions.

*Lessons-drawing in the European Commission.* After the European Commission organized public consultations and impact analysis, it proposed its regulation. In the initial proposal, the influence of the against-regulation coalition was rather strong. The proposal stipulated a voluntary self-certification system

for a small part of the supply chain, 'hoping to avoid the de facto embargo of conflict minerals, which has been a significant unintended consequence of the US conflict minerals rule' (Squire Sanders 2014). After this proposal was launched, the pro-regulation coalition cried foul and argued that making it voluntary would not affect potential unintended consequences. Because the proposed regulation had global geographic scope and included all unstable areas where minerals were extracted or traded, such as Colombia and Myanmar, there was no legitimate fear that there would be a risk of an embargo, they argued. Global Witness (2015) argued that the unintended consequences discussion was distorted by the European Commission to come up with a weak regulation.

*Lessons-drawing in the European Parliament.* The next step in the policy-making process was the discussion in the European Parliament. Both advocacy coalitions were present in the Parliament, with the progressive parties mostly in the pro-regulation camp and the conservative parties in the against-regulation camp. Interestingly, the various committees of the Parliament had divergent views on it. Whereas the Trade committee (the responsible committee) would largely go ahead with the Commission's proposal, the Development committee (with less say on this topic) was closer to the pro-regulation camp. One of the parliamentarians, Judith Sargentini of the Greens, was a member of the pro-regulation coalition, having previously worked for one of the lobbying NGOs. She was keenly aware of this difference in approach between the two committees and lobbied for the development committee to become the lead committee on this file. When this failed, she succeeded in becoming a temporary member of the Trade committee, and became one of the negotiators on this file in the trilogue (Koch, personal communication). Somewhat surprisingly, however, on 20 May 2015, the Parliament voted in favour of far-reaching amendments to the Commission proposal, demanding mandatory due diligence requirements for both importers of raw materials and products containing those minerals. How did that happen?

There was large mobilization in Europe and beyond to influence EU parliamentarians, who are more willing to 'learn' when the frame of NGOs is strong (Kurzer and Cooper 2012). The frame of the pro-regulation coalition was stronger, with images of blood coming out of mobile phones. As explained in the analytical framework, advocacy coalitions are dynamic entities and are active in integrating new members to their coalitions. The pro-regulation coalition was growing, with a joint letter to the European Parliament signed by 157 NGOs (Business and Human Rights Resource Centre 2016). Members of the potentially affected communities were especially active and sought to join the advocacy coalition. For instance, Nobel-laureate and winner of the EU's Sakharov Prize, Congolese gynaecologist Dr Denis Mukwege started writing letters to the Parliament for a tougher regulation (Mukwege et al. 2015). Also, and crucial for swaying the German position, more than 100 Catholic

bishops made clear that they were in favour of a stronger regulation (CIDSE 2015). It is hence important to see how the relative weight of coalitions can change over time, as some coalitions are successful in mobilizing new actors, affecting the lessons learnt.

One of the reasons that the Parliament proposed a stricter approach than the Commission was the result of an unexpected position of a part of the ALDE group, which is a liberal group and would normally belong to the against-regulation coalition. However, one senior politician of this group, the Belgian Louis Michel, belonged to the pro-regulation coalition for this specific regulation. He had long ties with the DRC, having been involved deeply in the peace negotiations in the DRC and having served as a Foreign Minister of Belgium. He felt that the benefits for the DRC outweighed the costs for Europe and was personally responsible for swaying the vote (Teffer 2015).

The main argument of the pro-regulationists in the Parliament was that a voluntary system would be ineffective. In their view, most companies do not check their suppliers and fail to publish information on their due diligence practices, unless they are legally obliged to do so (Cuvelier 2017). While progressive groups were satisfied with the vote, for their part, members of the Parliament belonging to the against-regulation coalition were dissatisfied with the results. Daniel Caspary, from the conservatives, argued that unrealistic legislation would worsen any development prospects for people in the region because of a de facto export ban (EPP 2015). In the analytical section, we showed how the reshaping of causal chains is a key ingredient of policy learning: Caspary tried to discredit the assumed causal chain being championed by the pro-regulation campaign (even after being defeated in the Parliament).

*Lessons-drawing in the Council of Ministers and during the trialogue discussion.* After the vote in the Parliament, it was the Council of Ministers' turn to make its position known. The position of the ministers is negotiated at the technical level by the 'Working Party on Trade Questions', a group of (senior-level) civil servants from EU member states who come to Brussels every other week. There were clear divisions between member states: countries such as Sweden openly favoured a more ambitious regulation, as proposed by the Parliament, whereas other countries, such as Austria, France and Italy, opposed it. After months of discussions in the fall of 2015, the Council of Ministers reached an ambiguous compromise in December 2015, allowing the trialogue to start. Since a majority of the ministers were initially in favour of the original Commission proposal, and considering the divergent proposal of the Parliament, a compromise had to be reached. Negotiators from all sides regularly used the competing narratives on unintended consequences. Also in the trialogue, the unintended consequences were at the centre of the discussion.

In February 2016, Cecilia Malmström, EU Commissioner for Trade, told the press after one of the key debates that the main remaining problem was the choice between a voluntary or a compulsory system (Barbieri 2016). At this point the Dutch government, holding EU Presidency, started working on a compromise that involved thresholds (a system they used for domestic regulation in the coal sector): the volume of imports would determine if the legislation would be mandatory or voluntary. These thresholds would effectively exempt small and medium enterprises, which would suffer most from the administrative burden (Global Witness 2016). This compromise made it into the final document, so the Dutch presidency could announce that ‘after years of talks’ Europe had agreed to the Dutch proposal (Government of the Netherlands 2016).

## **Policy learning and advocacy coalitions: learning within and from them**

### ***Policy learning within advocacy coalitions***

In the analytical section, we hypothesized that there would be bounded learning within advocacy coalitions. We suggested that there might be a difference in the degree to which members of advocacy coalitions are engaged in ‘Bayesian updating’, in which new bits of evidence can be added to the existing knowledge. The idea was that the core of an advocacy coalition, i.e. members with both pre-existing strong beliefs and material interests in viewing a causal chain in a particular way, would be less likely to learn than those who were more on the fringes of the advocacy coalition, i.e. organizations that have neither strong pre-existing beliefs nor material gains. To observe learning over a prolonged time period, we tracked public statements of a selection of members of the advocacy coalitions between 2009 and 2017. It became apparent that some actors updated their narratives based on new evidence on the ground, while others did not.

A change was found in the narrative of the leader of the NGO in South Kivu, Eric Kajemba (Coordinator, Observatoire Gouvernance et Paix, Bukavu). He was active in the field of conflict minerals and belonged to the fringes of the against-regulation coalition. In 2014, he signed an ‘open letter’ which stipulated that the Dodd-Frank Act had unintended and damaging consequences. In 2017, he signed the letter of the civil society of Sud-Kivu to the SEC stating that suspending Article 1502 would undoubtedly lead to conflict minerals infiltrating the supply chain with devastating effects. While there were unintended effects, they had been overcome.

Researchers Mitchell and Garrett also changed their narrative of unintended effects. In 2009, they stipulated that there was a clear risk of unintended effects: ‘A ban on exports, whether intended or unintended, or a disruption



of the present economies of Eastern DRC risks creating additional violence rather than reducing it' (Mitchell and Garrett 2009). They also belonged to the fringes of the against-regulation coalition, having no material gain in either position. However, these contributors' language in their 2017 submission to the SEC had evolved from scepticism about the potential impact of Article 1502 on conflict dynamics in the region to a conviction that the Act resulted in increased transparency in mineral supply chains and thus provided much needed insight into the structures enabling extreme poverty, child- and forced labour and human rights abuse (Mitchell and Garrett 2017).

However, there are also those parties whose vision has not altered. For instance, the IPC, which belonged to the core of the against-regulation coalition, had a similar narrative in their contributions on the negative unintended effects for the local population in 2011 and 2017 (IPC [2011, 2017]). In their 2017 contributions, they cited articles by Parker and others (Parker and Vadheim [2017]; Parker et al. [2017]), which used outdated data, to claim that the unintended effects were still ongoing.

### **Policy learning from advocacy coalitions**

Policy learning is a politicized process. The lessons from advocacy coalitions with stronger frames ('blood minerals') are more easily integrated than those with less attractive frames ('let's reduce administrative burden'). Lessons-drawing depended on pre-existing beliefs and values (as the case of Louis Michel illustrated) and on the relative force of the advocacy coalitions. So there are clear boundaries to learning; but it becomes apparent when analysing the final regulation that policy learning is nevertheless taking place. Both the pro- and the against-regulation advocacy coalitions wanted the EU to draw lessons with respect to unintended consequences of the US law. The pro-regulation camp proposed as the main takeaway that the EU regulation have a global scope because of the unintended consequences of stigmatizing one region. The against-regulation camp argued that the regulation ought to be voluntary because of the unintended consequences in producing countries and because of the administrative burden for companies. Concerns for unintended consequences filtered into the regulation, which is clear from three of its elements: geographic scope, timing, and focus. Avoiding stigmatization, and hence a de facto boycott, appears to have been taken to heart. Of course, the proof of the pudding is in the eating, but the EU regulation is seemingly designed so as to avoid or at least minimize the negative unintended consequences.

#### ***Target group: avoiding blacklist***

There was a strong demand from industry for an exhaustive list of conflict-affected and high-risk countries that companies could use to screen their

suppliers (IPC 2015). However, the Commission refused to provide such a fixed list, wary of stigmatizing those countries and aiming to prevent a de facto boycott of specific areas. Instead, the Commission wrote a draft handbook 'To assist operators carrying out supply chain due diligence with the identification of conflict-affected and high-risk areas' (European Commission 2016), providing links to websites where companies could find more information. Eventually, the Commission conceded and committed to task a group of external experts to provide a list of conflict-affected and high-risk areas, which it would regularly update. The list will be indicative (it will give an indication of countries that currently are or could be affected by conflict) and non-exhaustive (it will not necessarily include every area in the world affected by conflict); however, companies will still have to comply with the regulation when operating in conflict-affected areas that are not listed (European Commission n.d.). This dynamic geographic scope will substantially reduce the likelihood that one country will be targeted with an embargo, and hence it can be considered as a viable mode of managing potential negative unintended consequences.

#### *Timing: smart time management*

Also with respect to timing, the EU seems to have reduced the potential for negative unintended consequences. After six years of discussion, EU regulation was approved in 2017 but will enter into force only in 2021. This provides ample time for exporting countries, importing countries and companies to strengthen their policies and prepare for implementation. There is no need for companies to disengage from suppliers, but they can work together to make their systems compliant with EU regulation. The situation in the US was different: because the law was adopted rather abruptly in July 2010, there was continuous litigation about it, creating a lot of uncertainty (Manhart and Schleicher 2014). Also, the source countries were in shock when the US law was adopted, because they had inadequate time to prepare. As noted earlier, not all changes should automatically be ascribed to lessons-drawing. For example, the 'smart' time management could also have resulted from European firms and countries that would appreciate time to prepare for the new legislation and spread the associated costs over more years.

#### *Focus: inclusion, not exclusion*

The more inclusive focus of the EU regulation helps to reduce the potential for the observed negative unintended consequences of the Dodd-Frank Act. In a Joint Communication on the proposed conflict minerals regulation, the EU High Representative and the European Commission stressed the positive roles that minerals could play in countries' development. The communication was clear in that it did not want to lead to disengagement from bona fide mining in challenging environments:

Through due diligence, companies can ensure that they respect human rights and do not contribute to conflict ... However, due diligence must be encouraged in a way that does not deter legitimate mining activity and related trade in conflict-affected and high-risk areas. (European Commission & High Representative 2014)

Companies are thus not forced to label their products 'conflict-free'. Following the publication of the Joint Communication, EU High Representative Federica Mogherini and the relevant EU Commissioners announced their decision to allocate 20 million Euros towards the accompanying measures for the 2016–2020 period to promote responsibly sourced minerals from conflict-affected and high-risk areas (Council of the European Union 2015).

### **Conclusion: bounded policy learning**

One of the misconceptions about unintended consequences is that they are automatically considered unforeseen, unanticipated. Yet, consequences that are not intended by the actor might very well be anticipated. However, because those consequences are deemed of lesser impact or low probability (or both), the social action is executed regardless, or in such a way as to minimize unintended negative consequences. de Zwart (2015) argues that these unintended consequences are not a consequence of what Merton (1936) calls 'ignorance, error or ideological blindness', but a result of protracted deliberations on intervention dilemmas. This article's analysis of the process to come to an EU regulation on conflict minerals revealed these protracted deliberations. Process-tracing revealed a clear case of lessons-drawing. The EU adapted geographic scope, timing and focus of the initial proposal partially following a debate that featured knowledge about the unintended consequences of earlier US legislation on the subject. This does not mean that EU regulation will not have unintended consequences: unintended consequences are impossible to avoid. Rather, this is to suggest that EU regulation might have fewer and different unintended consequences than its American predecessor.

This learning did not happen automatically: advocacy coalitions were key mediators in the process. Learning took place within advocacy coalitions; specifically, organizations at the fringes of advocacy coalitions were updating their views based on new information. This learning was bounded, however, as there were clear limits to what was learned and by whom. The advocacy coalitions were not substantially learning from each other, but when they did, a neutral platform, such as the OECD, played an important facilitating role. The advocacy coalitions stimulated EU institutions to learn lessons on the unintended consequences of the Dodd-Frank Act. But also for EU institutions, the degree of this learning depended on the frames and the strength of the advocacy coalitions and was not a neutral, technical process. Advocacy

coalitions with growing and increasingly vocal memberships were more likely to see their proposed lessons learned.

It remains to be seen if the negative unintended consequences of EU conflict minerals legislation are minimized when the regulation enters into force in 2021. Yet, to end on a positive note, our research suggests that EU institutions are willing and capable of making effort to anticipate and mitigate unintended consequences.

## Note

1. In the period 2011–2013, when the US legislation was being prepared and rolled out, Dirk-Jan Koch was living in the Eastern Democratic Republic of Congo, which was a target of the Dodd-Frank Act. From 2014 until March 2018, he was working as a ranking official for the Dutch Ministry of Foreign Affairs, and in that capacity was closely involved in the negotiation process that led to EU conflict minerals legislation. Moreover, he served on the Multi-Stakeholder Steering Group for Responsible Minerals of the OECD and participated in all relevant OECD fora between 2014 and 2018.

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