

Ministerie van Economische Zaken
Nationaal Contact Punt
t.a.v. dhr. M. Sikkel
Postbus 20101
2500 EC Den Haag

Amsterdam, 26 October 2004

Subject:

Request for investigation of possible breach of the OECD Guidelines by Chemie Pharmacie in the Democratic Republic of Congo

Dear Mr Sikkel,

Hereby, Milieudéfensie (Friends of the Earth Netherlands), The Netherlands institute for Southern Africa (NiZA), Novib, the NC-IUCN , CENADEP, RECORE and PAL would like to request an investigation regarding the activities of the Dutch company Chemie Pharmacie Holland (CPH), based in the Netherlands, related to the coltan trade in the war-torn Eastern part of the Democratic Republic of Congo (DRC).

These are the details of the company involved:

Chemie Pharmacie Holland
Friedman Building
Hogehilweg 4
1101 CC Amsterdam

As interested parties, based in the DRC or based in the Netherlands and running projects in the DRC, some of us working closely with Congolese partners, we would like you to investigate whether CPH has breached the OECD guidelines by continuing its activities of importing coltan from rebel-held territories during the Congolese civil war.

The Netherlands institute for Southern Africa (NiZA), Milieudéfensie (Friends of the Earth Netherlands), IUCN-NL, Pax Christi, Novib, CENADEP do consider themselves stakeholders in this matter. Either they reside in the area, and see the social and environmental impacts of the coltan mining and trading every day around them, or they maintain close contacts with their partners in the area and/or have a history in campaigning and lobbying on this matter.

The Netherlands Institute for Southern Africa is a politically independent organisation committed to the solidarity with 'ordinary' people in southern Africa. NiZA helps them to structurally fight poverty, injustice and inequality. In this regard, NiZA is member of the international 'Fatal Transactions' Campaign against natural resources financing conflicts since 1999. Together with partners in Africa, Fatal Transactions calls on consumers,

policy-makers and companies to implement effective controls to ensure that the trade in natural resources does not finance or otherwise support conflict and economic injustice in Africa. The coltan trade in the DRC has been one of the key issues in the campaign against conflict goods¹.

The Congolese NGO CENADEP (Centre National D'Appui au Développement et à la Participation Populaire) coordinates a Congolese network of NGOs working on the extraction of natural resources and human security in the DRC, and the relation between the pillage on the country and the continuation of the war. The network is running a public awareness raising and lobby-campaign on natural resource exploitation, Corporate Social Responsibility and transparency, also focussing on the OECD guidelines.

The NGOs member of the Congolese network RECORE (Réseau Congo Reconstruction)² work on the amelioration of living conditions of the Congolese people. Uniting ten NGO working in mineral rich areas, they notify the deterioration of living conditions, a decline of biodiversity and the destruction of flora and fauna, and mass displacement of people because of pillage activities.

PAL (Programme d'Actions Locales), is a Congolese NGO based in Nord Kivu, specialised in environmental protection and food security. In their daily work they see the devastating effect of coltan exploitation on the environment, without any revenues flowing back into society.

For Milieudefensie the case of CPH in Congo is part of their Corporate Social Responsibility campaign, in which they address multinational companies, which cause environmental or social problems. In February 2002 Milieudefensie launched a letter writing action³ to ask the company to investigate whether the military in Congo do not profit from their activities. The letter writers, including Milieudefensie, never got an answer.

NC-IUCN is concerned with the environmental impact of mining activities. The Netherlands Committee for IUCN has published a report in 1996 "Mining in Tropical Regions, the ecological impact and Dutch involvement". Coltan mining can have severe effects on nature and biodiversity, especially under the circumstances in Congo.

Novib/Oxfam Netherlands is member of the Fatal Transactions campaign as well as of the national platform on war economies (OEP). Novib and her partners are campaigning against illicit exploitation of extractives in conflict areas. Novib has more than 50 partners in Rwanda, Burundi and the DRC.

Being part of an international network, Pax Christi Netherlands is active in the Greater Lakes region in cooperation with local Pax Christi branches and the national sections of Belgium and Germany. Acknowledging the cross border dimension of the problems in Eastern DRC, where possible, Pax Christi and her partners address the issues as such. This is possible

¹ www.niza.nl/fataltransactions

² See annex for details on the member organisations of RECORE

³ Earth Alarm 'Financiering Congolese burgeroorlog door Nederlands bedrijf', Milieudefensie, February 2002

through the longstanding involvement on issues of peace, safety and disarmament in i.a. Uganda, Sudan, Rwanda and Burundi of Pax Christi Netherlands and her partners. As such, Pax Christi Netherlands regards itself a stakeholder.

The UN Expert Panel on the pillage of natural resources and other forms of wealth form the DRC and the OECD Guidelines

Opmerking [M1]: Leg uit waarom je stakeholder bent

Chemie Pharmacie Holland is mentioned in the final report of the United Nations Expert Panel⁴ that investigated the illegal exploitation of natural resources and other forms of wealth of the DRC, as one of the companies that has violated the OECD guidelines. The Panel concludes that the conflict in the DRC is mainly about access, control and trade of key mineral resources, including coltan. It presents detailed evidence of ongoing dangerous and illegal activity that is directly contributing to the suffering of millions of people in the DRC.

Years of war have left the DRC without an effective regulatory framework. This lack of a rule of law has allowed various criminal networks to plunder the countries natural resources and public offers with impunity. By collaborating with elite networks- either directly or indirectly- the Panel contends that these companies named for having violated the OECD Guidelines have and continue to contribute to the ongoing conflict, gross human rights violations and the humanitarian crisis that exists in the DRC.

The UN Panel report presents the OECD guidelines with a major challenge. The principles of the guidelines are highly relevant to the current situation in the DRC. Their implementation would help the transition towards a more stable and equitable society.

We are convinced that CIME and the NCPs should play an active role in supporting the work of the UN Panel, by investigating specific companies named in the UN panel report as having acted in violation of the OECD Guidelines for multinational enterprises. The United Nations Security Council in its resolution of 24 January 2003 explicitly asks 'All states concerned to take immediate steps to end these illegal activities, which are perpetuating the conflict, impeding the economic development of the DRC and exacerbating the suffering of its people'.⁵ The resolution furthermore explicitly encourages governments to request information collected by the Panel to help them take the necessary investigative action against companies linked to the illegal exploitation of the DRC.

Collaboration between the UN panel and the NCPs therefore is vital in order to realise the potential of the guidelines, also and especially in situations of violent conflict like the current situation in the DRC and its transition towards a more stable and equitable society.

In the case of the Netherlands this implies that the case of Chemie Pharmacie Holland needs to be investigated. Although CPH has by now ended its activities in the DRC, we do think it

⁴ Final Report of the UN panel of experts on the illegal exploitation of Natural resources and other forms of wealth of the DRC, S/2002/565, paragraph 175

⁵ Resolution 1457 (2003), UN Security Council, paragraph 3 and 12.

relevant for the NCP to address the question whether CPHs activities during the heights of the civil war were in compliance with the OECD guidelines or not.

Before getting into more detail specific paragraphs of the OECD guidelines and the reasons why we think CPH has breached them, it is relevant to give a brief introduction into the context in which the company operates. What is the coltan trade about, and what role does coltan play in the current war in the DRC?

Coltan trade in the DRC- a violation of the OECD Guidelines?

(Articles of the OECD guidelines applicable to the specific situations described are indicated)

It is generally believed the DRC accounts for 80% of Africa's reserves of coltan, also called colombo-tantalite. In the DRC, coltan is mostly found near rivers and in riverbeds or hidden in the vast natural reserves of eastern Congo in the two Kivu Provinces and Maniema.

At the end of 2000, a boom for tantalum powder made its price rise to unprecedented levels. In the DRC, this caused a veritable rush into the mining areas, some of which lay in the World Heritage national parks in the east of the DRC. The parks are situated in the territory held by the *Rassemblement Congolais pour la Démocratie* (RCD), one of the rebel movements (supported by Rwanda) responsible for the brutal war, which has so far cost the lives of over 3,5 million Congolese. When prices for coltan rose to a height in November 2000, the rebels installed a monopoly to siphon off all revenue of the coltan exports in their area, providing them with the necessary resources to finance their war⁶. Meanwhile, thousands of poor Congolese farmers rushed to the coltan mines, killing many endangered species on their way. (**OECD Guidelines, chapter V**)

It is feared that a large proportion of the elephant population have been killed as well as a significant number of gorilla's, leaving the population at a dangerously low level⁷. (**OECD Guidelines, chapter V general provision and paragraph 2+3**). Wide scale human rights abuses took place in the context of the exploitation. Amnesty International reports about killings during fighting over mining areas, villages being burnt down and prisoners and street children being transported by the Rwandese army from Rwanda to eastern DRC to work in the mines⁸ (**OECD Guidelines, general policies paragraph 2 and chapter IV paragraph 1b-1c**). Circumstances in these mines are atrocious; many deadly accidents have been reported because of tunnels collapsing . Furthermore, in certain areas health issues have been raised regarding the potential radioactive nature of some of the coltan deposits leading to congenital deformities. (**OECD Guidelines, chapter IV paragraph 4b and chapter VII**)).

⁶ IPIS, *Coltan and Congo: the implication of the private sector*, (Antwerp, 2002)

⁷ *Coltan Mining in the DRC, the implications and opportunities for the telecommunications industry*; Fauna and Flora international, 14 January 2002.

⁸ *DRC, Rwandese Controlled East: devastating Human toll*, Amnesty International, 19-06,2002

“We raise more or less \$ 200,000 USD per month from diamonds. Coltan gives us more: a million USD a month”, Claimed Adolphe Onusumba, the leader of the RCD-Goma rebel movement in 2001⁹. The rebel monopoly on coltan exports siphoned off almost 2,5 million USD in tax revenues alone from December until February 2001. Parts of this went to the Rwandese army. The UN claims that coltan permits the Rwandan army to sustain its presence in the DRC. The army provides protection and security to the individuals and companies extracting the mineral. These have made money that is shared with the army, which in turn continues to provide the enabling environment to continue the exploitation¹⁰.
(OECD Guidelines, general policies paragraph 1 and paragraph 11)

However, the coltan boom was short-lived and prices rapidly decreased. Self-evidently, these price drops have affected the coltan exports through Rwanda and Uganda. Though the volume of the coltan exports has diminished substantially, there is evidence¹¹ that the warring parties still earn a substantial amount of money from the ‘black gold’. The scramble for Congo’s natural resources continues unabated.

Companies like CPH that participate in the trade and transport of coltan, trading with, and paying taxes and revenues to RCD-Goma, and directly or indirectly, to the Rwandese government, facilitate the continuation of the scramble for Congo’s resources and thereby fuel the bloody war. Meanwhile the population struggles on to survive in a ‘failed state’, where nobody sets any rules. The coltan digging goes on, as a source of income to many impoverished people in the Kivu region. Multinationals from OECD member states profit from the lack of rules and regulations, thereby violating the OECD guidelines brought forward above.

The activities of Chemie Pharmacie Holland in the DRC

Until April 2002, CPH has been part of an American-Dutch commercial agreement, Eagle Wings Resources International (EWRI). The Venture consists of an American partner, Trinitech Holdings, and a European business agent based in the Netherlands; Chemie Pharmacie Holland.

CPH has a long history of involvement in the coltan business. Today, CPH’s main business activities involve trading metals and alloys and producing chemical products for the pharmaceutical industry.

Until April 2002 (the last ‘declaration de sortie definitive’ of coltan from the DRC to the Netherlands we have seen is dated April 3, 2002: 4,570 kilo of coltan, of an estimated value of 42592,40 US\$), CPH has regularly imported coltan from Eastern DRC. EWRI, CPHs business partner, had an agreement with the Rebel movement RCD-Goma to exploit coltan

Opmerking [M2]: Ons doel is dat bedrijven zich aan de OECD-Richtlijnen houden. Dit is alleen een achterliggend campagne-doel, maar het lijkt me niet verstandig dat in deze brief erbij te zetten.

⁹ Vick, Karl, “In the waging of Congo’s wars, Vital ore Plays a crucial role’, *International Herald Tribune*, March 20, 2001

¹⁰ *Scoping study on the artisanal mining of coltan in the Kahuzi Biéga national park*, The Dian Fossey Gorilla Fund-Europe, April 2003.

¹¹ See among others: *Scoping study on the artisanal mining of coltan in Kahuzi Biéga national park*, Dian Fossey Gorilla Fund, And Amnesty international “DRC: Our brothers who help kill us, April 2003.

in South-Kivu¹². The coltan was first exported to Kigali, Rwanda, before shipping it to the Netherlands. Considering the fact that there are strong family ties between Eagles Wings Resources local representatives in Rwanda Alfred Rwigema and the Rwandan president, serious doubts can be raised about EWRIs, and therefore CPHs, complicity in the Rwandan war effort.

Since, president Kagame of Rwanda has been accused by the UN panel of Experts of playing a pivotal role in the exploitation of natural resources from the DRC because of “his relations with the Rwandan business community operating in the DRC” and of “his control of the army, and the structures involved in the illegal activities”¹³.

CPH management claims it has always taken great care not to do business with ‘warlords’ or people who manipulate small-scale miners¹⁴. However, they never did an effort to find out from which comptoirs or traders the coltan they import originates.

The fact that CPH is not informed about the exact origin of the coltan bought for them by Alfred Rwigema, is especially alarming. This means that it is very well possible, even probable, that CPH bought coltan of which the revenues have directly supported war efforts of the RCD Goma rebels and the Rwandan army.

As indicated above, considering these circumstances the following paragraphs of the OECD Guidelines are considered relevant regarding the activities of CPH and EWRI in the eastern part of the DRC and Rwanda:

Regarding the General Policies:

Paragraph 1: *Contribute to economic, social and environmental progress with a view to achieving sustainable development.*

Paragraph 2: *Respect the Human Rights of those affected by their activities consistent with the host governments’ international obligations and commitments.*

Paragraph 11: *Abstain from any improper involvement in local political activities.*

Chapter IV: Employment and industrial relations

Paragraph 1.b) *Contribute to the effective abolition of child labour.*

1.c) *Contribute to the elimination of all forms of forced or compulsory labour.*

¹² République démocratique du Congo, Rassemblement congolais pour la Démocratie, département des terres, mines et énergie; *Arrête départementale n0 019/RCD/CAB/DIME - 2001 du 12 mars 2001 portant attribution de l’autorisation personnelle de prospection n0 005/DTME/2001.*

¹³ *Report of the UN panel of Experts*, 12 April 2001, p 196.

¹⁴ Interview with G.Klein and Doron B.Sanders, Amsterdam, September 14, 2001, in: *European companies and the coltan trade: supporting the war economy in the DRC*, IPIS, January 2002.

Paragraph 4b) *Take adequate steps to ensure occupational health and safety in their operations.*

Chapter V: Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.

Paragraph 2: *Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprises and by their implementation.*

Paragraph 3: *Assess, and address in decision-making, the foreseeable environmental, health and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities might have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.*

Chapter VII: Consumer interests

Paragraph 2: *As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions.*

Chapter X: Taxation

It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and the spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.

One needs to wonder in this particular situation what the 'relevant authorities', and 'public finances' are, given the current balance of power in the DRC, that is de facto split up in several parts. EWRI has paid taxes to the RCD Goma over its coltan exports. CPH director Doron Sanders explicitly declared that CPH did not consider it their responsibility to detect for what means the taxes they paid to the RCD Goma rebel movement were being employed¹⁵.

¹⁵ Interview with Doron Sanders, director CPH, quoted in 'Ook westerse staten treft blaam in Congo'. Volkskrant, June 6, 2003

We would like the NCP to investigate whether these tax payments to the rebel movement are in accordance with the OECD guidelines.

Steps taken so far:

After the appearance of the first report of the UN Expert Panel mentioning CPH as one of the companies involved in the plundering of Congo's resources, IPIS researchers have had various meetings with the management of CPH. The outcomes of these meetings can be found in their reports quoted in this letter.

Partly as a result of these reports and the UN Expert Panel report and Ngo pressure, questions have been asked in the Dutch parliament about the involvement of Dutch companies in the European coltan trade¹⁶.

As a result of all this political and public pressure the Dutch Ministry of Economic Affairs and the Ministry of Foreign affairs have organised a meeting with the management of CPH, about its activities in the DRC and Rwanda. The Ministries concluded in a joint press statement after this meeting that one could doubt the information in the UN report¹⁷. According to the statement, CPH has convinced the Government that it is not guilty of the falsification of certificates of origin. Based on this meeting, the ministries declared not to see any indication for involvement of CPH in any illegal activities, especially since the relationship with EWRI has been suspended for commercial reasons since March 2002.

Milieudefensie, NC-IUCN, Novib and NiZA have written CPH in February 2003 in order to ask them about their current involvement in the DRC/Rwanda and their relationship with EWRI (letter attached). CPH has responded this letter by indicating that they no longer undertake any activities in the Grate Lakes region, neither maintain a business relationship with EWRI any longer. However, until May 2003 the address of CPH was on the website of EWRI as the 'European Business Partner'¹⁸.

However, all this does not address the question of the legitimacy of trading coltan with the Congolese Rebel movement RCD-Goma, thereby damaging the environment and taking the risk of fuelling the war and making the life of the population even more miserable. The fact that these circumstances are no longer there does not change the facts in the years before.

Therefore, we would very much like the Dutch NCP to investigate this case, in order to encourage Dutch companies operating in conflict areas to comply with international standards. We realise that the information on CPH and EWRI on which the UN Panel based its conclusions would be very helpful in this. We do hope the NCP will use the opportunity to request all information previously collected by the UN Expert Panel, and that this information will be made available to assist them in their investigative action.

¹⁶ Questions asked in Dutch Parliament October 2002, and June 2003, by Koenders, Ferrier, Karimi, Dittrich van Bommel and Herben.

¹⁷ Press release 'Geen aanwijzing voor Juistheid van VN beschuldigingen tegen Chemie-Pharmacie Holland', December 11, 2002.

¹⁸ <http://www.trinitechholdings.com/eagleswings/contact.html> (May 23, 2003)

Although this request for investigation concerns Chemie Pharmacie Holland, we would like to emphasize that questions can also be raised regarding the screening of companies hired for the transport of coltan. The complicity of another Dutch company mentioned in the UN Report, transport company Steinweg-Hollands Veen, has never been clarified either. As transport companies continue to play a pivotal role in the handling of minerals originating from the DRC, further investigation is required to clarify this business relationship¹⁹. We would very much like to meet you to further discuss these matters.

Yours sincerely,

Kirsten Hund, Niza

On behalf of:

Beaudoin Hamuli Kabuharza, CENADEP

Henk Hartogh, IUCN

Micha Hollestelle, Pax Christi

Monique de Lede, Milieudefensie

Alphonse Muhindo, PAL

Damien Ndosimau Kuyenga, GIVAC (*On behalf of the members of the RECORE -Reseau Congo reconstruction*)

Jan. Ruysenaars, Novib

CC: Chemie Pharmacie Holland, Dhr D. Sanders

Annexes:

Export documents of coltan exported from eastern DRC with the autorisation of RCD Goma by Eagles Wings natural Resources (towards CPH).

Fiche de Presentation des ONGs Congolaises soutenant la requete, members of the Réseau Congo Réconstruction

IPIS Reports: European companies and the coltan trade: Part 1 and 2

Final report of the UN Panel of Experts on the illegal exploitation of natural resources and other forms of wealth of the DRC.

For other UN reports and background documents on the coltan issue, see:

www.fataltransactions.nl at: *Grondstoffen/coltan/ documenten*

¹⁹ *European Companies and the coltan trade: supporting the war economy in the DRC*; IPIS, January 2002, 25.