

Belgium's fight against conflict diamonds:

An assessment of the country's diamond sector controls from a global perspective



EDITORIAL

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Front cover image: View of the Antwerp central train station, with the adjacent diamond quarter (Photo: IPIS, 2021)

Author: Hans Merket

Editing: Didier Verbruggen & Michael Elliot

Statistical analysis and graphs: Thomas Muller

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EXECUTIVE SUMMARY

The relatively small Belgian city of Antwerp has played a central role in the global diamond trade for centuries. Today, Antwerp is not only the world's largest diamond hub, it is also presented by the Belgian government and industry as the most ethical and transparent one. This claim is justified by reference to a diverse range of measures to regulate the profession and monitor the trade, which are unequalled in the rest of the world. Such measures include obligatory registration requirements for diamond dealers, the inspection of all incoming and outgoing shipments, record-keeping and stock declaration requirements, government oversight of industry self-regulation, and anti-money laundering measures.

In this report we assess the nature and effectiveness of this oversight and control framework from a global perspective. In this way, we aim to shed light on the role that one trading centre can play in regulating what is essentially a single segment of an internationally dispersed sector. As the world's leading example in implementing the existing intergovernmental and corporate regulatory frameworks, Belgium moreover makes a compelling study into the effectiveness of these approaches in ensuring a clean, ethical and transparent diamond trade.

In the late 1990s and early 2000s, rising allegations of Antwerp's role in facilitating the smuggling of conflict diamonds that were fuelling bloody civil wars across Africa, led to a tightening of controls on the sector and intensified actions by law enforcement. While Belgium managed to uncover a number of large and complex conflict diamond smuggling schemes, these criminal investigations and proceedings revealed important challenges. Central is the difficult burden of proof due to the complexity of evidencing the purchase by a person or company of conflict diamonds in an embargoed country. This became only more complicated as criminal techniques refined and fragmented the smuggling chain through complex corporate and financial structures.

Yet, after fifteen tumultuous years, there have been no new revelations of conflict diamonds circulating on the Belgian market since 2014. Does this mean that the Belgian controls have achieved their deterrent effect, or can it be that the detection mechanisms are ill-adapted to capture the evolving nature of the problem? The answer is a bit of both.

On the one hand, the strict Belgian controls indeed seem to be deterring criminals from using the Antwerp trade to enter smuggled diamonds into the legal chain. Such unlawful practices appear to have delocalised to other trading hubs with less government oversight of the diamond trade. Markedly, the Kimberley Process (KP) Certification Scheme (KPCS) that was launched in 2003 precisely to bar conflict diamonds from entering the mainstream rough diamond trade, does not manage to prevent this. When trade hubs or producer countries with weak internal controls allow conflict diamonds to enter the legal supply chain, these receive the KP quality mark and there is little other KP participants can do to detect this, no matter how strict their controls.

Indeed, the scope of inquiry of Belgian authorities is effectively limited to the paper trail accompanying diamond shipments that enter or leave its territory. The complexity of diamond supply chains and corporate structures, which tend to span multiple jurisdictions and numerous intricate business relations, make it relatively easy for smugglers to hide malpractices and assure that the paperwork presented in Belgium satisfies controls.

On the other hand, conflict diamonds also slip through the net in in Belgium and elsewhere irrespective of loopholes that exist in other jurisdictions. This is to a considerable extent due to the changing nature of conflict, which has become more diffused today and involves situations where public or private security forces, companies, criminals or armed groups are using widespread or systematic violence to secure their economic interests in diamond exploitation. These issues are not captured by the KPCS, due to its singular focus on preventing only diamonds that are fuelling civil wars, which sets arbitrary blinders for the Belgian controls that are grafted onto this scheme.

Furthermore, this multi-billion industry delivers an important contribution to Belgium's trade figures. Belgium thus needs its diamond sector and wants to guard it from the rising competition by other trad-

ing hubs. Yet, what is good for maintaining Antwerp's business attractiveness is often at odds with regulatory or law enforcement efforts designed to avoid the abuse of the trade. The difficult balance between efficient trade and efficient law enforcement challenges both cooperation with the private sector and between government agencies in Belgium.

Regarding public-private cooperation, the AWDC has come a long way in getting the traditionally regulation-wary industry on board. Yet, the AWDC's leverage over the actions of individual companies is limited. Moreover, its primary objectives of strengthening Antwerp's business position and the image of diamonds are not always compatible with attempts to tighten controls on the diamond trade, which involves risks of companies moving to competing locations or generating negative consumer associations with diamonds.

Tension is also evident in relation to the cooperation amongst the various government agencies involved in regulating the diamond sector. This regulation requires a careful balance between preventing unlawful practices within the trade, whilst leaving sufficient breathing space for the sector to function. Such a balance has often been hindered by a relatively compartmentalised approach, with the outlook and concerns of each agency shaped by their respective mandates, be it licensing, administrative controls or law enforcement.

Rather paradoxically, the tightening of controls in Antwerp may have reduced Belgium's grip on the sector, as it contributed to pushing the economic power and financing of the business increasingly into foreign hands. What is more, other trading centres appear to have taken advantage of Belgium's regulatory efforts by luring away businesses on the basis of a *laissez-faire* regulatory approach. This issue has been particularly apparent in relation to Dubai, which may overtake Antwerp as the world's main diamond trading hub soon. The end result of this delocalisation may not only be less regulation of the diamond business globally, but also increased challenges for Belgian authorities to detect and prosecute conflict diamond smuggling networks that may be abusing the loopholes in other jurisdictions to contaminate the global – and thus also Antwerp's – diamond trade.

Two overarching conclusions can be drawn from the above challenges. Firstly, if even the world's leading example in implementing diamond sector, and specifically KPCS, controls is not achieving the desired results, this points to the need for a more fundamental rethinking in how to respond to such challenges. Given the difficulties, or perhaps impossibilities, of effectively preventing all diamonds tainted by abusive practices from reaching the market, and thus fuelling human rights violations, this cannot be limited to a consumer-oriented approach. It should equally involve new strategies and efforts aimed at addressing the root causes of diamond-related conflict and violence along the supply chain. Secondly, this report highlights the transnationality of the challenge of conflict diamonds, and the importance of responding to it as such. Therefore, enhancing domestic controls and continuously adapting them to new challenges, needs to be combined with and embedded in efforts to strengthen the intergovernmental regulatory approach and transnational law enforcement cooperation.

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LIST OF ACRONYMS

4 C'S	Carat, colour, clarity and cut
AML	Anti-money laundering
AWDC	Antwerp World Diamond Centre
BFDB	Belgian Federation of Diamond Bourses
CAR	Central African Republic
CEO	Chief Executive Officer
CFI	Cel voor Financiële Informatieverwerking (Belgian Financial Intelligence Unit)
CT.	Carats
DDE	Dubai Diamond Exchange
DMCC	Dubai Multi Commodities Centre
DO	Diamond Office
DRC	Democratic Republic of Congo
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FPSE	Federal Public Service Economy
FPSE-EI	Federal Public Service for Economy - Economic Inspectorate
FPSE-LS	Federal Public Service for Economy - License Service
GIA	Gemological Institute of America
HRD	Hoge Raad voor Diamant (Diamond High Council)
HS	Harmonised Systems
IPIS	International Peace Information Service
KP	Kimberley Process
KPC	Kimberley Process Certificate
KPCS	Kimberley Process Certification Scheme
ML/TF	Money laundering and terrorist financing
NBB	National Bank of Belgium
NGO	Non-Governmental Organisation
PAC	Partnership Africa Canada (today known as IMPACT)
PNB	Punjab National Bank
SOW	System of Warranties
STR	Suspicious transaction report
UAE	United Arab Emirates
UN	United Nations
UNGPs	UN Guiding Principles on Business and Human Rights
US	United States
USD	United States Dollar
VAT	Value Added Tax
WDC	World Diamond Council

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INTRODUCTION

Antwerp has been the world's main diamond hub since the late 19th century. It is reported that over 80% of the world's rough diamonds and 50% of all polished diamonds pass through this Belgian city. The global pole position in this prestigious market is evidently a source of considerable pride for Belgium. Yet, in the late 1990s and early 2000s Antwerp's blooming diamond sector started making headlines for the wrong reasons, namely as global hub in the smuggling of conflict diamonds that were fuelling bloody civil wars across Africa. Combined with a series of scandals revealing widespread fraud, large-scale money laundering and allegations of terrorist financing through the trade in diamonds, this led to a gradual tightening of controls on the diamond sector in Belgium. Today, Antwerp positions itself as the world's most ethical and transparent diamond centre. While the Belgian regulatory framework is indeed unrivalled in the rest of the world, its leading role as global diamond hub is increasingly threatened by the rise of other centres like Dubai and Mumbai.

This research paper assesses the nature and effectiveness of the Belgian oversight and control framework from a global perspective. It seeks to better understand the impact of the controls in Belgium – which is effectively a pass-through for diamonds on their way from mine to market – on eliminating conflict diamonds from the global supply chain. We aim to unravel the interplay between the Belgian oversight system, the controls in other jurisdictions and the *modus operandi* of diamond smugglers. In other words, this report aims to shed light on the role that one trading centre can play in regulating what is essentially a single segment of an internationally dispersed sector. Furthermore, as the world's leading example in implementing the existing intergovernmental and corporate frameworks to regulate the diamond business, Belgium makes a compelling study into the effectiveness of these approaches in ensuring a clean, ethical and transparent diamond trade.

The Belgian controls are grafted onto the operationalisation of the Kimberley Process (KP) Certification Scheme (KPCS), which was launched in 2003 to stop conflict diamonds from entering the mainstream rough diamond market. Other elements of these controls align with the international agenda to stop money laundering and terrorist financing (ML/TF) through the trade in diamonds. In this research, the focus is on the Belgian controls relevant to stopping the illegal trade in conflict diamonds, as a litmus test for the effectiveness of the global KPCS.¹ The KP defines conflict diamonds as “rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments”.² Yet, the analysis will highlight the criticism among many stakeholders that this definition is unduly narrow as it neglects situations where diamonds fuel other types of conflict, such as widespread or systemic violence committed by public or private security forces.³

The findings in this paper draw from a review of relevant literature and other documentary sources, statistical analyses and key stakeholder interviews. The review included primary sources, such as Belgian legislation, public reports from oversight bodies like the KP and the Financial Action Task Force (FATF), and press releases and other public communications by governmental and industry actors. We also studied secondary sources such as academic publications, applied research, industry reports, and international and Belgian press coverage from the late 1990s until today on issues related to conflict diamonds and diamond sector controls in Antwerp. Statistical analyses were performed in relation to import and export figures of rough and polished diamonds from the National Bank of Belgium (NBB), KP rough diamond trade data, and NBB data on the turnover of Belgian diamond companies. Finally, around twenty interviews were conducted with key stakeholders from the relevant Belgian administrations (the Federal Public Service Economy and the Federal Public Service Finance), the federal police, the Belgian financial intelligence unit, the Antwerp World Diamond Centre (AWDC), industry insiders, diamond experts, international crime experts and journalists. These interviews mainly served to enrich, contextualise and

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- 1 Given that the analysis is centred on conflict diamonds, the report will not directly focus on cases of other diamond-related criminality such as money laundering. Such practices are not entirely ignored either, however, as they are in practice regularly linked to conflict diamond smuggling schemes and are jointly targeted by the regulatory response.
 - 2 Kimberley Process Certification Scheme Core Document, Section 1 – Definitions.
 - 3 See for instance: Chadwick V. and Cornish L., ‘Can the EU revive a troubled scheme against conflict diamonds?’, Devex, 12.01.2018, <<https://www.devex.com/news/can-the-eu-revive-a-troubled-scheme-against-conflict-diamonds-91831>>.

interpret the findings, and no individuals are quoted verbatim.

In order to contextualise the analysis, the report will start with an overview of the changing role of Antwerp in the global diamond trade, the importance of the sector for Belgium, the types of players involved and the prospects for the future in light of global competition. The Belgian oversight and control framework, as well as the context in which it was developed and gradually tightened, are outlined in a second chapter. Chapter 3 examines the Belgian system at work and analyses the cases that were brought against those accused of being involved in the smuggling of conflict diamonds, in order to shed light on the nature and scope of the problem, the evolving techniques used by criminal networks and challenges related to the burden of proof. In Chapter 4 we seek to gain a better understanding of the limitations in both the design of the KPCS and of Belgian controls, which leave loopholes that may allow conflict diamonds to continue circulating and thereby fuelling human rights violations across diamond producing countries. A final chapter draws conclusions on the impact of the Belgian control system on the illegal trade in conflict diamonds.

1. ANTWERP, A DIAMOND CENTRE IN TRANSFORMATION

Antwerp has a long and rich history as a diamond hub, which can be traced back to the 15th century.⁴ In the past decades Antwerp's diamond sector underwent considerable transformations. What is its role in the global diamond trade today, how important is this sector still for the Belgian economy, who are the players that keep the engine running and how is it performing under the pressure of rising international competition? These questions will be analysed in the sections below.

1.1. Shaken to the core by globalisation

Antwerp was the world's first major diamond cutting and trading centre and, as it has been in continuous operation since its founding, it is also the oldest one.⁵ Between the 17th and the 19th century, Antwerp lost considerable ground to Amsterdam, which became the primary recipient of that period's huge South American diamond finds. It was the sequence of discoveries of diamonds in Africa, initially in the 1870s in South Africa, followed by Namibia, the Democratic Republic of Congo (DRC) and Angola, that brought Antwerp back to pole position. Belgium's control over DRC production in particular, which gave it dominance over the global market in industrial diamonds⁶, was leveraged to assure a sustained rough diamond supply in deals made with De Beers – the industry giant that held the global monopoly on diamond mining and trade until the end of the 20th century – the United Kingdom (UK) and the United States (US).⁷ From this secure position, the Belgian diamond cutting industry was able to thrive, resulting in control over this market segment globally for much of the 1900s.

Over the past several decades, as in many industries, globalisation has entailed and accelerated changes and those who were the pride of the Antwerp diamond industry only one generation ago would find themselves without a place in the sector today. Small players were affected most significantly. These included the numerous intermediaries and brokers that long played an important role in finding the right diamonds or buyers for their business clients. Due to increasing vertical integration of diamond companies (see below) and digitization, the need for their services dropped. As the ranks of intermediaries declined, the four eminent Antwerp diamond bourses,⁸ where these agents typically facilitated deals, have equally been seeing their relevance decline. Another bygone glory of the Antwerp diamond industry is its once flourishing cutting and polishing sector. While an estimated 20,000 cutters were active in Antwerp and its surroundings in the 1970s, today this number has shrunk to a few hundred.⁹ These jobs have predominantly been lost to one Indian city, Surat, that employs over 650,000 people in the diamond manufacturing business at a fraction of the Belgian labour cost.¹⁰ India today reportedly polishes 90% of the world's diamonds.¹¹

4 'Antwerp Archives Reveal Diamond Trade Dating Back to 1447', The Diamond Loupe, 30.01.2017, <<https://www.thediamondloupe.com/articles/2017-01-30/antwerp-archives-reveal-diamond-trade-dating-back-1447>>.

5 For a complete account of the Belgian diamond history, see: Vleeschdrager E., *Diamonds: Reality and Passion* (Editions du Perron, Allleur, 1997), 266p.

6 There are basically three categories of diamonds: industrial (low quality stones used in drilling, cutting and grinding tools), near gem (mid quality stones that produce smaller, high clarity or bigger, lower clarity polished diamonds), and gem quality (higher quality stones used to produce high clarity polished diamonds).

7 Even-Zohar C, *From Mine to Mistress: Corporate Strategies and Government Policies in the International Diamond Industry* (Mining Communications Ltd., London, 2007), pp. 561-573.

8 The four Antwerp diamond bourses are the Diamantclub van Antwerpen, Beurs voor Diamanthandel, Vrije Diamanthandel en Antwerpsche Diamantkring.

9 According to the latest census conducted by the City of Antwerp, there are 579 active diamond manufacturers in Antwerp (City of Antwerp, *Geregistreerde directe tewerkstelling in Antwerpen in de diamantsector: Deelaspectstudie van de actualisatie van de socio-economische gegevens Antwerpse diamantsector* (SC/Team Data/Statistiek, Antwerp, 2021), p. 2).

10 A 2008 study by the Catholic University of Leuven (KULeuven) calculated the annual median labour cost of an employee in Belgium's diamond sector at EUR 27,500, compared to EUR 3,210 for their counterpart in India (Konings J. and Vanormelingen S., *Het Economisch Belang van de Antwerpse Diamantsector* (KULeuven, Leuven, 2008), p. 47).

11 Bain & Company and Antwerp World Diamond Council, *The Global Diamond Industry 2019: Strong origins: Current perspectives on the diamond industry, plus a 50-year review* (Bain & Company, Boston, 2019), p. 15.



Antwerp diamond polisher Pieter Bombeke in his workshop (Photo: IPIS, 2020).

1.2. The world's diamond supermarket

In spite of these changes, Antwerp remains a global diamond powerhouse. According to the Antwerp World Diamond Centre (AWDC), the umbrella organisation of the Belgian diamond industry, 86% of the world's rough diamonds and 50% of polished diamonds pass through Antwerp.¹²

The Antwerp diamond business is highly international in nature, with over 70 nationalities represented. Some of the most prominent ones are Indians, Lebanese, Armenians and Israeli. In total, there are around 1,600 registered diamond companies in Belgium.¹³ One illuminating way to dissect these companies is by size. About one third of the total are small, often one-man businesses that have an annual turnover below EUR 0.5 million.¹⁴ Nearly half are small enterprises with typically 4 to 5 employees and a turnover between EUR 0.5 and 30 million. Around 200 (or 12%) are medium-sized enterprises with between EUR 30 and 100 million net sales generated. The remaining 120 (or 7%) are large, often multi-national companies, with a turnover above EUR 100 million. This final group is by far the most important one in terms of market share and influence. In 2018, the 100 biggest Belgian diamond companies generated more than half of the sector's total turnover.¹⁵

Another way to look at this diverse group of companies is by type of activity. There are three dominant types. First, around 30 large corporations are vertically integrated enterprises with activities spanning

¹² Antwerp World Diamond Council, Report to Society 2014-2018 (AWDC, Antwerp, 2019), p. 41.

¹³ The analysis below is based on a typology of Antwerp diamond companies done by AWDC in 2015.

¹⁴ Throughout this report EUR and USD will both be used as currencies, depending on the data source. USD is the common currency used in the diamond sector globally, while EUR is standard in Belgian regulation and NBB data. Over the past five years, the average USD-EUR exchange rate was 0.88 according to the European Central Bank.

¹⁵ IPIS analysis of NBB data.

much of the diamond value chain (see Box 1 below). The second group consists of around 500 companies of all sizes that trade mainly in rough diamonds. Traders in polished diamonds constitute the third key group, which consists of over 600 companies, with a higher representation of small enterprises. Traders in industrial diamonds represent a much smaller group of around 50, usually small companies. Another group of secondary importance is that of around 100 diamond manufacturers, the most important ones being branches of multinationals that conduct all or the bulk of their manufacturing activities abroad. Their Antwerp presence mainly functions to maintain commercial relations or secure rough diamond purchasing deals. Other smaller categories are the around ten sales offices of major mining companies, the around ten houses facilitating diamond tenders and the over 200 small 'independents' operating rather informally and making a living from buying rough, manufacturing and then selling the polished diamonds.

This cross-section of Antwerp's diamond businesses indicates a clear trend towards scaling, internationalisation and vertical integration. Antwerp's diamond sector is increasingly dominated by big multinational companies, which are outcompeting the smaller players. Another striking feature of the diamond business is that the bulk of diamond companies are family-owned enterprises that are not listed on a stock exchange. Consequently, little tends to be known about their internal affairs, as they do not fall under the rules concerning corporate governance and transparency that apply to listed enterprises.¹⁶



The entry barrier to the Square Mile in the Rijnstraat (left), soldiers patrolling the Hoveniersstraat (right) (Photo: IPIS, 2020)

The above overview also highlights how Antwerp's diamond sector is all about wholesale trade. Antwerp is in fact the world's diamond supermarket, where companies of all trades come to buy and sell these precious stones. The city's 'diamond quarter', also dubbed the 'Square Mile' does not feature the fancy jewellery boutiques and designers for which cities like Paris and New York are reputed.¹⁷ Rather, the *Rijnstraat*, *Hoveniersstraat* and *Schupstraat* that make up the Square Mile consist of nondescript office buildings where the day-to-day affairs of this multi-billion business are managed. The magnitude and value of the trade are highlighted by the huge security barriers, CCTV cameras, police station, and patrolling soldiers protecting the diamond quarter.

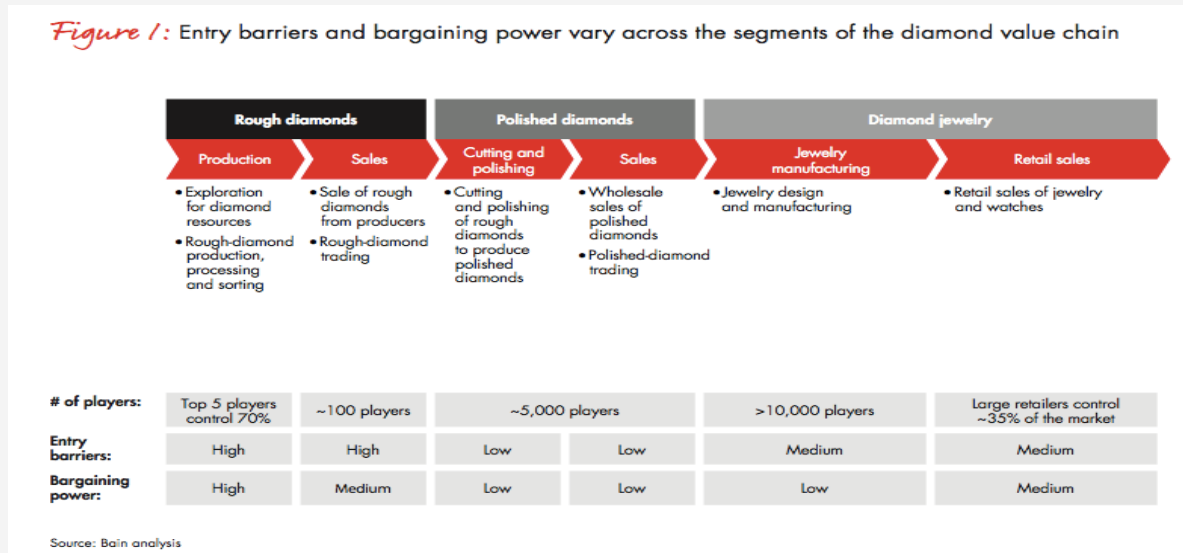
¹⁶ For an overview of the Belgian rules, see: Federal Public Service Employment, Labour and Social Dialogue, Jaarlijkse Informatie, <https://employment.belgium.be/en/node/4272#toc_heading_5>.

¹⁷ To combat fraud and swindling of tourists and others by jewelry stores in Antwerp, the City Council and the AWDC launched Antwerp's Most Brilliant label in 2016. This is a quality certificate awarded to jewelers that excel in sustainability, safety, morality, transparency, service and business stability, and comply with Belgian legislation on economic, social and fiscal matters. At present, 23 Antwerp jewelers have been awarded the label (<https://www.visitantwerpen.be/en/shopping-and-fashion-en/diamond-city/antwerp-s-most-brilliant-en/antwerps-most-brilliant>).

Box 1: A fragmented global supply chain

The diamond industry involves thousands of companies across the globe, with important differences in entry barriers and leverage across the different segments of the value chain (see Figure 1 below).

Figure 1: Entry barriers and bargaining power across the different segments of the diamond value chain



Source: Bain & Company and Antwerp World Diamond Council, *The Global Diamond Industry 2017: The enduring story in a changing world* (Bain & Company, Boston, 2017), p. 3.

Diamond mining is dominated by a small group of large companies, with the top five players (Alrosa, De Beers, Rio Tinto, Petra Diamonds and Dominion Diamond Mines¹⁸) controlling 70% of the market in 2017. The remaining 30% of natural diamonds are produced by a diverse group of mostly lesser known medium and small-scale mining companies, as well as artisanal miners.

The trade in rough diamonds is also fairly centralised with a relatively small group of around 130 dealers and manufacturers having long-term supply contracts with these big miners. In these agreements, dealers commit to buying fixed quantities of diamonds at prices determined by the miner, in return for consistent supply.¹⁹ This small group of big miners and contractual buyers set the rules of the rough diamond trade, which is home to thousands of smaller players, including buying and exporting houses in producer countries, small and medium-sized enterprises in the world's trading centres, and individual traders across the globe.

The rough diamond trade falling within the scope of the long-term contractual agreements between big miners and traders is known as the primary market. The secondary market consists of all supply by the big miners that is not governed by such long-term agreements (Alrosa and De Beers, for instance, market respectively around 30% and 10% of their production through spot sales and tenders), plus the production by smaller companies and artisanal miners.

- 18 In February 2021, Arctic Canadian Diamond Company acquired substantially all of Dominion's assets, excluding its interest in the joint venture agreement and liabilities relating to the Diavik Diamond Mine in Canada ('Arctic Canadian Diamond Company Ltd. Announces New Ownership, Interim President, and Appointment of Advisor on Aboriginal and Northern Affairs', BusinessWire.com, 08.03.2021, <<https://www.businesswire.com/news/home/20210308005756/en/Arctic-Canadian-Diamond-Company-Ltd.-Announces-New-Ownership-Interim-President-and-Appointment-of-Advisor-on-Aboriginal-and-Northern-Affairs>>).
- 19 Freedman J., 'Who's Buying the Rough in 2019?', Diamonds.net, 11.08.2019, <<https://www.diamonds.net/News/NewsItem.aspx?ArticleID=64025>>.

By controlling rough diamond supply and prices, the big miners, particularly De Beers and Alrosa, have long had considerable control over the diamond value chain. However, in recent years they have been pushed to gradually start loosening their grip on the sector.²⁰

The manufacturing and trade of polished diamonds is much more fragmented. The Indian city of Surat, where the bulk of the world's diamonds are cut and polished, is estimated to house over 7,000 manufacturing and polishing units that jointly employ over 650,000 workers.²¹ China is the second most important diamond manufacturing country, with a market share of around 5%, while trading centres like Antwerp and Ramat Gan in Israel have smaller cutting and polishing facilities that mainly specialise in niche high-end goods. Profit margins and bargaining power are low in this segment of the diamond value chain.

A similar picture emerges from diamond jewellery manufacturing, with even more actors involved. India is again a central player, with other important jewellery manufacturing industries in China, the European Union (EU) and the US.

Thousands of companies in these centres supply the retail sales market, where there is again a much greater concentration of corporate power. A small number of large retailers, such as Tiffany & Co., Signet, Chow Tai Fook, Lukfook and Chow Sang San, which are predominantly based in the US and China, control approximately 35% of the market. It is at this level that most of the value of diamond production and trade is generated. Where the value of global production according to KP statistics was USD 13.6 billion in 2019, diamond jewellery sales in the same year totalled approximately USD 80 billion.²²

The enormous flows of diamonds going in and out of Antwerp every day connect the city to all of the major producer, trade, manufacturing and consumer markets. In 2019, Belgium imported a total of 90.8 million carats of rough diamonds worth EUR 6.4 billion and exported 98.9 million carats with a total value of EUR 7.0 billion.²³ Imports mainly came from the Russian Federation (28% in terms of value, 20% in terms of volume), the world's main diamond producer country; the United Arab Emirates (UAE - 14% value, 11% volume), one of the main global diamond trading hubs; Botswana (12% value, 9% volume), Africa's trading hub and key producer country; Canada, another important producing country (11% value, 10% volume); and the UK (6% value, 20% volume), Europe's second most important rough diamond trading centre.²⁴ In terms of exports, two countries account for roughly 85% of Belgium's total rough diamond export value: India (64 % in terms of value, 71% in terms of volume) and the United Arab Emirates (18% value, 21% volume).

20 Biesheuvel T. and Fedorinova Y., 'The Masters of the Diamond World Are Losing Control', Bloomberg, 21.06.2020, <<https://www.bloomberg.com/news/articles/2020-06-21/the-masters-of-the-diamond-world-are-losing-control>>; Narvekar P. and Even Zohar C., The 2019 Pipeline: Prelude to the storm (IDEX, New York, 2020), 12p.

21 Gaitonde A., 'India's diamond manufacturing sector surges on...', Rough & Polished, 23.11.2020, <<https://www.rough-polished.com/en/analytics/119422.html>>.

22 Bain & Company and AWDC (2019), p. 21.

23 IPIS analysis of NBB data.

24 Given the European Union's internal market, diamond trading activities between EU Member States are technically not imports or exports, but rather movements of goods. In 2019, when the data analysed here was recorded, the UK was still an EU Member State. Following a one year transition period after its exit from the EU, the UK left the EU Customs Union and Single Market on 1 January 2021. It remains to be seen how this will impact the diamond trading volumes between Belgium and the UK (Freedman J., 'What the Brexit Deal Means for the Diamond Trade', Diamonds.net, 10.01.2021, <<https://www.diamonds.net/News/NewsItem.aspx?ArticleID=65940>>.

Table 1: 2019 Belgian imports and exports of rough diamonds (NBB data)

Imports			Exports		
Country	Value	Volume	Country	Value	Volume
Russian Federation	28%	20%	India	64%	71%
UAE	14%	11%	UAE	18%	21%
Botswana	12%	9%	<i>Rest of the world</i>	18%	8%
Canada	11%	10%	Total	EUR 6.965 billion	Ct. 98,865 million
UK	6%	20%			
<i>Rest of the world</i>	29%	30%			
Total	EUR 6.370 billion	Ct. 90.757 million			

The polished diamond trade is considerably smaller, with Belgium importing 3.2 million carats in 2019 worth EUR 2.9 billion, and exporting 2.5 million carats worth EUR 3.4 billion. Imports come from across the globe, with the main countries of provenance being India (41% value, 63% volume), Hong Kong (10% value, 10% volume) and the Russian Federation (10% value, 4% volume). Exports are equally scattered across the globe and go to Hong Kong (29% value, 19% volume), US (13% value, 3% volume), Italy (9% value, 17% volume), Switzerland (8% value, 8% volume), and UAE (8% value, 11% volume).

Table 2: 2019 Belgian imports and exports of polished diamonds (NBB data)

Imports			Exports		
Country	Value	Volume	Country	Value	Volume
India	41%	63%	Hong Kong	29%	19%
Hong Kong	10%	10%	US	13%	3%
Russian Federation	10%	4%	Italy	9%	17%
Israel	7%	3%	Switzerland	8%	8%
South Africa	7%	2%	UAE	8%	11%
<i>Rest of the world</i>	25%	18%	<i>Rest of the world</i>	33%	42%
Total	EUR 2.923204 billion	Ct. 3.204 million	Total	EUR 3.401 billion	Ct. 2.471 million

1.3. Importance for Belgium's economy

The Antwerp diamond sector ostensibly presents impressive figures, with a total turnover of USD 37 billion in 2019. Furthermore, diamonds account for approximately 5% of Belgium's foreign trade and 15% of all exports outside the EU.²⁵ These elevated numbers can be somewhat misleading, however, due to certain industry-specific practices that inflate the sector's total turnover figure. Diamonds tend to go back and forth between traders and trading centres numerous times, as they are offered for prospection,

25 AWDC (2019), p. 6.

cut or polished, split up into smaller parcels, combined into larger ones, or sorted according to their 4 C (carat, colour, clarity and cut – see Box 2 below) characteristics and the specific desires of the client. This raises the question as to what the actual added value of these impressive numbers is to the Belgian economy.

Box 2: The 4C's of diamond quality

The quality of diamonds is measured according to the so-called 4 C's: carat, colour, clarity and cut.

Carat (ct.) is a metric weight, equivalent to 0.2 grams.

Colour refers to the natural tint of a diamond. In most cases grading is based on the absence of colour (with value decreasing from near colourlessness over dark yellow to brown), except for the rare category of fancy colour diamonds (which can be anything from bright yellow to blue or green).

Clarity is a measure of the purity of a stone. This decreases depending on the number and visibility of flaws, which refers to internal or external patterns or inclusions that can take various forms.

Cut refers to how well a diamond's facets interact with light, which depends on its finishing, proportions and the cutting style (with the round brilliant being the most widely used).

Due to the myriad of gradations in each of the 4 C's, diamonds can be sorted into 12,000 to 16,000 different categories.²⁶



Caption: Various diamond shapes (Photo: Serendipity Diamonds, licensed under [CC BY-ND 2.0](https://creativecommons.org/licenses/by-nd/2.0/))

26 Bain & Company and Antwerp World Diamond Centre, *The Global Diamond Industry: Lifting the Veil of Mystery* (Bain & Company, Boston, 2011), p.38.

Firstly, questions exist concerning how many people this sector employs, as different estimations circulate depending on the calculation method used and how broadly the sector's indirect employment generation is interpreted. The AWDC regularly provides the numbers of 6,600 direct and 26,000 indirect jobs. These figures are not, however, the result of a census, but are based on a mathematical formula from a 2008 study by the Catholic University of Leuven²⁷ that is disputed by some industry observers.²⁸ They differ considerably from a recent census by the city of Antwerp, which calculated that in 2018 the sector and its related activities (such as jewellery designers and retailers) in Antwerp consisted of 2,308 businesses that jointly employed 1,839 wage earners, representing a drop of nearly 25% compared to ten years earlier.²⁹ According to this same study, 57% of workers are active in wholesale, 26% in diamond manufacturing and 17% in related businesses. The employment figures do not include the number of independent entrepreneurs active in Antwerp's diamond sector, which has a large number of one-man enterprises. Indeed, the city census counted that 75% of businesses directly and indirectly active in the diamond sector have no registered employees.³⁰



AWDC banner (Photo: antwerperR, 2009, licensed under [CC BY-NC-SA 2.0](https://creativecommons.org/licenses/by-nc-sa/2.0/))

Secondly, the AWDC estimates that the value added by the diamond industry (which is the turnover minus the price of the purchased resources) to the Belgian economy was EUR 750 million in 2018.³¹ To put this into perspective, the diamond sector's 2018 turnover is about the same as that of the Belgian ICT sector, which has a net value added of EUR 16.7 billion.³² So while the sector makes a substantial contribution to the Belgian economy, this does not seem to be where its main strength lies.

The key importance of the diamond industry arguably rests in its contribution to Belgian export figures and trade balance. This assures that Belgium remains in the good books of financial markets, which is essential to financing the country's high public debt ratio. This explains why Antwerp's diamond sector is important to Belgium, and why Belgium is committed to guarding it from competition by other trading hubs in countries like UAE, India, China or Switzerland.

27 Konings and Vanormelingen (2008), pp. 14 and 54. While the study's original estimate of 8,000 direct jobs has meanwhile been reduced by the AWDC to 6,600, the twelve-year old estimate for indirect jobs is still used.

28 Lallemand, for instance, expresses doubts about these figures (in Lallemand A., *L'Anvers due Diamant* (Racine, Brussels, 2012), p. 123). Journalist Frank Demets made his own calculation in 2005 and arrived at only 2,500 direct jobs (Demets F., 'De dubieuze diamant', *Knack*, 14.12.2005, <<https://www.knack.be/nieuws/magazine/de-dubieuze-diamant/article-normal-997217.html>>).

29 City of Antwerp (2021), p. 12.

30 According to this study, 23% of businesses have between 1 and 9 employees, 2% between 10 and 99, and no businesses have over 100 workers (Ibid., p. 7).

31 A 2021 study by the City of Antwerp estimates the diamond sector's added value to be considerably lower, namely EUR 643 million in 2017, reduced to 463 million after index correction (Ibid., p. 10.).

32 'ICT in België', FPS Economy, 31.03.2021, <<https://economiepr.belgium.be/nl/themas/online/ict-belgie>>.

Box 3: Interwoven political and economic interests

The importance of the diamond industry to the Belgian economy explains the government's openness to support the sector with legislation tailored to its needs,³³ such as a separate fiscal regime,³⁴ the notorious amicable settlement law,³⁵ and, most recently, the basic banking act.³⁶ These tailor-made support measures have led to criticism of excessive political protection of and support for the diamond industry.³⁷ Such rumours are regularly fed by dubious political demarches, such as the creation of a Diamantclub in the Belgian Parliament to protect the sector's interests in 2010 and the adoption of the amicable settlement law in 2011, both the midst of the storm around the Omega Diamonds and Monstreij scandals (see further section 2.1.2. and 3.2.1.).³⁸ In 2018, a parliamentary committee of inquiry confirmed that the adoption of this settlement law resulted from a dubious cooperation between the magistrates of the public prosecutor's office, political parties, the Justice cabinet and representatives of the diamond sector.³⁹ Two law professors in particular, who had been drafting the disputed legislation while at the same time representing the diamond industry as lawyers, were reproached by the committee for a lack of transparency.⁴⁰

1.4. Economic power shifting abroad

While the diamond sector is important to the Belgian economy, it is quite alien to most of the population. Most Belgians of course know that Antwerp has a thing with diamonds, but few are aware of what that means exactly. Some reasons have already been mentioned. The diamond sector is not a major provider of employment and the wholesale nature of the trade escapes the public eye. Yet another reason is that over the last decades management and decision-making have increasingly shifted abroad.

Antwerp's diamond trade today is indeed predominantly run by multinational companies. Many Belgian diamond companies are in fact subsidiaries of foreign groups, with complex legal structures and activities in numerous countries. Strikingly, all of the ten biggest diamond companies operating in Antwerp are part of multinational groups, none of which has its main legal seat in Belgium. The company with the closest ties to Belgium, and number two in terms of turnover in 2018, is Pluczenik Diamond Company N.V. It has its head office in Antwerp, but was founded in South Africa and its ultimate parent is a Hong Kong-based group. For the other nine companies, Antwerp is home to only one of their branch offices. Rosy Blue, long the number one diamond company in Belgium in terms of turnover and one of the biggest globally, was founded in Antwerp but moved its headquarters to Dubai several years ago.

33 For a critique of these intertwined political and economic interests, see for instance: Fagan B. and Smyth A., *Diamants de Sang: Quelle responsabilité pour la Belgique?* (Justice & Paix, Brussels, 2019), pp. 38-40.

34 Lisovoy T., 'Belgian Parliament approved Carat Tax', 16.12.2016, <<https://www.rough-polished.com/en/news/105316.html>>.

35 'Omega Diamond's lawyer drafted, negotiated and lobbied for the settlement law before using it to save his client', Open Source Investigations, 24.04.2017, <<https://www.opensourceinvestigations.com/corruption/omega-diamonds-lawyer-drafted-negotiated-lobbied-settlement-law-using-save-client/>>.

36 Freedman J., 'New Banking Law Set to Support Antwerp Trade', *Diamonds.net*, 27.10.2020, <<https://www.diamonds.net/News/NewsItem.aspx?ArticleID=65675>>. The shared interests of government and industry are also highlighted by the standard practice whereby Belgian trainee diplomats receive training from the AWDC as part of a tour of their offices.

37 See for instance: Mouton O., 'Relations troubles diamantaires – politiques', *Le Vif*, 26.03.2015, <<https://www.levif.be/actualite/belgique/relation-troubles-diamantaires-politiques/>>.

38 Cochez T., 'De afkoopwet is het monster van Frankenstein', *Apache*, 03.12.2013, <<https://www.apache.be/2013/12/03/de-afkoopwet-is-het-monster-van-frankenstein/>>.

39 Belgian Chamber of Representatives, Parliamentary Committee of Inquiry charged with investigating the circumstances leading to the adoption and application of the Law of 14 April 2011 containing various provisions, regarding the amicable settlement of criminal cases, 25.04.2018, Doc. 54 2179/008 (available in Dutch and French).

40 In e-mails which the committee was able to view, one of the lawyers wrote to the Board of the AWDC, about the law he was drafting, that its intended legal effect was (own translation): "(...) to block the prosecution of any abuse (thus no judgement of guilt or not, nor formal admission of guilt as in the case of a suspension)". He added that if the Christian-Democrats were to provide the Justice Minister, "I believe we would certainly have a willing ear for this problem at the Justice Department". Belgian Chamber of Representatives, Parliamentary Committee of Inquiry charged with investigating the circumstances leading to the adoption and application of the Law of 14 April 2011 containing various provisions, regarding the amicable settlement of criminal cases, 16.04.2018, Doc. 54 2179/007, pp. 86-87 (available in Dutch and French).

Table 3: Top 10 Belgian diamond companies, in terms of turnover (based on 2018 NBB data)

Rank	Company name	Turnover 2018 (in EUR)	Parent company seat
1.	Rosy Blue NV	1.147 billion	India
2.	Pluczenik Diamond Company NV	750 million	Hong Kong
3.	Dominion Diamond Marketing	669 million	United States
4.	Dharm Diam	563 million	India
5.	Arjav Diamonds	542 million	India
6.	K.G.K. Diamonds	538 million	India
7.	Bonas Couzyn	432 million	United Kingdom
8.	Rio Tinto Diamonds	410 million	United Kingdom
9.	Kiran Exports	338 million	India
10.	Diacore Belgium	329 million	Switzerland

Even the financing of the sector is no longer in Belgian hands, as domestic banks have withdrawn from the diamond industry, largely to avoid risks of money laundering and tax evasion (see section 1.5.). Rather paradoxically therefore, in this “diamond country par excellence”⁴¹ the sector has no alternative but to turn to a small group of foreign banks. More striking still is that some of the most important of these banks are run from two countries that are often named as Belgium’s main competitors in the diamond business, namely the UAE with its National Bank of Fujairah (NBF) and India with its State Bank of India and Bank of India.⁴² In the words of the AWDC, this makes Antwerp “the only relevant diamond trading center that is entirely isolated from access to its domestic banks.”⁴³

Box 4: The rapid rise of the Belgian Indian diamond community

In the past decades, the Indian community in Belgium has grown from a small player in the Antwerp diamond business into the most important group today. This community consists of about 400 families, most of whom are Jains who have their roots in the famous diamond merchants’ town of Palanpur in Gujarat. The first Indian traders arrived in Antwerp during the 1960s, when India’s diamond business collapsed following independence and the 1962 Chinese-Indian war.⁴⁴ They established themselves within a business space seen as unprofitable by most other traders in Antwerp at that time, namely that of small and low-quality rough diamonds, which they sent to their home country for manufacturing.⁴⁵ This approach proved successful and by the 1980s their substantial profits allowed them to start competing on higher value stones.⁴⁶ Today, many of these once small ventures have grown into multibillion global and vertically integrated companies. Their operations span the entire diamond value chain, with offices employing thousands of workers in African producer countries, trading hubs, and major consumer markets like China and the US.

41 ‘When are diamonds truly conflict-free?’, FPS Foreign Affairs, Foreign Trade and Development Cooperation, 14.02.2020, <https://diplomatie.belgium.be/en/newsroom/news/2020/when_are_diamonds_truly_conflict_free>.

42 Other banks financing the Belgian diamond sector include the Dutch ABN AMRO, the French Société Générale, and UK’s Ebury.

43 AWDC (2019), p. 69.

44 Sauviller R. and Di Rosa S., *Zwarte diamant: 50 jaar fraude, bedrog en belastingontduiking in de Belgische diamantsector* (Van Halewyck, Antwerpen, 2014), p. 85.

45 Ray S. G., *The Diamond Trail: How India Rose to Global Domination* (Harper Collins Publishers India, New Delhi, 2019), 224p.

46 Wiedemann E., ‘Antwerp’s Diamond Business: Jews Surrender Gem Trade to Indians’, Spiegel International, 15.05.2006, <<https://www.spiegel.de/international/spiegel/antwerp-s-diamond-business-jews-surrender-gem-trade-to-indians-a-416243.html>>.

At present, five of the ten biggest diamond companies operating in Antwerp have their parent company seat in India, and some estimate that the Indian community in Belgium accounts for three quarters of Antwerp's diamond trade.⁴⁷

1.5. Are Antwerp's days numbered?

"The centrality of Antwerp in the diamond trade is unlikely to be challenged by any other centre ... in Belgium, more than almost any other modern diamond-trading centre, the future holds a sparkling potential".⁴⁸ Much has changed since the prominent diamond industry analyst Chaim Even Zohar wrote these words in 2007. In the past ten years, concerns that the future of the diamond industry in Belgium is at risk have resounded ever more strongly, as diamantaires regularly threatened to leave Antwerp for trading hubs with governments perceived to be more supportive or less controlling.⁴⁹

Aside from Mumbai, which benefits from its proximity to the world's diamond manufacturing workforce in Surat, the fiercest competition today comes from Dubai. This gulf emirate, which had virtually no diamond sector twenty years ago, grew spectacularly to be amongst today's top three global diamond hubs. Painfully for Antwerp, they were helped in this rise by former AWDC Director Peter Meeus, who became special advisor on diamonds to the Dubai Multi Commodities Centre (DMCC) in 2006 and Chairman of the Dubai Diamond Exchange in 2009. He was helped by a team of former Belgian colleagues reportedly known in Dubai as 'Little Antwerp'.⁵⁰ Dubai attracts businesses to DMCC with terms Antwerp cannot and will never offer, such as a 50-year tax holiday, limited government oversight, the possibility of opening an office in less than five days and an exemption from paying office rent the first six months.⁵¹ In addition, the UAE offers a strong financial infrastructure and is strategically located with good access to the rough diamond supply lines from both Africa and Russia, and only two hours away by air from Mumbai. The emirate's comparative advantages are underpinned by strong political support and self-confidence, as exemplified by DMCC's CEO and 2016 KP Chair Ahmed bin Sulayem's recent statement that Dubai will soon "overtake Antwerp in the diamond business".⁵²

Table 4: Main rough diamond trading hubs in terms of imports (2019 KP statistics)

KP Participant	Diamond trading hub	Imports in USD value (2019)
India	Mumbai	14 billion
European Union	Antwerp (+ London, Prague, Idar-Oberstein, Dublin, Lisbon, Bucharest) ⁵³	8.7 billion
UAE	Dubai	6 billion
Israel	Ramat Gan	2.2 billion
China	Hong Kong (+Shanghai, Guangzhou, Macau)	1.5 billion
Botswana	Gaborone	1.4 billion

47 Thomas M., 'Danger for desis in diamond land', Times of India, 28.10.2012, <<https://timesofindia.indiatimes.com/home/stoi/special-report/Danger-for-desis-in-diamond-land/articleshow/16987542.cms>>.

48 Even Zohar (2007), pp. 589-591.

49 See for instance: Sinnaeve S., 'Eerste diamantairs verlaten Antwerpen', De Tijd, 31.03.2015, <<https://www.tijd.be/ondernemen/grondstoffen/eerste-diamantairs-verlaten-antwerpen/9617083.html>>.

50 Sauviller and Di Rosa (2014), pp. 271-275.

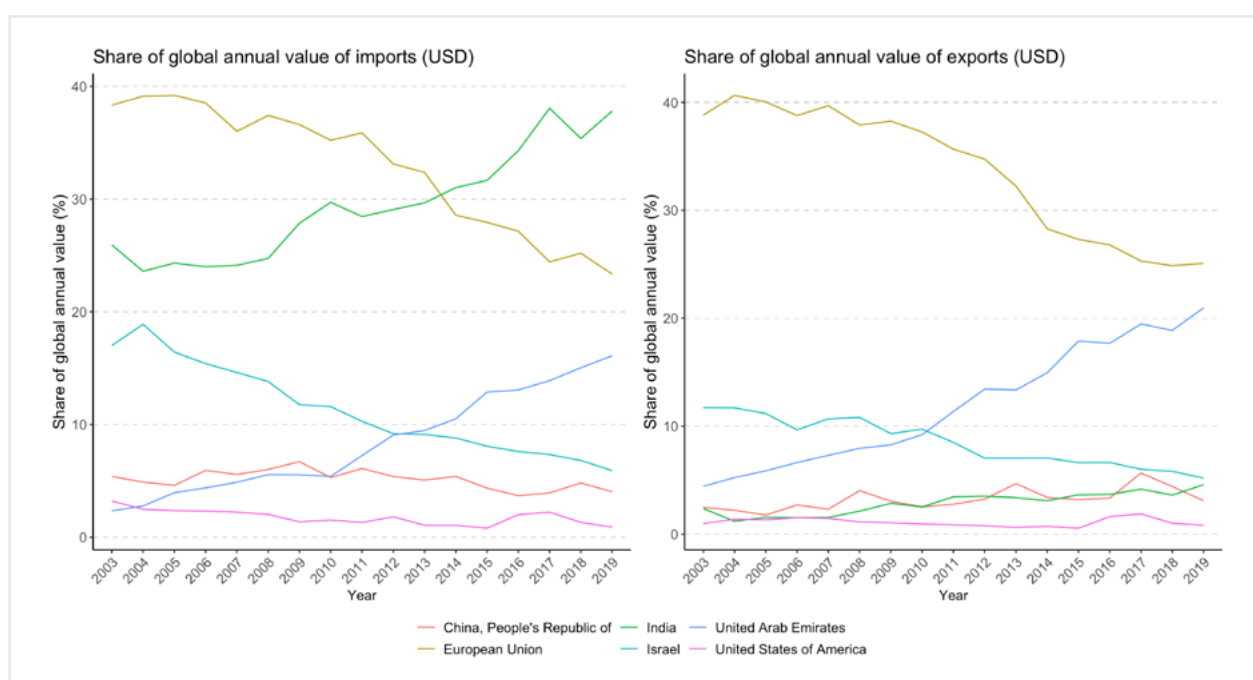
51 See for instance: 'Dubai vies to keep grip on Angolan diamonds', Africa Intelligence, 11.12.2020, <<https://www.africaintelligence.com/mining-sector/state-strategy/2020/12/11/dubai-vies-to-keep-grip-on-angolan-diamonds,109626994-eve>>.

52 Abbas W., 'Dubai firms told to cash in on stimulus measures', Khaleej Times, 07.07.2020, <<https://www.khaleejtimes.com/business/local/dubai-firms-told-to-cash-in-on-stimulus-measures>>.

53 Since 2021, London is no longer an EU diamond trading hub as the UK became a KP Participant in its own right following the country's exit from the EU (see footnote 24).

The increasing competition from Dubai and Mumbai is clearly illustrated in the figures below. They depict the market share in terms of value between 2003 and 2019 of global rough diamond imports and exports of the world's six main trading hubs. The figures are based on KP statistics, where the European Union acts as single participant representing the 27 Member States. Although Belgium's share of the EU rough diamond trade is not publicly communicated, industry experts estimate that it lies between 90 and 95%.⁵⁴ Accordingly, the plotted line on the graph below representing the EU's share may be taken as closely approximating that of Belgium. India, where the bulk of the world's diamonds are polished and thus disappear from KP rough diamond statistics, already overtook the EU in 2014 in terms of rough diamond imports. The UAE's imports and exports have risen steadily over the past 18 years and appear to be on their way to bypassing those of the EU in a few years' time. This evolution might be accelerated by the fact that the UK, Europe's second most important rough diamond trading hub, left the EU and became a KP Participant in its own right from 2021.

Figures 2 a and b – Evolution of rough diamond import and export market share of the world's six main trading centres (KP data)



Antwerp has not, however, thrown in the towel just yet and has a number of important assets compared to other trading hubs. One of its biggest strengths is its long-established critical mass of established diamond suppliers and buyers that exert a mutual attraction. The city hosts important tender houses as well as the sales offices of some of the world's biggest diamond producers. This makes Antwerp one of the most important places for tenders of 'run of mine' production, meaning diamonds derived directly from the source. This ensures high quality and consistency of supply, which has long attracted well-established buyers from across the world that in turn ensures the desired level of competition by suppliers seeking to get the best prices for the stones they put on offer.

Other strengths of Belgium are its stable (geo-)political environment, rule of law and well-established social services, for example in health care. In addition, while the bulk of cutting and polishing nowadays occurs in India, Antwerp is still known for cutting top-quality diamonds with state-of-the-art technology. This lucrative niche is getting renewed impetus through the ambitious plans of HB Antwerp, a recently founded manufacturer catering to the highest end of the market.⁵⁵ Finally, and increasingly, Antwerp actively seeks to distinguish itself from the competition through its ethical benchmark, as will be discussed in the next chapter.

⁵⁴ IPIS, Interview with diamond industry expert, 19.01.2021.

⁵⁵ Freedman J., 'HB Antwerp Aims to Shake Up Large-Stone Market', Diamonds.net, 17.09.2020, <<https://www.diamonds.net/News/NewsItem.aspx?ArticleID=65526>>.

The financial infrastructure, with dedicated banks supporting this capital-intensive and complex industry, used to be another strength of Antwerp. Little is left of that today however, especially since the Belgian bank KBC dissolved its Antwerp Diamond Bank in 2014.⁵⁶ Later, the Union Bank of India withdrew from Antwerp while Dutch ABN AMRO scaled back its diamond-focused operations.⁵⁷ The financial sector in Belgium shies away from the money-laundering and terrorist financing risks associated with the sector, which is reinforced by the fact that many diamond traders have failed to modernise their business practices and are therefore unable or unwilling to provide the transparency and openness regarding business relations and finances that banks at present require.⁵⁸ As a result, many of Antwerp's diamond traders are even struggling to open a bank account, which is what led to the adoption of the Basic Banking Act in late 2020.⁵⁹ As Antwerp's diamond sector no longer has a financial infrastructure of its own, Belgian diamond businesses have no option other than to turn to foreign banks for financing.⁶⁰ This might pose a genuine threat to the status of Antwerp as global diamond hub, given that this capital-intensive trade tends to follow the financing.



Impression of the diamond neighbourhood in Antwerp (Photo: IPIS, 2020)

Another comparative advantage that Antwerp seems to be losing is its sole status as neutral territory where diamond traders of Jewish and Arab descent can do business side by side. In what has been termed “a massive game changer” for the industry, the 2020 historic accord between UAE and Israel is set to normalise trade between these two diamond powerhouses that had long banned all formal business relations.⁶¹

Antwerp's unchallenged status as the world's diamond capital belongs to the past and the competition is here to stay.⁶² Decreasing trade volumes and values (see Figures 3 a and b below) lead to lower profits, and fewer businesses and jobs. While the sector's USD 37 billion turnover in 2019 is an impressive figure

56 Kuriyan V., 'Antwerp Diamond Bank Dismantled To Cover Up Sins Of KBC Bank: Report', Gemkonnnect, 14.09.2015, <<https://gemkonnnect.wordpress.com/2015/09/14/antwerp-diamond-bank-dismantled-to-cover-up-sins-of-kbc-bank/>>.

57 Robinson A., 'Diamond Trade Must Find A Way Around Negative Developments', IDEX, 06.09.2018, <<http://www.idexonline.com/Memo?Id=44206>>.

58 AWDC (2019), p. 69.

59 Law 8 November 2020 introducing provisions on the basic banking service for enterprises in Book VII of the Code of Economic Law (No 2020-11-08/04 Belgian Official Journal). This law stipulates that enterprises that have been denied basic banking services at least three times by Belgian financial institutions can submit a request to the governmental Basic Banking Services Chamber, which will then designate a Belgian financial institution that has to provide basic banking services to the requesting enterprise. This will allow that enterprise to make simple payments, cash deposits and transfers.

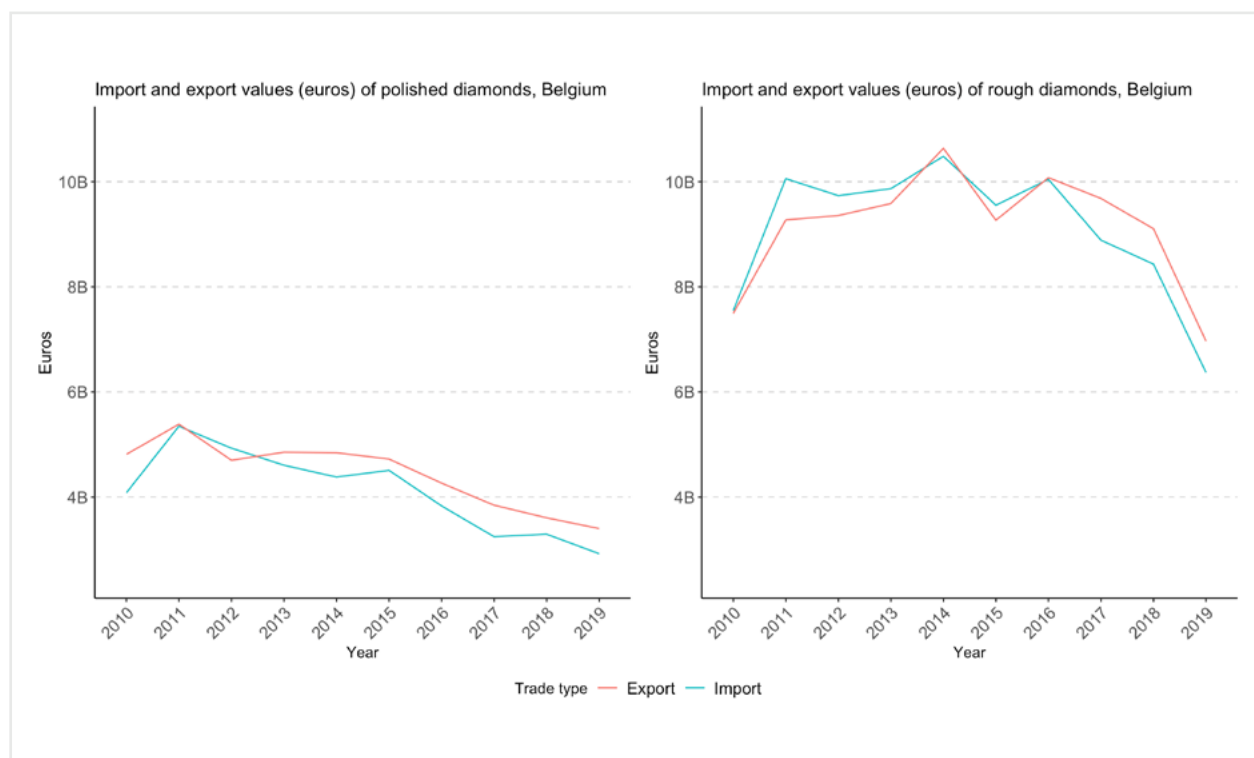
60 This similarly poses considerable challenges (Bain & Company (2019), pp. 14-17).

61 Cornwell A., 'UAE-Israel accord could bring new sparkle to Dubai diamond trade', Reuters, 07.10.2020, <<https://www.reuters.com/article/israel-gulf-emirates-diamonds-int-idUSKBN26SIWP>>.

62 This is clearly illustrated by the struggle for influence over Angola's sizeable diamond production, where Dubai is at present clearly on the winning end ('Luanda shuns Antwerp's courtship of its diamonds and stays loyal to Dubai', Africa Intelligence, 12.05.2021, <https://www.africaintelligence.com/mining-sector_state-strategy/2021/05/12/luanda-shuns-antwerp-s-courtship-of-its-diamonds-and-stays-loyal-to-dubai,109665432-eve>).

at first sight, it should be noted that it represents a drop of 20% compared to 2018, and was the lowest figure in a decade. The COVID-19 pandemic⁶³ caused a crisis within a crisis, with the trade in rough and polished diamonds dropping another 32% in 2020 to USD 25 billion.⁶⁴ The damaging impact of this crisis was evident in a wave of staff redundancies. The AWDC for instance, which runs on a percentage of imported value, reportedly laid off over ten of its nearly 80 employees by September 2020.⁶⁵ At its subsidiary, HRD Antwerp, a leading global authority in diamond grading, 21 jobs were lost between May and September 2020. In the Belgian branch of another key diamond grader, the Gemological Institute of America (GIA), over 50 jobs are at risk, as the institute announced plans to scale back its Antwerp operations in December 2020.⁶⁶

Figures 3 a and b – Evolution in Belgian total annual values of imports and exports of rough and polished diamonds from 2010-2019 (NBB data)



The key question at the time of writing is whether the COVID crisis will accelerate the decline of Antwerp as a global diamond centre or whether a quick recovery will give the hub impetus to take on the competition. Antwerp's maturity as a diamond centre was to some extent shown by the nearly 100 rough diamond tenders that were held in the city despite the 2020 slowdown across the sector globally.⁶⁷ Yet, it remains to be seen whether this will be enough to prevent the necessary critical mass of buyers and suppliers from moving to other trading hubs, in particular Dubai. While industry and government continue to herald Antwerp's success and strength publicly, increasing pessimism resounds behind closed doors. One prominent industry insider divulged that, in their view, it seems unrealistic that Antwerp could still turn the tide and expects that it will be written off as global diamond hub in five years from now.⁶⁸

63 For an overview of how the pandemic affected the sector globally, see: Bain & Company and Antwerp World Diamond Centre, *Brilliant Under Pressure: The Global Diamond Industry 2020–21* (Bain & Company, Boston, 2021), 53p.

64 Suy, P., 'Chinese consument geeft Antwerpse diamant broodnodige schwing', *De Tijd*, 08.02.2021, <<https://www.tijd.be/ondernemen/algemeen/antwerpse-diamant-rekent-op-comeback-na-coronadrama/10282823.html>>.

65 IPIS, Interview AWDC representative, 15.09.2020.

66 Freedman J., 'GIA to Cut Back Antwerp Business', *Diamonds.net*, 22.12.2020, <<https://www.diamonds.net/news/NewsItem.aspx?ArticleID=65892>>.

67 'Antwerp's Rough Tenders Thrive Despite Pandemic', *The Diamond Loupe*, 06.01.2020, <<https://www.thediamondloupe.com/market-analysis/2021-01-06/antwerp%E2%80%99s-rough-tenders-thrive-despite-pandemic>>.

68 IPIS, Interview with diamond industry expert, 18.02.2021.

2. DIAMOND SECTOR OVERSIGHT AND CONTROLS IN BELGIUM

Over the last two decades, the Belgian government and diamond industry have developed a system of internal controls that has become a strong component of the sector's public image and branding. This system is promoted through a marketing strategy that places particular emphasis on ethics and transparency. To a great extent, this evolution was a response to international pressure that stemmed from Belgium's long unchallenged status as the diamond capital of the world. Global consumer awareness of blood diamonds and various scandals turned the world's eyes to Antwerp, which was forced to take action to preserve the integrity and image of its sparkling trade. This evolution will be sketched in this chapter, followed by an assessment of what Antwerp's ethical claims entail in practice.

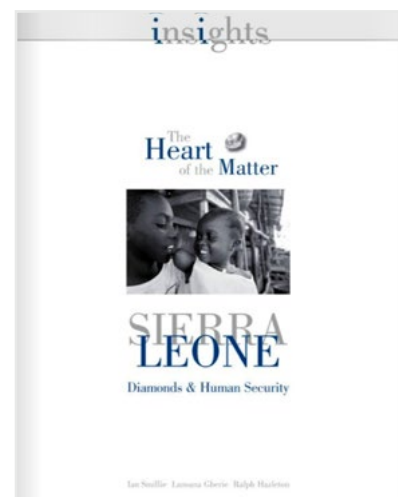
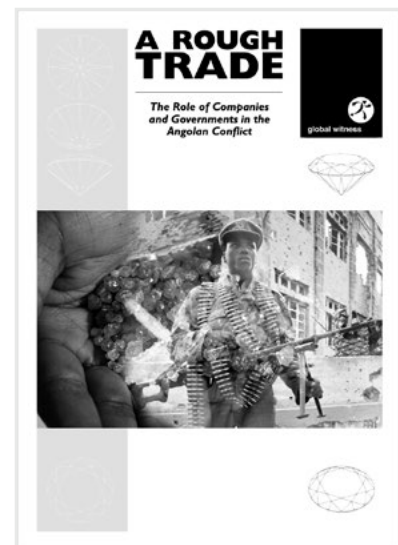
2.1. Rising pressure on Belgium

2.1.1. Blood diamonds in Antwerp

The first significant stains on Belgium's international reputation in relation to its diamond industry were several reports in the late 1990s pointing at the centre's responsibility in facilitating the global trade in blood diamonds. These reports played an important part in building international momentum that eventually led to the creation of the KP in 2000 and the launch of its certification scheme three years later.

The widely publicised 1998 report "A Rough Trade: The Role of Companies and Governments in the Angolan Conflict" by the NGO Global Witness was the first of these reports to point a finger to Belgium for "failing in its obligation to the UN" by prioritising economic considerations over closing loopholes in its import control system that allowed circumventing the embargo on Angolan blood diamonds.⁶⁹ Another notable report in 2000 by advocacy group Partnership Africa Canada (PAC – today known as IMPACT) on the diamond-funded conflict in Sierra Leone used much stronger language. It called the Belgian diamond industry "irresponsible, secretive and seriously under-regulated", with "a demonstrated attraction for new forms of organized crime, and ... complicit in fuelling African wars".⁷⁰ The Belgian authorities were not spared either, criticized for lacking a genuine interest in controlling diamond smuggling and for outsourcing monitoring to the industry-led Diamond High Council (HRD or *Hoge Raad voor Diamant* – the AWDC's predecessor). According to PAC, several judicial inquiries showed that such outsourcing violated "almost any definition of neutrality" and constituted "an invitation to corruption".⁷¹

This pillorying of Belgium did not just come from NGOs. Criticism was also expressed by the UK government as well as the prominent Canadian ambassador to the United Nations and then Chairman of the UN Panel of Experts on Angola, Robert Fowler. In 2000, this panel reported that "the extremely lax controls and regulations governing



Covers of the 1998 Global Witness and 2000 PAC reports

69 Global Witness, *A Rough Trade: The Role of Companies and Governments in the Angolan Conflict* (GW, London, 1998), p. 10.

70 Smillie I., Gberie L. and Hazleton R., *The Heart of the Matter: Sierra Leone, Diamonds & Human Security* (Complete Report), (Partnership Africa Canada, Ottawa, 2000), p. 69.

71 Ibid., p. 34.

the Antwerp market facilitate and perhaps even encourage illegal trading activity”.⁷² It estimated that 4,000 to 5,000 diamond dealers do not even operate within Belgium’s loose regulatory framework as registration is voluntary. Fowler’s report denounced Belgium for not taking any effective measures to monitor the activities of suspicious dealers who appeared to be able to travel and operate without hindrance.

Belgium’s initial reaction was rather defensive. While the authorities created an interdepartmental diamond taskforce⁷³ in 2000 to initiate the exchange of information between law enforcement and other governmental bodies, they simultaneously denounced the reports by the UN Panel of Experts as one-sided, constituting a “deliberate damage campaign” against the Antwerp diamond sector.⁷⁴ Nonetheless, in the years that followed, several issues laid bare by the above reports were addressed and Belgium took a proactive role in the design and implementation of the KPCS. In 2002, an overhaul of the HRD was initiated to bring this industry body, with its considerable monitoring responsibilities, into closer alignment with government policies.

Box 5: The Kimberley Process basics

The Kimberley Process is an international cooperation mechanism formed under the umbrella of the United Nations. It is a tripartite arrangement consisting of 82 participating states (also referred to as KP participants) as well as industry and civil society observers that cooperate in a number of working groups and meet twice a year under a chairmanship that rotates between KP participants. Decisions in the KP are based on consensus amongst the participating states.

The KP is intended to prevent the flow of conflict diamonds onto the global market through the implementation of an import/export certification scheme applicable to rough diamonds. In order to participate in this scheme, states, which are responsible for the scheme’s implementation, are obliged to meet certain minimum requirements regarding rough diamond handling and to put in place appropriate legislation and institutions (see further sections 2.2. and 4.1.).⁷⁵

2.1.2. *Allegations of terrorist and criminal financing and fraud scandals*

In the aftermath of the September 11, 2001 terrorist attacks in the United States, a number of reports on terrorist financing through the trade in diamonds were added to the accusations relating to the trade in conflict diamonds. Alleged linkages between Al Qaeda and diamond smuggling networks operating in Antwerp led to considerable concern in Belgium.⁷⁶ A 2004 Ghent University report commissioned by the Belgian government revealed how the Antwerp diamond sector was vulnerable to and entwined with international criminal organisations.⁷⁷ A widely publicised report by the Financial Action Task Force (FATF) – the world’s anti-money laundering watchdog – in 2013 confirmed the growing awareness that the diamond industry is “tremendously vulnerable” to money laundering and terrorist financing (ML/TF) because of “the high subjectivity in the valuation of diamonds, the ability of diamonds to change their form, the trade-based and global nature of the diamond market, the high value of the product which

72 Final Report of the UN Panel of Experts on Violations of Security Council Sanctions Against Unita (The “Fowler Report”), S/2000/203, 10.03.2000, paras 87-91.

73 This task force still convenes today and includes representatives of the AWDC, the FPSE, Customs, the Federation of the Belgian Financial Sector, the Federal Judicial Police, the Public Prosecutor’s Office, and the Special Tax Inspection of the Finance Ministry.

74 ‘België lanceert offensief tegenbeschadiging Antwerpse diamant’, De Tijd, 25.05.2002, <<https://www.tijd.be/algemeen/algemeen/Belgie-lanceert-offensief-tegenbeschadiging-Antwerpse-diamant/5312184>>.

75 See further: Partnership Africa Canada, A Guide to the Kimberley Process, (PAC, Ottawa, 2013), 32p.

76 Farah D., ‘Washington Post, Al Qaeda cash tied to diamond trade’, Washington Post, 02.11.2001, <<https://www.washingtonpost.com/archive/politics/2001/11/02/al-qaeda-cash-tied-to-diamond-trade/93abd66a-5048-469a-9a87-5d2efb565a62/>>.

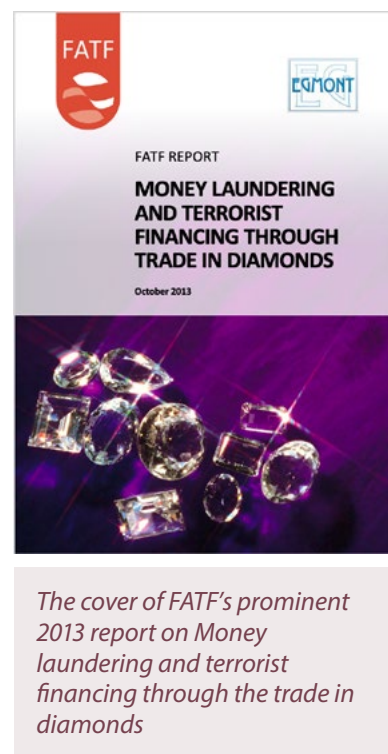
77 Cuyvers L., Vander Beken T., De Ruyver B., Defruytier M. and Hansens J., Kwetsbaarheid voor georganiseerde criminaliteit: Een gevalstudie van de diamantsector (Ghent University, 2004), 487p.

may facilitate large scale ML/TF and the long production chain involving many actors”.⁷⁸

These various alarm bells gradually caused a tightening of regulations concerning ML/TF in Belgium, while the industry initially regarded these developments with unease and reacted rather offensive to any allegations of criminal abuse of the diamond trade. This is exemplified by the HRD’s threats with damage claims against the authors of Ghent University’s report⁷⁹ and the hands-off statements by then HRD Director Peter Meeus stressing that “these so-called conflict diamonds represent only 4% of the global trade”⁸⁰ and that “the real problems lay in the countries of origin. We are only trading”.⁸¹ A prominent diamond industry analyst called Belgium “a case of over-compliance” with the costs of measures introduced by Belgium, such as the prohibition of cash transfers above EUR 15,000 or the obligatory registration of diamond traders, being “out of proportion to the benefits”.⁸²

Yet, scandals continued to plague the Antwerp diamond sector, including major and widely publicised cases such as the Omega Diamonds fraud (see further section 4.2.1.), the Monstrey fraud and the HSBC leaks. Monstrey Worldwide Services, one of the sector’s main transporting firms, was convicted in 2016 for having set up a fraud carousel involving fake invoices and transactions between Antwerp, Amsterdam and Geneva, reportedly involving at least 355 diamantaires in Belgium. The total fraud was estimated at over EUR 800 million between 2000 and 2005. The HSBC leaks in 2015 led Belgian prosecutors to charge the bank’s Swiss unit with fraud, money laundering and criminal conspiracy.⁸³ According to the charges, its clientele not only included internationally wanted criminals and unsavoury associates, but also over 3,000 accounts of Belgian companies of which 916 reportedly belonged to Antwerp diamantaires, some of whom had faced earlier charges of blood diamond smuggling and fraud.⁸⁴ This case, which caused huge controversy within industry, political and judicial spheres,⁸⁵ eventually ended with a settlement of nearly EUR 300 million.⁸⁶

The fact that these and other cases triggered charges against three of the top five Antwerp diamond



78 Financial Action Task Force/Egmont, Money Laundering and Terrorist Financing through Trade in Diamonds (FATF/OECD, Paris, 2013), pp. 52-53.

79 'Als Antwerpse diamantairs topwetenschappers bedreigen', De Morgen, 19.01.2004, <<https://www.demorgen.be/nieuws/als-antwerpse-diamantairs-topwetenschappers-bedreigen>>.

80 While this figure was often used, including by the EU ('Commission adopts proposal to implement the ban on conflict diamonds', European Commission Press Release IP/02/1205, 08.08.2002, <https://ec.europa.eu/commission/presscorner/detail/lv/IP_02_1205>), other sources put this share in the early 2000s at 15% (see for instance: Global Witness, The Truth About Diamonds (GW, London, 2006), p. 2), which seems to be acknowledged by Belgium today ('Belgium leading the fight against conflict diamonds', FPS Foreign Affairs, Foreign Trade and Development, 12.11.2018, <https://diplomatie.belgium.be/en/newsroom/news/2018/belgium_leading_fight_against_conflict_diamonds>).

81 Rabaey M., 'Hoge Raad voor Diamant houdt oorlogen in stand', De Morgen, 14.01.2000, <<https://www.demorgen.be/nieuws/hoge-raad-voor-diamant-houdt-oorlogen-in-stand~b249289b/>>.

82 Even Zohar (2007), pp. 580-582.

83 Chittum R., Fitzgibbon W., Cabra M., Carvajal R. and Bové L., 'Diamond Dealers in Deep Trouble as Bank Documents Shine Light on Secret Ways', International Consortium of Investigative Journalists, 09.02.2015, <<https://www.icij.org/investigations/swiss-leaks/diamond-dealers-deep-trouble-bank-documents-shine-light-secret-ways/>>.

84 Clerix K., 'Doorgelicht: de offshorediamantair', Knack, 26.04.2016, <<https://www.knack.be/nieuws/belgie/doorgelicht-de-offshorediamantair/article-normal-696255.html>>.

85 See for instance: Golan E., 'Controversial Antwerp Diamond Prosecutor Van Calster Dismissed', IDEX, 14.11.2012, <<http://www.idexonline.com/FullArticle?id=37477>>.

86 Bové L., 'HSBC mag Belgische vervolging afkopen met 295 miljoen euro', De Tijd, 03.10.2019, <<https://www.tijd.be/politiek-economie/belgie/algemeen/hsbc-mag-belgische-vervolging-afkopen-met-295-miljoen-euro/10168363.html>>.

companies of the past years (Eurostar Diamond Traders,⁸⁷ Rosy Blue⁸⁸ and Omega Diamonds), and several of the AWDC's Board members as well as Presidents of the Antwerp Bourses,⁸⁹ indicated the magnitude of fraudulent practices and their relationship with the formal trade. While major leaks of corporate data, such as the 2013 Offshore Leaks and the 2015 Panama Papers, continued to reveal unsavoury financial practices among major Antwerp diamond companies,⁹⁰ recent cases confirm how such structures can be exploited for criminal purposes such as money laundering.⁹¹ These include proceedings commenced in early 2021 in Antwerp's Criminal Court against Jacob S., who is charged with aiding Antwerp diamantaires in laundering millions of euros through offshore accounts.⁹² Another striking example that came into the spotlight in 2020 is the Cash Travel case, involving charges against 46 diamantaires for aiding in the laundering of an estimated EUR 8,8 million drug money for South-American drug cartels.⁹³

The world's biggest diamond scandal of the past years also has links to Belgium. It concerns the Punjab National Bank (PNB) scam, India's largest ever fraud case estimated at USD 1.8 billion, which came to light in 2018. The suspected kingpin in this scheme is Indian diamond tycoon Nirav Modi,⁹⁴ who started his career in Antwerp in 1999 with the company Firestone Diamond. This company was later renamed Firestar Diamond and taken over by Nirav Modi's brother Neeshal, who is a Belgian citizen. It was rising to the top in Belgium – from the 23rd position in terms of turnover in 2016 to the 12th in 2017⁹⁵ – when it declared bankruptcy in 2018. Its Director is wanted by the Indian authorities for involvement in the PNB scam.⁹⁶

2.1.3. *Industry changing course*

These challenges appear to have gradually affected the course of Antwerp's diamond industry umbrella organization, which was renamed the AWDC in 2007. The AWDC currently presents itself as a public-private partnership, protecting not just corporate interests but the image of diamonds⁹⁷ against the "opaque and wrongful practices of a few [discrediting] the entire diamond industry".⁹⁸ Particularly since the tenure of current CEO Ari Epstein, which started in 2011, transparency has become the organisation's new motto and Antwerp's ethical benchmark its new frame of reference. This is exemplified in its commitment to expand the 4 Cs with a "5th C" of compliance, confidence and corporate social responsibility.⁹⁹

87 The Belgian judiciary is currently investigating the 2019 bankruptcy of Eurostar Diamond Traders, which was in 2016 still Antwerp's largest diamond company, following suspicions of forgery, disposal of assets and money laundering (Bové L., 'Gerecht onderzoekt faillissement grootste Antwerpse diamantbedrijf', De Tijd, 21.04.2021, <<https://www.tijd.be/politiek-economie/belgie/algemeen/gerecht-onderzoekt-faillissement-grootste-antwerpse-diamantbedrijf/10299722.html>>).

88 Rosy Blue popped up again in the 2020 FinCen Files, with referenced an astonishing 6,265 suspicious activity reports worth USD 4.98 billion pertaining to the company between 2014 and 2016, which mainly concerned huge volumes of unusual intra-company transactions (Sarin R., 'FinCEN Files — Flagged in each offshore tax probe, Rosy Blue is now on US radar', The Indian Express, 26.09.2020, <<https://indianexpress.com/article/india/fincen-files-flagged-in-each-offshore-tax-probe-rosy-blue-is-now-on-us-radar-6615352/>>).

89 This occurred in the context of both the Monstrey case ('Topman diamantkoepel zelf vervolgd', De Tijd, 27.04.2013, <<https://www.tijd.be/politiek-economie/belgie/federaal/topman-diamantkoepel-zelf-vervolgd/9335595.html>>), and HSBC leaks (Di Rosa S. and Sauviller R., 'Gangsterbank HSBC: waar de criminele klant koning is?', 06.08.2019, <<https://www.humo.be/nieuws/gangsterbank-hsbc-waar-de-criminele-klant-koning-is~b0e5f916/>>).

90 See further: Clerix K., 'De offshoregeheimen van de Antwerpse diamantsector', Mondiaal Nieuws, 27.04.2016, <<https://www.mo.be/analyse/de-offshoregeheimen-van-de-antwerpse-diamantsector>>. Offshore leaks again got an AWDC Board member into hot water, leading to his resignation ('Offshore Leaks doet kop rollen in diamant', De Tijd, 29.04.2013, <<https://www.tijd.be/ondernemen/grondstoffen/offshore-leaks-doet-kop-rollen-in-diamant/9332171.html>>).

91 In its 2018 annual report, the Belgian financial intelligence unit reported that investments in diamonds are increasingly used to transfer the proceeds of crime, particularly of drug trafficking, across jurisdictions (Belgian Financial Intelligence Processing Unit, 25th Annual Report 2018 (CFI, Brussels, 2019), p. 12).

92 Bové L., 'Diamantairs staan terecht voor grote witwascarrousel', De Tijd, 21.01.2021, <<https://www.tijd.be/politiek-economie/belgie/algemeen/diamantairs-staan-terecht-voor-grote-witwascarrousel/10278714.html>>.

93 Bové L., 'Drugsgeld witgewassen via Antwerpse diamantairs', De Tijd, 18.01.2020, <<https://www.tijd.be/politiek-economie/belgie/economie/drugsgeld-witgewassen-via-antwerpse-diamantairs/10200139.html>>.

94 'PNB scam: Chronology of Nirav Modi's case', The Times of India, 25.02.2021, <<https://timesofindia.indiatimes.com/business/india-business/pnb-scam-chronology-of-nirav-modis-case/articleshow/81209698.cms>>.

95 IPIS analysis of NBB data.

96 Belgium refused India's request for extradition, stating that it cannot extradite Belgian citizens.

97 AWDC Mission: <<https://www.awdc.be/en/mission>>.

98 AWDC (2019), p. 25.

99 Antwerp World Diamond Council, Sustainability Report 2014 (AWDC, Antwerp, 2014), p. 43-51.

A critical peer evaluation in 2015 by FATF of Belgium's ML/TF measures made it clear that much more was needed from the diamond sector than this change of tone. The report noted that while some sectors in the Belgian economy had made progress, others "are still downplaying their exposure to these risks, particularly diamond dealers and casinos".¹⁰⁰ In the FATF's view, this was especially clear in a 2013 AWDC assessment which framed risks as coming from persons outside the regulated profession, or from professionals violating their own rules, while in fact the FATF considered the existing rules as insufficiently rigorous to effectively control the sector's high risks. The FATF also pointed fingers at the Belgian authorities as it considered the supervision of diamond dealers "extremely limited, notably due to a lack of available resources", resulting in a failure to detect, investigate and prosecute ML offences.¹⁰¹ The FATF moreover highlighted the limited number of court cases related to the diamond industry compared to the size of this market and the risks it poses for ML/TF, which the FATF considered higher than in any other sector in the country.¹⁰²



Showcase of a jewellery store in Antwerp's diamond district (Photo: IPIS, 2020)

FATF's evaluation led to the creation of a dedicated working group to carry out a risk analysis of the sector under the direction of the Federal Public Service Economy (FPSE) and involving Customs, the federal police, the public prosecutor's office, tax inspection, the financial sector, the AWDC and accountants from the diamond sector. In parallel, the AWDC drafted a (non-public) report in 2017 on Money Laundering Practices in the Belgian diamond sector. These deliberations paved the way for a further tightening of existing regulations in Belgium (see section 2.2.). Moreover, the Belgian diamond industry and authorities increasingly started promoting Antwerp as "not only the biggest diamond city but also the purest",¹⁰³ as "the cradle of transparency and compliance in the diamond trade",¹⁰⁴ "as role model for the entire diamond and jewelry industry",¹⁰⁵ and as "ensuring [that] natural resources foster peace and sustainable development".¹⁰⁶

While a follow-up FATF evaluation of the effectiveness of the newly introduced measures was postponed indefinitely in 2020 due to COVID-19,¹⁰⁷ at least one prominent FATF member still appears unconvinced. A 2020 money laundering report by the US Department of State described how "Belgium is emerging as a primary European repository for bulk cash. Multiple crime groups collect bulk cash in Belgium and move it globally via a variety of means, most of which focus on the Antwerp diamond quarter ... The opaque and closed nature of the Antwerp diamond industry complicates money laundering investiga-

¹⁰⁰ Financial Action Task Force, Anti-money laundering and counter-terrorist financing measures: Belgium Mutual Evaluation Report (FATF, Paris, 2015), p. 8.

¹⁰¹ Ibid., p. 6.

¹⁰² Ibid., p. 56.

¹⁰³ Van Campenhout L., Vice-Mayor and Alderman for Diamonds of the City of Antwerp, Closing Remarks at the Kimberley Process Intersessional Meeting, Antwerp, 22.06.2018, <<https://www.kimberleyprocess.com/en/2018-intersessional-closing-remarks-ludo-van-campenhout-vice-mayor-and-alderman-diamonds-city>>.

¹⁰⁴ De Wever B., Mayor of the City of Antwerp, Opening Remarks at the Kimberley Process Intersessional Meeting, Antwerp, 18.06.2018, <https://www.kimberleyprocess.com/en/system/files/documents/bart_de_wever_opening_remarks.pdf>.

¹⁰⁵ AWDC (2019), p. 52.

¹⁰⁶ Belgium - FPS Foreign Affairs, Foreign Trade and Development/Antwerp World Diamond Centre, Diamond Due Diligence - The Belgian Approach, <<https://vimeo.com/showcase/7699943>>.

¹⁰⁷ An assessment of the progress made by Belgium in resolving technical compliance shortcomings identified in the 2015 evaluation was done by FATF in 2018 (Financial Action Task Force, Anti-money laundering and counter-terrorist financing measures: Belgium 3rd Enhanced Follow-up Report & Technical Compliance Re-Rating (FATF, Paris, 2018), 19p).

tions and provides a cover to launder illicit funds through pre-existing, pseudo-legitimate networks.”¹⁰⁸ To understand whether such criticism is still relevant, we will first dissect the regulatory framework in the section below, and then look at its implementation in Chapters 3 and 4.

2.2. The oversight and control system

The legal framework regulating Belgium’s diamond trade consists of legislation governing all diamond transactions and stocks in the country,¹⁰⁹ EU Regulations implementing the KPCS¹¹⁰ and anti-money laundering (AML) laws and decrees¹¹¹.

This legal framework assigns responsibilities to various actors. Central to it is the License Service of the Federal Public Service for Economy (FPSE-LS), which is the Belgian EU Authority for the KPCS as well as the administrator of the diamond sector’s AML responsibilities. Customs, which falls under the Federal Public Service for Finance, also holds responsibility for supervising the diamond trade as part of its general mandate regarding imports and exports. In part, this responsibility is shared with the AWDC, which since 2011 is recognised by Customs as an Authorised Economic Operator (AEO), and assists in import and export formalities that are organised in the AWDC’s Diamond Office (DO).

These actors jointly operate an oversight and control system consisting of five components that are set out below: registration, import and export licensing, record-keeping and stock declarations, industry self-regulation, and anti-money laundering measures.

BOX 6: EU KP Authorities

The EU acts as a single participant in the KPCS with seven KP Authorities supervising a common set of rules set out in Council Regulation 2368/2002. Besides Antwerp, these authorities are based in Prague (Czech Republic), Idar-Oberstein (Germany), Dublin (Ireland), Lisbon (Portugal), Bucharest (Romania) and – since 2021 – Turin (Italy).¹¹² Until 31 December 2020 there was also an EU authority in London, but since Brexit the United Kingdom has become an independent participant in the KP.

Diamond importers and exporters are free to choose any point of entry or departure in the EU’s 27 Member States, but are subject to verification and clearance by one of the EU Authorities. KP rules, and their implementation in the EU, leave considerable flexibility as to how and to what extent the diamond trade is controlled. Therefore, these EU Authorities apply different sets of rules for issues like the registration, inspection of shipments and follow-up on suspicious packages. For instance, only the EU KP Authorities in Germany, Portugal and Belgium conduct physical inspections of all imported and exported shipments.

108 United States Department of State - Bureau of International Narcotics and Law Enforcement Affairs, International Narcotics Control Strategy Report Volume II: Money Laundering (BINLEA, Washington, 2020), pp. 57-58.

109 The Law of 2 August 2002, which is implemented by the Royal Decree of 20 November 2019, contains measures concerning the supervision of the diamond sector. The legal basis for customs supervision is the Law of 11 September 1962 regulating the import, export and the transit of goods in Belgium, and several Ministerial Decrees regulating all categories of diamonds (30 December 1993, 15 September 1995, and 27 April 1997).

110 Council Regulation (EC) No 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds (OJ L 358, 31.12.2002, p.28), and amending Regulations.

111 Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash (No 2017-09-18/06 Belgian Official Journal); with the most recent implementing measures contained in Royal Decree of 1 July 2020 approving the regulations implementing the Act of 18 September 2017 on the prevention of money laundering and terrorist financing and limiting the use of cash for diamond and/or synthetic diamond traders registered pursuant to Article 169(3) of the Programme Law of 2 August 2002 (2020-07-01/06 Belgian Official Journal).

112 EU Service for Foreign Policy Instruments, The Kimberley Process, the fight against ‘conflict diamonds’, <<https://ec.europa.eu/fpi/what-we-do/kimberley-process-fight-against-%E2%80%98conflict-diamonds%E2%80%99-en>>.

2.2.1. Registration

Any firm active in the Belgian diamond trade, including dealers, buyers, sellers, exporters, cutters and polishers, must apply for registration with the FPSE-LS. A November 2019 Royal Decree tightened registration requirements in response to the critical 2015 FATF review. In addition to standard identification, businesses that want to keep their registration or obtain access to the diamond trade must now demonstrate professional competence,¹¹³ participation in a recognized AML training program by at least one company director and a clean criminal record for the company and its senior officers. Furthermore, companies must declare their shareholder structure and disclose ultimate ownership. Registration is only granted if all documents are in order and has to be renewed annually.

The FPSE-LS keeps a daily updated database of all registered diamond companies. According to its data, 322 businesses have seen their registration revoked and in one case suspended between January 2018 and June 2020.¹¹⁴ There are various causes for revoking or suspending a license, including cessation of activities, bankruptcy, mergers, takeovers, deletion of VAT number, non-compliance with the annual obligations under the 2019 Royal Decree, negative evaluation by the FPSE's Economic Inspectorate (see below), or a criminal conviction.

2.2.2. Import and export licensing

All diamond imports from and exports to countries outside the EU have to be licensed. The formalities around this process involve the FPSE-LS, Customs and the AWDC, and are organised in the latter's DO, which is the single entry and exit point for all diamond shipments in Belgium.

In the DO, sworn-in diamond experts physically inspect every incoming and outgoing diamond shipment. They verify the seal, weight, declared value, stated origin and qualification (Harmonised Systems - HS - code), as well as the accompanying documentation. This includes invoices, import declaration, license, as well as KP Certificates (KPC) in the case of rough diamond shipments. Each shipment is assigned to one of the approximately 15 diamond experts on the basis of a random rotational system. This system was introduced following a major fraud case in the late 1990s, when two diamantaires managed to get an estimated EUR 100 million worth of shipments containing gravel instead of diamonds through the DO by bribing an expert. The ensuing police investigation revealed that several important traders managed to get up to 80% of their shipments verified by the same experts, whom they allegedly pampered with gifts and donations.¹¹⁵

The fact that these sworn experts are on the AWDC's payroll has regularly attracted criticism on the basis that it gives rise to conflicts of interests, as the experts are exercising control in relation to the very traders that the AWDC represents, some of them having a seat on the body's board. Yet, according to both the AWDC and the FPSE, the independence of the experts is guaranteed by the fact that they are appointed by the Minister of Economy – after passing a practical and theoretical test – answer only to the FPSE, and act under the supervision of the latter's officers who have a permanent presence in the expertise room.¹¹⁶

The process in the DO is as follows: the AWDC is responsible for declaring all imports and exports. For incoming shipments, which typically arrive from Brussels airport and are brought to the DO by licensed high-value transport companies, the AWDC first undertakes a superficial check. This includes verifying that all parcels are sealed and have the necessary paperwork, which according to the AWDC rarely causes issues.¹¹⁷ Subsequently, the AWDC declares shipments to Customs, which has two to three people in

¹¹³ Professional competences can be demonstrated by a certificate of a diamond training course, by membership of one of the 32 bourses affiliated to the World Federation of Diamond Bourses (WFDB), or by an overview of previous professional activities and experience.

¹¹⁴ IPIS, Interview with FPSE-LS official, 28.10.2020.

¹¹⁵ Sauviller and Di Rosa (2014), pp. 121-124.

¹¹⁶ Guided visit of IPIS to the Diamond Office, 15.09.2020.

¹¹⁷ Ibid.

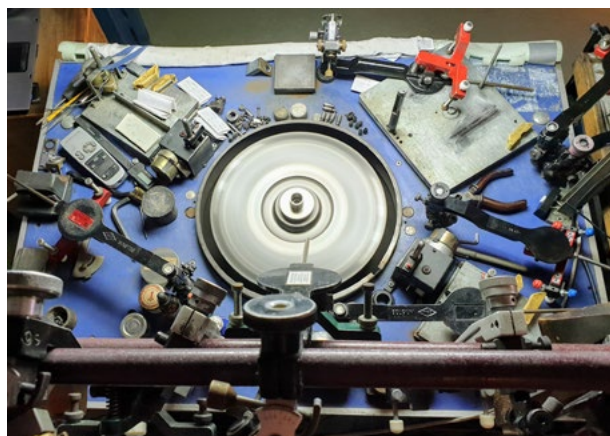
the DO, for clearance. Customs performs spot-checks on around 2% of all imports based on their own risk analysis.

Upon customs clearance, shipments pass to the expertise room where sworn experts open all parcels under FPSE supervision. If experts notice irregularities or deviations, they submit these in writing to the FPSE officers present. If these deviations have relevance to customs clearance, the FPSE passes the reports to Customs officers, who in turn take appropriate action in accordance with applicable regulations.¹¹⁸ As part of their mandate, the FPSE and Customs can ask for a reinspection, request rectifications to the import declaration, open an investigation and/or notify the Belgian Financial Intelligence Processing Unit (*Cel voor Financiële Informatieverwerking* or CFI). The law provides sanctions (fines and confiscations) for imports or exports without a licence, and for providing no or false information and documents.

For exports, this procedure takes the reverse order, starting with the inspection by diamond experts who are in this case also responsible for correctly sealing the parcels. Rough diamond shipments subsequently go to an officer of the FPSE-LS who issues the KP Certificates. Finally, all outgoing shipments pass through Customs for clearance.

2.2.3. Record keeping and annual stock declarations

Registered diamond dealers in Belgium have to keep verifiable records of all purchase and sales data, invoices, names of clients, KPCs and stocks for a period of five years. On an annual basis, they have to submit an independently audited declaration of stocks and activities to the FPSE, under penalty of suspension of their registration. This declaration should include the value, weight and classification of diamonds in stock or consignment, all imports, exports, acquisitions and sales, and the volume of rough diamonds used for cutting and polishing.



*Diamond polisher's atelier in Antwerp
(Photo: IPIS, 2020)*

The oversight exercised by the FPSE is performed according to a risk analysis, which combines information such as that acquired through DO controls or from the interdepartmental diamond taskforce, on certain high-risk countries or business partners, and indicators of money-laundering.¹¹⁹ On this basis, the FPSE-LS refers a selection of companies to the FPSE's Economic Inspectorate (FPSE-EI), which checks whether the flow of documents (KPCs, invoices, stock declaration) matches the flow of diamonds.

On the basis of this risk analysis FPSE-LS selects companies that will undergo a spot-check. These are announced company visits by the FPSE-LS and the FPSE-EI in which the accompanying paperwork of specific or random imports and exports are checked. On average, around 30 companies per year reportedly receive such a visit.¹²⁰

In the case of irregularities, the FPSE can take different measures depending on their nature and gravity. Minor infringements are subject to an administrative penalty. In the case of suspicious transactions, the FPSE notifies the CFI, which can investigate potential money laundering links or illicit financial flows. Finally, for more serious cases of non-compliance, for instance suspected forgery with documents or stocks, the FPSE submits an official report to the public prosecutor's office.

118 Royal Decree of 20 November 2019, Article 8(2).

119 IPIS, Interview with Belgian official involved in monitoring the diamond sector, 20.10.2020.

120 Ibid.

2.2.4. Industry self-regulation

The World Diamond Council (WDC), which represents the diamond industry as an official observer to the KP, established a System of Warranties (SoW) in 2002. This voluntary system of industry self-regulation, which was updated in 2018,¹²¹ seeks to expand the effectiveness of the KPCS beyond the import and export of rough diamonds. The original intent of the SoW was to create a paper trail attesting to the fact that stones were derived from a shipment which has received a KP certificate. In practice this means that buyers and sellers of rough diamonds, polished diamonds and jewellery containing diamonds are to confirm, by way of an explicit statement on all invoices, that the diamonds they are selling are purchased from legitimate sources, that they are conflict-free and – since 2018 – that the company adheres to WDC’s SoW Guidelines. In addition to a voluntary commitment to a series of responsible sourcing principles, these Guidelines direct companies to keep and annually audit records of all warranty invoices received and issued.

EU Council Regulation 2368/2002 endorses this principle of industry self-regulation and recognises the four Antwerp diamond bourses, as the only bourses in the EU, as compliant with the EU’s rules and regulations implementing the KPCS.¹²² This recognition is based on a binding “Code of Conduct” of the Belgian Federation of Diamond Bourses (BFDB), and the by-laws of its four Antwerp member organisations. These require verification of SoW implementation by independent auditors and set out disciplinary measures, in particular the obligation for bourses to expel any member found to have seriously violated the principles of the EU Regulation. While the role of the four Antwerp bourses in facilitating the diamond trade has been declining due to the digitisation and globalisation of the business, their responsibility in the Belgian regulatory framework continues to ensure their relevance.

Due to this EU recognition, accredited members of the Antwerp diamond bourses can make use of a fast-track procedure for receiving KP export certificates on the basis of a simple signed declaration to the FPSE that the diamonds they are exporting were lawfully imported. Non-member exporters must document this for each export with conclusive evidence in the form of an export declaration and/or invoice. This system is one of Belgium’s prides as it is the only country in the world where diamond industry self-regulation is a full-fledged part of the government’s regulatory framework, with a clear incentive in the form of this fast-track procedure and supervision by the FPSE-LS.

The latter’s mandate to monitor industry self-regulation is provided for by a 2004 Protocol signed by the Belgian Minister of Economy and the Presidents of the four Antwerp diamond bourses. By way of the above-mentioned spot-checks, the FPSE also checks the warranty statements on invoices, verifies the presence of KP certificates for rough diamond imports and exports and compares annual stock declarations with its own KP database. Where deficiencies are detected, traders lose access to the fast-track procedure. In 2019, only 11 out of nearly 750 companies trading in rough diamonds (either as their sole activity or in combination with other aspects of the diamond business such as trade in polished diamonds or manufacturing – see section 1.2.) did not provide the necessary attestation to fall under the fast-track procedure.¹²³

2.2.5. Anti-money laundering measures

In order to prevent the use of the diamond trade for money laundering and terrorist financing purposes, diamond traders are subjected to a series of obligations that were most recently updated in July 2020.¹²⁴ These include identifying and knowing clients and their ultimate beneficiaries; keeping all relevant identification and transaction documents; showing constant vigilance regarding business relations and transactions, in particular concerning atypical transactions that could be susceptible to money laundering or terrorist financing; educating personnel and designating a person responsible for supervision

121 World Diamond Council, System of Warranties Guidelines (WDC, New York, 2018), 12p.

122 Annex V to Council Regulation (EC) 2368/2002.

123 IPIS, Interview with Belgian diamond industry member, 16.02.2021.

124 Royal Decree of 1 July 2020.

and application of AML measures; keeping cash payments below EUR 3,000; and submitting an annual report on the application of AML to the FPSE.

Furthermore, Belgian diamond companies are obliged to work in an active and efficient manner with the CFI. They should report any suspicious transaction, with the AWDC acting as point of contact between the diamantaires and Belgium's financial intelligence unit. Such a suspicious transaction report (STR) gives the CFI an investigative mandate to collect financial intelligence. If the CFI finds sufficient indications of money laundering or terrorist financing, it passes the file to the public prosecutor's office, which decides whether to pursue the case further.

Since 2007, the AWDC has an AML & Compliance Helpdesk offering support, information and trainings on obligations and best practices for diamond companies regarding compliance with these obligations. Belgian authorities monitor compliance with these measures mainly through the obligatory annual AML reports of diamond companies, which are collected by the FPSE-LS and selected for inspection by the FPSE-EI as part of their risk-based administrative controls, which were outlined above.

3. THE BELGIAN CONTROLS AT WORK

The obligations that the Belgian diamond monitoring and oversight system imposes on the diamond trade stand out globally. Only a few countries implement some of the key individual measures of Belgium's regulatory framework, such as the obligatory registration requirements for diamond dealers, the inspection of all incoming and outgoing shipments, and the government controls of industry self-regulation, while the combined strength of the control system is unequalled in the rest of the world.

In the past twenty years, Belgian controls have detected several alleged conflict diamond smugglers. Without going into the details of individual cases, we analyse in this chapter what lessons can be drawn from them regarding the nature of the problem, the techniques used by criminals and the challenges involved in holding them to account. Given that little information about the status, nature and outcome of criminal proceedings is publicly available in Belgium, this analysis is predominantly based on what appeared in the press or in UN and NGO reports.

When the KPCS entered into force in 2003, Belgium was still the unrivalled global diamond hub. It is therefore not surprising that it became one of the main testing grounds for its enforcement. More striking is that, twenty years later, Belgium is purportedly still the only country where conflict diamond smuggling networks and individuals involved therein have been brought before the courts. Arguably, this is explained more by stricter oversight than by a higher level of infringements compared to other KP members, as it is hardly plausible that court proceedings would not have been justified anywhere else.

3.1. Early cases

The reports about Antwerp's role as the world's conflict diamond smuggling hub at the turn of the century not only involved obscure traders, but also prominent diamantaires suspected of fuelling civil wars by knowingly dealing in conflict diamonds.¹²⁵ These allegations not only increased pressure on government and industry, they also set the law enforcement and judicial machinery in motion.

3.1.1. The world's first conflict diamond trial

The world's first ever trial against traders in so-called 'blood diamonds' was held before Antwerp's Criminal Court in 2004. This was the first in a series of investigations involving the notorious Belgian-Lebanese Nassour and Ahmad families.¹²⁶ The Court identified Aziz Nassour, who had already fled to Beirut, as the leader of a criminal organisation smuggling conflict diamonds from Sierra Leone and the DRC via Liberia and Lebanon to Antwerp. The Court found that the organisation had in this manner contributed to the prolongation of a bloody conflict and to the violation of human rights.¹²⁷

Nassour was convicted *in absentia* as leader of a criminal organisation buying illegal diamonds from rebels in DRC and Sierra Leone. He was sentenced to six years in prison and a fine of EUR 25,000. Nassour's cousin, Samih Ossaily, was convicted as the network's pivotal figure in Monrovia where he bought conflict diamonds from Sierra Leonean rebels in cooperation with the Liberian dictator Charles Taylor. He did not escape his punishment and was sentenced to a prison term of three years. Nassour's brother-in-law, Ali Ahmad, was given a suspended prison sentence of 18 months for trading Nassour's diamonds in Antwerp through their Belgian company Asa Diam. The company was sentenced to pay a customs fine of

125 This included allegations against diamantaires like the brothers Zollman and their Antwerp-based company Glasol ('UK Identifies UNITA Sanction Violators... Zollmann response', Diamonds.net, 29.02.2000, <<https://www.diamonds.net/News/NewsItem.aspx?ArticleID=3687>>) and Charles Ziegler, who owned Afridiam with the Dutch Jacobus Witteveen (Letter from the chairman of the UN Security Council committee established pursuant to Resolution 864 (1993) concerning the situation in Angola addressed to the president of the Security Council, S/2000/203, 10.03.2000, para. 91).

126 Another of these cases concerned Hassan Ahmad who was suspected of smuggling EUR 20 million worth of illegal diamonds between 2003 and 2006 from Brazil to Belgium by means of fake KP certificates. The last update about this case was in 2011 when it was reportedly awaiting trial pending a ruling by Brazilian courts ('Verkoper 'spookdiamant' nog niet berecht', De Standaard, 29.04.2011, <<https://www.standaard.be/cnt/8439g0ol>>).

127 'Eerste veroordeling voor smokkel bloeddiamant', De Standaard, 07.12.2004, <<https://www.standaard.be/cnt/g5maqe1r>>.

EUR 60.8 million for failing to declare diamonds. The gang's couriers received jail sentences of between one year and 30 months. There were also charges of arms trafficking, money laundering and financial support to Al Qaeda, but none of these were considered substantiated by the Court.

This first case laid bare some important challenges for law enforcement in the fight against conflict diamonds, which will be illustrated here and further elaborated in Chapter 4. Firstly, the smuggling of conflict diamonds is difficult to prove before the courts. This is due partly to complex corporate and financial structures used by some networks. Further, limitations in the ability to trace stones from source to market (see Box 7 below), render it hard, if not impossible, to evidence that diamonds being traded are in fact conflict diamonds and thus violate the UN-sanctioned embargoes. This was also the conclusion of the Antwerp Court of Appeal in 2006. It overturned the lower court's conviction on charges relating to the conflict and human rights violations, only upholding the more straightforward charges of fraud against the fugitive Nassour as head of the organisation, for which it sentenced him to eight years imprisonment.¹²⁸

Related charges that could not be corroborated before the Criminal Court were those against the Belgian-Lebanese trading company Soafrimex of Kassim Tajideen. This company had received various financial transactions from the incriminated diamond companies and was suspected of facilitating diamond smuggling, money laundering and terrorist financing. Yet, six years after the investigation started, Tajideen and his company were acquitted on all charges related to diamond smuggling due to lack of proof, and were only convicted for fiscal fraud. Tajideen was later designated as a terrorist financier in the US and convicted for money laundering involving the evasion of US sanctions.¹²⁹

A second challenge exposed by this first conflict diamond case arises from Antwerp being only one link in the chain, with both the diamonds and the associated financial flows spanning numerous jurisdictions. This evidently complicates the work of law enforcement in dismantling such networks, all the more since the latter tend to exploit the weakest links in the chain, such as fragile states with weak government capacities, or trading hubs with limited transparency. Indeed, members of the Ahmad and Nassour clans, despite several convictions and designations as terrorist financiers,¹³⁰ continue to feature in reports about mineral smuggling across conflict-affected African and South American countries, most recently in the diamond-rich Central African Republic.¹³¹

3.1.2. More charges, similar challenges

The conviction of Nassour got the most international attention, but it was certainly not the only case in Belgium involving conflict diamond charges dating back to the turbulent period leading to the launch of the KPCS.¹³² Belgian courts issued similar convictions in cases against Limo Diamonds, Peri Diamonds and Shallop Diamonds. All of them involved allegations of smuggling conflict diamonds from countries that fell under a UN embargo due to diamond-funded civil wars: Angola in the cases of Limo and Shallop,

128 Sauviller and Di Rosa (2014).

129 United States Department of Justice, Office of Public Affairs, Lebanese Businessman Tied by Treasury Department to Hezbollah is Sentenced to Prison for Money Laundering Scheme Involving the Evasion of U.S. Sanctions, 08.08.2019, <<https://www.justice.gov/opa/pr/lebanese-businessman-tied-treasury-department-hezbollah-sentenced-prison-money-laundering>>.

130 United States Department of the Treasury, Press Release: Treasury Designates Prominent Lebanon and DRC-Based Hizballah Money Launderers, 13.12.2019, <<https://home.treasury.gov/news/press-releases/sm856>>; Tajideen was released in 2020 by the Trump administration as part of a deal with Iran (Prothero M., 'The Trump administration gave Iran and Hezbollah a high-value terrorist prisoner but seems to have got next to nothing in return', Insider, 15.07.2020, <<https://www.businessinsider.com/kassim-tajideen-released-trump-deal-hezbollah-and-iran-2020-7?r=US&IR=>>>).

131 Dukhan N., 'State of Prey: Proxies, Predators, and Profiteers in the Central African Republic', The Sentry Briefing, October 2020, <<https://cdn.thesentry.org/wp-content/uploads/2020/10/StateofPrey-TheSentry-Oct2020.pdf>>, pp. 5-6.

132 A potentially interesting case was cancelled at the last moment as the defendant, Michel Desaeleer, died in a Belgian prison shortly before his hearing. This would have been the first trial ever of a Belgian citizen on Belgian soil for charges of war crimes. Desaeleer was accused of profiting from a conflict situation and enslaving workers on diamonds mines that he controlled in Sierra Leone in a deal with the rebels of the Revolutionary United Front. The diamonds were smuggled abroad via Liberia and mainly sold in Antwerp (Reisman T., 'Death of a Middleman Thwarts Blood Diamonds Case', International Justice Monitor, 04.10.2016, <<https://www.ijmonitor.org/2016/10/death-of-a-middleman-thwarts-blood-diamonds-case/>>).

and Côte d'Ivoire in the case of Peri. In all three cases the Court of Appeal came to a different conclusion than the Criminal Court, revealing similar challenges in substantiating such charges. The central thread was that mainly evidence directly linking individuals to the purchase of conflict diamonds in an embargoed country was upheld in the final judgement. Charges against companies involved or more indirect practices of companies mixing conflict diamonds into the legal trade proved much harder to substantiate.

In the case of Limo Diamonds, a chain of evidence, described in detail in a 2002 UN report,¹³³ linked the company manager to the purchase of millions of dollars' worth of embargoed diamonds from the single largest illicit diamond dealer in Luanda, Angola. There was also evidence that the manager had bribed Zambian government officials to forge trade documents and falsely declare that the high value diamonds being traded originated from Zambia,¹³⁴ a country with a tiny production of mainly industrial diamonds. As a result, the Antwerp Court of Appeal in 2009 upheld the conviction of Limo Diamonds' manager for importing millions of euros worth of diamonds from Angola, in defiance of a UN embargo. It sentenced him to four years imprisonment and a professional ban of ten years. The company itself, which at first instance was sentenced to a fine of EUR 25,000, was acquitted in the appeal.

The evidence against Shallop Diamonds was based on financial transactions to Angola, reported by Interpol Luanda in 2001, without the company officially sourcing anything from the embargoed country.¹³⁵ The investigation also revealed forged trade documents declaring that the diamonds associated with these financial transactions had come from Guinea, Côte d'Ivoire and South Africa. The Court of Appeal in 2010 upheld the conviction of three members of the Shallop family for illegal diamond trade, but did not find there was sufficient evidence that Shallop Diamonds, nor the family's other business Lion's Diamonds, had benefited from this illegal trade, and therefore overturned the lower court's conviction, acquitting both.¹³⁶

Peri Diamonds was one of the top 100 Belgian diamond companies in terms of turnover in the early 2000s. The news of its involvement in a multi-million dollar conflict diamond smuggling scheme in 2006 – publicised simultaneously with the candidacy of one of its managers to join the HRD's board¹³⁷ – caused considerable sensation in Antwerp's diamond scene. The company and its managers were accused of continuing to trade over USD 19 million worth of diamonds from Côte d'Ivoire after the imposition of a UN embargo on diamond exports from the country in January 2003.¹³⁸ In 2011, the Court of Appeal upheld the conviction of the company's two managers as members of a criminal network smuggling diamonds from Côte d'Ivoire. In this case, the company's conviction was also upheld and it was sentenced to a fine of EUR 27,500. This was arguably because of the role of the corporate structure in the smuggling scheme, which involved a purchasing entity in Côte d'Ivoire called Sogenem, and a similar structure registered in neighbouring Ghana under the name of Peri Diamonds. However, allegations – elaborated in a 2009 UN report¹³⁹ – that Peri Diamonds covertly mixed illegal Ivorian stones worth USD 19 million with legal production from Ghana in shipments to Antwerp, were not proved as the exact amounts traded and laundered could not be determined.¹⁴⁰

133 Letter dated 18 April 2002 from the chairman of the UN Security Council committee established pursuant to Resolution 864 (1993) concerning the situation in Angola addressed to the president of the Security Council, S/2002/486, 26.04.2002, paras 136-155.

134 'Zwaardere straf in beroep voor illegale diamanthandel', De Morgen, 16.12.2009, <<https://www.demorgen.be/nieuws/zwaardere-straf-in-beroep-voor-illegale-diamanthandel~b6bac97f/>>.

135 'Zwaardere straffen in beroep voor illegale diamanthandel', De Morgen, 17.02.2010, <<https://www.demorgen.be/nieuws/zwaardere-straffen-in-beroep-voor-illegale-diamanthandel~bc0edaa4/>>.

136 Lion's Diamonds is currently proceeding against the Belgian government on claims of tampering with the confiscated diamonds that were returned to the company after its acquittal (Bové L., 'Rechtszaak tegen Justitie over geknoei met diamanten', De Tijd, 28.01.2021, <<https://www.tijd.be/politiek-economie/belgie/algemeen/rechtszaak-tegen-justitie-over-geknoui-met-diamanten/10280329.html>>).

137 'Antwerp to elect new HRD directors on May 3-4', Diamond World, 02.05.2006, <<https://www.diamondworld.net/contentview.aspx?item=393>>.

138 While this coincides with the entry into force of the KPCS, Côte d'Ivoire still fell under UN Security Council sanctions and not a KP embargo.

139 Letter dated 7 October 2009 from the Chairman of the Security Council Committee established pursuant to resolution 1572 (2004) concerning Côte d'Ivoire addressed to the President of the Security Council, S/2009/521, 09.10.2009, paras 292-306.

140 'Peri Diamonds zwaardere bestraft voor invoer bloeddiamanten', De Morgen, 08.04.2011, <<https://www.demorgen.be/nieuws/peri-diamonds-zwaardere-bestaft-voor-invoer-bloeddiamanten~b011aa12/>>.

3.2. Conflict diamond smuggling 2.0

With these early cases indicating that law enforcement would require evidence of the direct involvement of a company or a person in the purchase of conflict diamonds in an embargoed country, those involved gradually adapted their methods. This led them to fragment the smuggling chain, further complicating the detection and prosecution of conflict diamond smuggling. Remarkably, the launch of the KP rough diamond certification scheme in 2003 did not make this fragmentation harder. On the contrary, it introduced a system of mixed origin certificates to be used for parcels combining diamonds originating from more than one country, without the need to specify which countries (see further section 4.1.4.). Those wanting to trade conflict diamonds in Antwerp could drastically reduce the risk of detection by building in a stopover in another trading hub with less stringent controls. There, the stones could be mixed, or were pretended to be mixed, with diamonds from another country, which is as such a legitimate practice in diamond trading where stones are sorted on the basis of the 4 C's rather than origin. Once such diamonds arrived in Antwerp it would be impossible to trace them back to their country of mining origin.

3.2.1. *The massive Omega Diamonds case*

With a little luck, Belgian law enforcement nonetheless managed to detect such mixed origin fraud in the massive Omega Diamonds case. The luck came in the form of a disgruntled former employee, David Renous, who came forth as a whistle-blower, first to the US Federal Bureau of Investigations (FBI) and later to the Belgian judiciary.

Renous reportedly exposed an immense scam by this large company. Indeed, Omega Diamonds was one of Belgium's top three diamond companies in terms of turnover, representing over 10% of the country's rough diamond trade, when the Belgian judiciary opened a fraud investigation in 2009.¹⁴¹ Both the prominence of the company and the scope and the nature of the criminal charges, made this case striking. The prosecution estimated the fraud to involve EUR 2.2 billion over a period that ran from 2001 to 2008. The alleged scheme concerned the smuggling of conflict diamonds from Angola and the DRC through entities in Geneva and Dubai, where the origin of stones was masked through repackaging and re-labelling as KP-certified mixed origin exports to Antwerp. This fragmented trade scheme was reported as having simultaneously served to artificially increase the value of diamonds and thereby hide profits from the Belgian tax authorities.¹⁴² Making the case even graver, were reports of this system being used to launder money from illicit arms transfers to Angola, in defiance of UN sanctions, and alleged linkages to corruption at Angola's highest echelons of government.¹⁴³

However, it never came to a court ruling as Omega Diamonds settled the case in 2013, clearing the company of all charges without an admission of guilt, in a plea deal that involved a payment of EUR 150 million to the Belgian tax authorities and another EUR 10 million to the public prosecutor's office. Even though the deal with Omega Diamonds was announced as the largest ever settlement in Belgium, it constituted only 7% of the estimated fraud value and has been called "a small band-aid on a very large wound".¹⁴⁴ As all charges against the company and its directors were dropped, it also meant that the ongoing evidence gathering was stopped. For a while it looked like this would not be the end of it, as Customs started a separate case in 2013 and claimed the spectacular sum of EUR 4.6 billion for infringements of customs legislation.¹⁴⁵ However, following protracted proceedings, Customs eventually also came to a settlement with Omega Diamonds in 2019, for a still undisclosed amount, as the statutory

141 IPIS analysis of NBB data.

142 'Revealed: Omega Diamond's Fraudulent Settlement with Belgian Government', Open Source Investigations, 06.04.2017, <<https://www.opensourceinvestigations.com/corruption/revealed-omega-diamonds-fraudulent-settlement-belgian-government/>>.

143 Sharife K. and Grobler J., 'Kimberley's Illicit Process', World Policy, 2013/2014 (Winter Issue), <<http://worldpolicy.org/kimberleys-illicit-process/>>.

144 Rabaey M., 'Fiscaal afkoopakkoord met Omega Diamonds gedrenkt in Angolees bloed', De Morgen, 11.05.2013, <<https://www.demorgen.be/nieuws/fiscaal-afkoopakkoord-met-omega-diamonds-gedrenkt-in-angolees-bloed~bc39314c/>>.

145 'Belgian customs take second swipe against Omega Diamonds', Africa Intelligence, 15.05.2018, <<https://www.africaintelligence.com/mining-sector/2018/05/15/belgian-customs-take-second-swipe-against-omega-diamonds.108310302-art>>.

limitation period lapsed and two defendants had meanwhile passed away.¹⁴⁶

3.2.2. More allegations against the notorious Belgian-Lebanese smuggling network

The Omega Diamond case bears some similarities to new allegations against the Belgian-Lebanese Ahmad family, who – after a first conviction in 2004 – again came in the crosshairs of Belgian law enforcement. An investigation completed in 2012 by the Antwerp judiciary uncovered evidence of what appeared to be a massive diamond smuggling network using stopovers between African countries and Antwerp in hubs like Beirut, Dubai and Geneva to hide the illicit origin of stones by manipulating the mixed KP certificate scheme. The Antwerp judiciary estimated that the network introduced, via three Antwerp diamond companies owned by Nazem Ahmad, EUR 1.3 billion worth of illicit diamonds on the Belgian market between 2003 and 2009, and reportedly suspected that part of the profits was used to finance Hezbollah.¹⁴⁷

Both the Omega Diamonds case and the Ahmad investigation point to a growing complexity of corporate and financial smuggling structures and an intertwining of KP fraud with various kinds of financial irregularities. In addition to hiding the smuggling itself, the complexity of these structures may be used to evade taxes and to launder the proceeds of crime, or to finance terrorism. In the most recent Ahmad smuggling case, Belgian investigators detected a complex tangle of what was described as fraudulent books, fake invoices and EUR 660 million worth of suspicious transactions from Antwerp to 175 different bank accounts in Lebanon. With reports of inexplicable increases in the value of certain shipments of up to 2,500 %, the investigation also offered insight into tax evasion techniques, whereby the value of shipments is artificially raised to decrease declared profits.¹⁴⁸

The question arises whether such complex cases, involving intricate relations between numerous companies in various – often not particularly cooperative – jurisdictions are manageable for the Belgian – or any national – judicial system. While the Belgian judiciary could in 2012 only seize a few million Euros worth of goods and property, Nazem Ahmad – who is meanwhile under US sanctions for financing terrorism – is reported to have invested his wealth in real estate as well as an art gallery in Beirut.¹⁴⁹ Since 2012 there has been no public update on this case, and the public prosecutor's office did not reply to IPIS' request for more information.

3.2.3. Detection of conflict diamonds from the Central African Republic

In May 2014, a number of diamond parcels, worth at least EUR 2 million, destined for the Antwerp company Kardiam were seized in the DO. The seizure was based on suspicions that the parcels contained conflict diamonds from the Central African Republic, which had been under a KP embargo since 2013. The KP Working Group on Diamond Experts conducted a comparison of digital images of the shipments with CAR's diamond footprint, which is a typology based on distinct physical characteristics (namely size and quality frequency distribution and morphology) of rough diamonds mined at a specific geographic location. On the basis of this comparison, the KP Working Group concluded that it was highly probable that the seized diamonds originated from CAR.¹⁵⁰

146 'Strafvordering tegen Omega Diamonds vervalt na regeling met douane', *Gazet Van Antwerpen*, 26.02.2020, <https://www.gva.be/cnt/dmf20200226_04865887>.

147 Bové L., 'Miljardenfraude in diamantsector', *De Tijd*, 17.11.2012, <<https://www.tijd.be/politiek-economie/belgie/federaal/miljardenfraude-in-diamantsector/9269321.html>>.

148 Ibid.

149 United States Department of the Treasury (2019)..

150 FPS Economy, Press Release: FPS Economy discovers shipment of potential conflict diamonds from the Central African Republic, Brussels, 06.06.2014.



Diamond mining in Abba in the Central African Republic (Photo: IPIS, 2020)

A few months later, a report by the UN panel of experts on CAR provided more details of the case.¹⁵¹ Reportedly, it concerned two KP-certified mixed origin parcels seized in May and a third one seized June 2014, comprising 6,653 carats in total. These had been exported from Dubai to Antwerp by two UAE companies. The UAE authorities traced back these three parcels to 18 imported shipments from the DRC (8), Lebanon (6), the EU (2), South-Africa (1) and Mauritius (1). The shipments from the DRC to the UAE raised particular suspicion. DRC authorities pointed out to the UN panel that CAR diamonds could have illegally entered its formal supply chain, but that it was also possible that it did so in the UAE. According to the assessment by the KP working group, some of the rough diamonds in the three parcels resembled the footprints of Nola (western CAR) and Sam-Ouandja and Bria (eastern CAR). The UN panel found evidence that Kardiam's parent company, Badica, the second largest Central African diamond trader, was at that time buying rough diamonds in Sam-Ouandja and Bria and transporting these by air to Bangui. Sam-Ouandja and Bria were known to be under the control of former Séléka rebels, who are considered responsible for plunging the CAR into a devastating civil war and causing the deaths of thousands of civilians. According to the UN panel, Badica was providing through aircraft taxes and security payments¹⁵² "sustainable financial support for the former Séléka".¹⁵³ On this basis, the UN Sanctions Committee decided to place both Badica and Kardiam on its sanctions list in August 2015.

In Belgium, the FPS Economy immediately revoked the license of Kardiam and a criminal investigation was opened. The latter is reportedly concluded, but at the time of writing the case is still awaiting trial.¹⁵⁴ In the following Chapter we will come back to the Kardiam case to illustrate some of the challenges for the Belgian control system in detecting the import of conflict diamonds.

¹⁵¹ Letter dated 28 October 2014 from the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013) addressed to the President of the Security Council, S/2014/762, 29.10.2014, paras 115-127.

¹⁵² Letter dated 26 June 2014 from the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013) addressed to the President of the Security Council, S/2014/452, 01.07.2014, para. 66.

¹⁵³ Letter dated 28 October 2014 from the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013) addressed to the President of the Security Council, S/2014/762, 29.10.2014, para 127.

¹⁵⁴ IPIS, interview Belgian law enforcement officer, 08.12.2020.

4. HOLES IN THE NET

Since the seizing of the Kardiam shipments in 2014 there have been no new revelations related to the circulation of conflict diamonds in Belgium, nor have there been any new convictions. Two nuances should, however, be made here. Firstly, with the growing complexity of criminal methods, investigations and proceedings are increasingly drawn out. For instance, the proceedings against Nazem Ahmad and Kardiam, initiated in 2012 and 2014 respectively, appear both still to be uncompleted. Secondly, the judiciary in Belgium offers little transparency as to the nature and status of ongoing proceedings. Only the information that the judiciary decides to disclose or that journalists and researchers are able to obtain becomes public knowledge.

That there is more than just what is publicly available is illustrated by reports that Customs identified 113 diamond-related infringements in 2018, of which 19 were cases of smuggling and 47 of incorrect origin declaration.¹⁵⁵ Furthermore, two rough diamond shipments were reportedly detained in the EU in 2019, with one new judicial proceeding launched and various previously initiated proceedings ongoing for issues related to importing diamonds without, or with a fake, KP Certificate or not in a tamper resistant container.¹⁵⁶ Neither the FPSE nor the public prosecutor's office could give any information about the specifics of these proceedings. While these might not be major criminal cases, such offences may be part of or point to a bigger problem. For instance, a false KP certificate from Cameroon accompanying a shipment of 225 carats worth nearly USD 900,000 was detected in the DO in 2017. An industry insider suspected that this may have been a test by a Cameroonian fraudster dealing in smuggled CAR conflict diamonds to assess the rigidity of Antwerp's controls.¹⁵⁷

The fact remains that no major cases of conflict diamonds making their way to Belgium have been in the news for over five years. Does this mean that the storm is over? Does the low detection of conflict diamonds mean that the Belgian controls have achieved their deterrent effect, or can it be that the detection mechanisms are ill-adapted to capture the evolving nature of the problem? The detection of the large and complex conflict diamond laundering scheme set up by Omega Diamonds might never have occurred if no whistle-blower decided to break the diamond industry's omerta. It does therefore not seem far-fetched to assume that similar cases might still slip through the net in Belgium, and even more so in trading hubs with less stringent controls. This is all the more true given that given criminal networks continuously refine their techniques based on changing contexts, legislation and law enforcement approaches.¹⁵⁸

In this Chapter we assess the limits in both the KPCS and the Belgian controls that might allow the smuggling of conflict diamonds to go undetected.

4.1. Limitations due to the design of the KPCS

When the KPCS was launched in 2003 it presented a new approach to a growing concern about responsible mineral sourcing, at a time when the international debate on this topic was still to mature. Governments, industry and several civil society organisations found common ground in addressing the problem of the diamond sector fuelling civil wars through a certification scheme, the design of which presented a hard-fought compromise between many competing interests.¹⁵⁹ While many of its shortcomings were initially accepted as part of the bargain, increasingly, civil society organisations,¹⁶⁰ analysts¹⁶¹ and industry insiders¹⁶² have argued that these undermine the effectiveness and credibility of the

155 Bové L., 'Recordaantal inbreuken ontdekt in diamantsector', De Tijd, 22.10.2019, <<https://www.tijd.be/ondernemen/grondstoffen/recordaantal-inbreuken-ontdekt-in-diamantsector/10174026.html>>.

156 IPIS, with Belgian official involved in monitoring the diamond sector, 28.10.2020.

157 IPIS, Interview with diamond industry expert, 19.01.2021.

158 IPIS, Interview Belgian law enforcement officer, 14.08.2020.

159 For a civil society perspective on these negotiations, see: Smillie I., *Diamonds* (Polity Press, Cambridge, 2014), pp. 68-141.

160 Rhode D., 'The Kimberley Process is a 'perfect cover story' for blood diamonds', The Guardian, 24.03.2014, <<https://www.theguardian.com/sustainable-business/diamonds-blood-kimberley-process-mines-ethical>>.

161 Bates R., 'Is the Kimberley Process B.S.?', JCK, 30.03.2017, <<https://www.jckonline.com/editorial-article/is-the-kimberley-process-b-s/>>.

162 Rapaport M., 'After Kimberley... Now What?', Global Policy Forum, 10.08.2011, <<https://archive.globalpolicy.org/security-council/dark-side-of-natural-resources/diamonds-in-conflict/50565-after-kimberley-now-what.html>>.

scheme,¹⁶³ and erode the consumer confidence it was designed to restore.¹⁶⁴ The most important flaws will be set out below and include the narrow definition of conflict diamonds, patchwork enforcement, and the regulatory lacunae in relation to polishing and mixing. A final subsection will elucidate why meaningful KPCS reform appears to be unlikely.

4.1.1. Narrow conflict diamond definition

In the KP context, 'conflict' has a specific meaning. The KP defines conflict diamonds as "rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments".¹⁶⁵ While this focus stems from the particular objective that the KPCS was set to address at its outset, ever more questions are being raised as to whether this is still sufficient – and worth all the resources and effort invested in this scheme – in light of the changed nature of conflict that affects diamond supply chains today.¹⁶⁶

The KP's conflict diamond definition is narrow in terms of both actions and actors encompassed. On the one hand, it limits conflict to a context of civil war and thereby excludes a whole spectrum of grave human rights abuses, such as beatings, shootings, torture, inhumane treatment, sexual abuse and forced labour, that are known to plague the mining sector in many states regardless of war situations. On the other hand, it also excludes a whole range of actors that may commit or contribute to abuses in diamond-related conflict, such as criminal networks, public or private security services, governmental bodies, mining companies, small-scale or artisanal miners, etc.



Speech by H.E. Didier Reynders, Deputy Prime Minister and Minister of Foreign and European Affairs of Belgium, at the November 2018 KP Plenary Meeting in Brussels (Photo: KP, 2018)

163 Kimberley Process Civil Society Coalition, Press Release: "Make-or-break moment for Kimberley Process to restore faith and stop flow of blood diamonds", 20.11.2019, <<https://www.kpcivilsociety.org/press/make-or-break-moment-for-kimberley-process-to-restore-faith-and-stop-flow-of-blood-diamonds/>>.

164 IMPACT, Press Release: False Consumer Confidence in Diamonds: Declining Credibility in the Kimberley Process, December 2017, <<https://impacttransform.org/wp-content/uploads/2017/12/False-Consumer-Confidence-in-Diamonds.pdf>>.

165 KPCS Core Document, Section 1, Definitions.

166 See for instance: Kimberley Process Civil Society Coalition, Real Care is Rare: An on-the-ground perspective on blood diamonds and the fifth 'C' (KPCSC, Harare, 2019), 31p.

This is far from a mere theoretical discussion and has very concrete implications across the world, including for Antwerp. Civil wars and rebel insurgencies are usually preceded by forms of violence that are outside the scope of the KPCS. Despite the KPCS often being presented as a conflict prevention mechanism,¹⁶⁷ its high threshold in practice means that it only intervenes where conflict has escalated to a large scale. This approach is also reflected in the KP's intervention toolbox, which consists only of the drastic option of imposing embargoes on rough diamond exports from a participant country. The shortcomings of this approach are painfully illustrated by the case of the Central African Republic, which since 2013 is the only country under a KP embargo. While NGOs had been raising alarm over the dangerous cocktail of bad governance and inter-ethnic conflict over access to diamond mines at least since 2010,¹⁶⁸ the KP only intervened after a coup in 2013 plunged the CAR into a protracted civil war. In addition, the embargo has created the enabling conditions for smuggling activities, including the involvement of international criminal and terrorist groups, to become the norm in CAR's diamond trade, despite the partial lifting of sanctions in the western part of the country since 2015.¹⁶⁹

Zimbabwe is another case in point. In 2008 the authorities violently cracked down on an illegal diamond rush in Marange, leading to the death of at least 200 diggers, and subsequently took control of the area. A 2009 KP fact-finding mission concluded that Zimbabwe did not comply with the minimum requirements of the KPCS and recommended suspending the country for at least six months. Yet, as the situation did not fall under the KP's conflict diamond definition, this became the subject of political arm-wrestling amongst KP participants. Finally, an ad hoc compromise was found in the form of a Joint Action Plan aimed at bringing Zimbabwe into compliance with KP minimum requirements through enhanced KP monitoring.¹⁷⁰ This monitoring came to an end in November 2011, despite fierce civil society outcry.¹⁷¹ Some participants, like the EU and US,¹⁷² in the absence of KP consensus decided to unilaterally ban diamonds from Marange in 2008-2009 by blacklisting the state-owned Zimbabwe Mining Development Corporation (ZMDC).

The EU sanctions were lifted in 2013 following intense lobbying by the AWDC¹⁷³ and later the Belgian government, which argued that the EU needed to encourage democratic changes in Zimbabwe. In a move criticised for putting economic interests above human rights considerations,¹⁷⁴ Belgium overcame the opposition of the UK to its proposal by arguing that the ban was pushing Marange's diamond trade underground leading these "cheap black market stones [to undermine] the competitiveness of Europe-

167 See for instance: Kimberley Process, High level event in New York: "From blood diamonds to peace diamonds: conflict prevention through the Kimberley Process", 28.02.2019, <<https://www.kimberleyprocess.com/en/kimberley-process-high-level-event-new-york-%E2%80%9C-blood-diamonds-peace-diamonds-conflict-prevention%3F>>.

168 International Crisis Group, 'Dangerous Little Stones: Diamonds in the Central African Republic', ICG Africa Report N°167, 16.12.2010.

169 De Jong T. et al., Rapport diagnostic sur la contrebande des diamants en République centrafricaine (USAID Artisanal Mining and Property Rights Task Order under the Strengthening Tenure and Resource Rights II (STARR II) IDIQ, Washington, 2019), 52p.

170 Mtisi S., 'The Kimberley Process' Dance with Zimbabwe', Zimbabwe Environmental Law Association, n.d., <<http://www.zela.org/the-kimberley-process-dance-with-zimbabwe/>>.

171 Global Witness, Press Release: Kimberley Process lets Zimbabwe off the hook (again), 02.11.2011, <<https://www.globalwitness.org/en/archive/kimberley-process-lets-zimbabwe-hook-again/>>.

172 While ZMDC ceased to exist in 2014, the US took action again in 2019 with Customs and Border Protection (CBP) blocking imports of rough diamonds from Marange on suspicions of forced labour (United States Customs and Border Protection, CBP Issues Detention Orders against Companies Suspected of Using Forced Labor, 01.10.2019, <<https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-orders-against-companies-suspected-using-forced-labor>>).

173 The AWDC's CEO, Ari Epstein, took credit for this effort in an address to the Zimbabwe Parliament in March 2014, stressing that "I made a commitment to the Zimbabwean minister of Mines to help lift the European Union sanctions on Zimbabwe Mining Development Corporation and I worked extremely hard to keep these promises" ('How powerful is the Antwerp Diamond Lobby?', Open Source Investigations, 28.03.2017, <<https://www.opensourceinvestigations.com/corruption/powerful-antwerp-diamond-lobby/>>).

174 Brems E., 'Eerst de diamant, dan de moraal', De Standaard, 18.02.2013, <https://www.standaard.be/cnt/dmf20130217_00472759>.

an diamond firms".¹⁷⁵ While Marange no longer makes international headlines, numerous reports document that the brutal violence inflicted on locals to protect dubious state and corporate interest continues to this day.¹⁷⁶

The Central African Republic and Zimbabwe are no stand-alone cases. A 2019 report by the KP Civil Society Coalition, titled *Real Care is Rare: An on-the-ground perspective on blood diamonds and the fifth 'C'*, documents ongoing cases where both artisanal and industrial diamond mining is associated with violence and human rights abuses in countries like Sierra Leone, Tanzania, Angola, the Democratic Republic of Congo and Venezuela.¹⁷⁷ Due to its narrow conflict diamond definition, these diamonds continue to pass KP certification and circulate without any restraint, including on the Belgian market. A recent and telling example is that of the Williamson Diamond Mine in Tanzania, owned by Petra Diamonds. Despite growing evidence of ongoing killings and assaults of locals by the mine's private security company,¹⁷⁸ no action has been triggered by the KP and Petra's diamonds continue to be tendered in Antwerp.¹⁷⁹ The filing of a claim by the human rights law firm Leigh Day on behalf of more than 30 affected community members in the High Court in London, resulted in Petra Diamonds agreeing to a EUR 5 million settlement package in May 2021.¹⁸⁰



Artisanal miners searching for diamonds in the surroundings of the Williamson Diamond Mine in Tanzania (Photo: IPIS, 2018)

4.1.2. Patchwork implementation and enforcement

The KPCS rests on the agreement that a participant can only trade rough diamonds with other participants, while all participants are supposed to meet the minimum requirements of the scheme. These minimum requirements are relatively basic and consist of the following.¹⁸¹

175 Rettman A., 'Belgium and UK clinch deal on Zimbabwe diamonds', EUObserver, 15.02.2013, <<https://euobserver.com/foreign/119090>>. The first tenders of Zimbabwean diamonds in Antwerp after the lifting of sanctions in 2013 were immediately controversial. In a 2017 report, Global Witness argued that the companies facilitating these tenders, Antwerp Diamond Tender Facility (ATF) and First Element Bvba, violated the then still existing EU sanctions against the military company Zimbabwe Defense Industries (ZDI). The latter allegedly owned an important stake in Anjin, the Chinese company offering Marange rough diamonds for tender in Antwerp (Global Witness, An inside job - Zimbabwe: The state, the security forces, and a decade of disappearing diamonds (Global Witness, London, 2017), 54p). These allegations were denied by the AWDC (Gotev G., 'Report traces Zimbabwe's illicit diamond trade to Antwerp', 11.09.2017, <<https://www.euractiv.com/section/development-policy/news/report-traces-zimbabwes-illicit-diamond-trade-to-antwerp/>>).

176 Matiashe F., 'Lose-lose cooperation? Zimbabwe: Who wins and who loses in the rush for diamonds?', The Africa Report, 11.03.2021, <<https://www.theafricareport.com/71030/zimbabwe-who-wins-and-who-loses-in-the-rush-for-diamonds/>>.

177 Kimberley Process Civil Society Coalition (2019).

178 RAID, The Deadly Cost of 'Ethical' Diamonds: Human Rights Abuses at Petra Diamonds' Tanzanian Mine (RAID, London, 2020), 76p.; Merket H. and Foubert E., Dissecting the social license to operate: Local community perceptions of industrial mining in northwest Tanzania (IPIS, Antwerp, 2019), pp. 46-47;

179 'Rough Prices Slide 24% at Petra Tender', Diamonds.net, 29.03.2020, <<https://www.diamonds.net/news/NewsItem.aspx?ArticleID=64893>>.

180 Leigh Day, Settlement agreed with Petra Diamonds Limited following claims of serious human rights abuses, 12.05.2020, <<https://www.leighday.co.uk/latest-updates/news/2020-news/claim-is-filed-over-alleged-human-rights-abuses-at-tanzanian-diamond-mine/>>.

181 KPCS Core Document, Section IV.

- a. establishing a system of internal controls designed to eliminate the presence of conflict diamonds from shipments of rough diamonds imported into and exported from the participant's territory;
- b. designating an Importing and Exporting Authority;
- c. ensuring that rough diamonds are imported and exported in tamper resistant containers;
- d. as required, amending or enacting appropriate laws or regulations to implement and enforce the Certification Scheme and to maintain dissuasive and proportional penalties for transgressions;
- e. collecting and maintaining relevant official production, import and export data, and collating and exchanging such data in accordance with the respective provisions;

The efficacy of the KPCS thus relies on the combined effectiveness of the internal controls implemented by its 56 participants, representing 82 countries (with the EU and its 27 Member States counting as a single participant). These controls should ensure that participants can guarantee that no conflict diamonds enter shipments of rough diamonds imported into or exported from its territory. This arrangement however suffers from two important weaknesses.

Firstly, it is not clearly stipulated how internal controls should be operationalised. Rather, participants draw from a list of non-binding options and recommendations. This has resulted in patchwork internal controls with varying levels of rigour and effectiveness. It also explains the disparity between Antwerp's controls and those of other trading centres.

Secondly, the KP does not have an independent monitoring mechanism and relies on a rather permissive peer review system.¹⁸² This takes two main forms. On the one hand, delegations of KP participants and observers undertake review visits to a participating country, either on the latter's own invitation (which every participant is expected to submit every five years), or, exceptionally, in credible cases of serious non-compliance (such visits are called review missions). On the other hand, every participant should annually submit a report on KPCS implementation, along with its official production and/or trade data, which are subject to peer review. This system of peer review has demonstrated its value for sharing best practices and lesson learning, but much less for addressing weaknesses in the implementation of internal controls or cases of non-compliance with KP minimum requirements. This is mainly because participants only formulate recommendations, which are not systematically followed-up. The non-binding nature of such recommendations is apparent from the fact that the KP does not have a tool for measuring progress, nor does it impose any obligation for participants to work towards a particular standard of performance. In practice this often leads to review visit reports routinely reiterating many of the recommendations of the previous visit.



View of an industrial diamond mine in Lesotho (Photo: Maluti Community Development Forum (MCDF), 2020)

¹⁸² Kimberley Process, Administrative Decision on Peer Review System (Revised), 2019, AD/Delhi/2019/002.

This failure to adequately provide for implementation and enforcement of the KPCS creates an uneven playing field which undermines the KPCS's basic objective and puts into question its reason for existence.¹⁸³ It allows numerous loopholes to continue to exist across both producer and trader countries through which conflict diamonds and illicit flows of diamonds can enter the supply chain. These loopholes result from a variety of causes, including large informal diamond mining and trading sectors, lack of resources to trace diamonds' origins across sometimes complex and vast domestic supply chains, ill-designed control mechanisms, lack of expertise regarding diamond valuation and classification, limited capacity to detect fake KP certificates, corruption, *et cetera*. Again, the CAR serves as an illustration. Despite being under KP monitoring, with exports only allowed from 8 compliant zones in the west of the country, it is estimated that up to 80 to 90% of rough diamond production is still smuggled out of the country.¹⁸⁴ These diamonds enter the KP-certified global supply chain through other producing countries but mainly through trading centres, typically those where internal controls are weak, meaning that the authorities concerned do not notice or ignore when smuggled diamonds enter their jurisdiction.¹⁸⁵

Box 7: Addressing the traceability conundrum

The ability to trace diamonds from mine to market is essential in assuring that conflict diamonds do not contaminate the global trade. This conundrum has been hanging over industry heads ever since conflict diamonds became a public concern, and remains unresolved to date.

The main challenge in tracing diamonds is that its supply chains are built on the logic of the 4 C's. Demand in the global market is shaped by jewellery lines of manufacturers requiring specific sets of diamond categories, which are defined by the 4 C characteristics and do not typically include criteria related to mining origin. The fact that origin is not, or is only secondary as, a consideration applies particularly to small diamonds, which make up the bulk of the global trade and tend to be traded in large parcels. Diamond melee, defined by the Gemmological Institute of America as diamonds weighing less than 0.2 carat, makes up 90% of annual rough diamond production.

This challenge for the industry at large of tracking diamonds and avoiding the contamination of global supply chains with diamonds from unlawful sources is also illustrated by the phenomenon of large-scale diamond heists. Their loot, which can amount to tens of millions of Euros, is almost never found,¹⁸⁶ as it appears to be laundered back into the formal diamond trade with relative ease.¹⁸⁷

Several industry actors have been seeking to address the traceability conundrum through technology. This includes blockchain initiatives,¹⁸⁸ laser inscriptions¹⁸⁹ and laboratory testing.¹⁹⁰ Yet while technology is being further developed, it remains "an immense challenge to apply this to the millions of small stones that are unearthed and traded", as noted by the AWDC.¹⁹¹ For these stones, suppliers can at best identify 'provenance', which is an elastic concept used in the diamond industry to refer to either the last stop or one of the last stops made by a diamond on its way to retail.

183 Southward F., Kimberley Process: Observations from the sidelines (IPIS, Antwerp, 2013), p. 12.

184 Jaillon A. and de Brier G., Cartographie des sites miniers artisanaux dans l'ouest de la Centrafrique (IPIS, Antwerp, 2019), p. 48; Pennes S. et al, Diagnostic de l'exploitation minière et perspectives de développement socio-économique en RCA à la lumière de la vision du régime minier en Afrique (Levin Sources, Cambridge, 2018), 139p.

185 Obale O., From Conflict to Illicit: Mapping the diamond trade from Central African Republic to Cameroon (Partnership Africa Canada, Ottawa, 2016), 30p.

186 See for instance: 'Who, What, Why: How do you spot a stolen diamond?', BBC, 21.02.2013, <<https://www.bbc.com/news/magazine-21525403>>.

187 FATF (2013), p. 69.

188 See for instance: <<https://www.tracr.com/>>; <<https://www.everledger.io/>>.

189 Jamasmie C., 'Nanotechnology platform to trace diamonds launched', Mining.com, 25.02.2021, <<https://www.mining.com/nanotechnology-platform-to-trace-diamonds-launched/>>.

190 Bates R., 'The Origin of Diamonds Can Be Fingerprinted, Study Shows', JCK, 22.01.2021, <<https://www.jckonline.com/editorial-article/diamonds-origin-fingerprinted/>>.

191 AWDC (2019a), p. 46.

Provenance is also used in a negative sense through non-provenance claims, which seek assurance that diamonds do not stem from certain areas that the client may find problematic, which presently often concerns Zimbabwe, CAR or the DRC. In the absence of any evidence on origin, such claims essentially rely on trust and seek to provide some comfort to retailers and consumers that nothing untoward is associated with their purchase.

As consumers increasingly want to know where products, including diamonds,¹⁹² are coming from, tracking origin is gaining importance in the industry.¹⁹³ This is leading ever more established jewellery brands to pressure suppliers to differentiate according to origin and provide adequate substantiation to their claims of origin. Nonetheless, it is reported that there remains considerable reluctance among manufacturers in particular, who doubt that this trend “pushed upon them” would be worth the effort.¹⁹⁴ Others in the industry have expressed concerns that the resources and technology required for this traceability drive risk causing a further marginalisation of the market segment where responsible sourcing challenges are already most acute, namely that of underregulated production by small mining companies and artisanal miners.¹⁹⁵

Notably, the AWDC is making efforts to address this challenge by supporting initiatives that bring responsibly and transparently sourced artisanal diamonds to market. An early initiative receiving the AWDC’s support was My Fair Diamond by the Belgian company CAP Conseil, which resulted in 2016 in a fair-trade jewellery collection with diamonds sourced from Sierra Leone.¹⁹⁶ Building on this pilot, a new project on the AWDC’s agenda is Origine which has the broader objective of making a scalable blueprint for linking the certification of artisanal diamond mines in Guinea-Conakry to the international marketing of their production. Due to implementational difficulties as well as challenges related to political stability in Guinea and the COVID-19 pandemic, however, the project is currently on hold, and may be implemented in a different country.¹⁹⁷

4.1.3. The polishing lacuna

Another consequence of the specific problem the KPCS was designed to address is that it only applies to rough diamonds. Consequently, from the moment a diamond is cut or polished it no longer falls within the KPCS’s remit. In combination with substandard internal controls, this creates a blind spot that is open for abuse as smuggled diamonds can be laundered through polishing.¹⁹⁸ While there are reports on producer countries setting up domestic diamond manufacturing facilities to avoid KP regulation,¹⁹⁹ the main risk concerning this gap lies in India where 90% of the world’s diamonds are polished. While India is generally seen as meeting KPCS requirements, there have been occasional reports of diamond smuggling to India, including by dhow from Dubai,²⁰⁰ and the existence of a trade in undocumented rough diamonds at discounted prices.²⁰¹ This trade is said to include stones associated with conflict or human rights abuses, such as those from Marange, which have been reported to sell for 25 to 40% below market

192 See for instance: Hsu T., ‘You Know Your Diamond’s Cut and Carat. But Does It Have Ethical Origins?’, The New York Times, 08.01.2019, <<https://www.nytimes.com/2019/01/08/business/diamonds-origin-tiffany-consumers.html>>..

193 Zimnisky P., ‘These five trends are playing out in the diamond industry’, Mining.com, 16.02.2021, <<https://www.mining.com/web/these-five-trends-are-playing-out-in-the-diamond-industry/>>.

194 Krawitz A., ‘In Search of a Plan at the World Diamond Congress’, Diamonds.net, 05.10.2020, <<https://www.diamonds.net/news/NewsItem.aspx?ArticleID=65577>>.

195 Branstrator B., ‘Why Inclusivity Is Important in Diamond Traceability’, National Jeweler, 21.04.2021, <<https://www.nationaljeweler.com/articles/9717-why-inclusivity-is-important-in-diamond-traceability>>.

196 ‘Diamonds as Catalyst for Development Cooperation: AWDC’s Guinea Project’, The Diamond Loupe, 11.03.2020, <<https://www.thediamondloupe.com/sustainability/2020-03-11/diamonds-catalyst-development-cooperation-awdcs-guinea>>.

197 IPIS, Interview AWDC representatives, 27.10.2020.

198 FATF (2013), p. 133.

199 Ray S. G., ‘Globally barred blood diamonds from Sierra Leone find their way to Gujarat’, India Today, 07.05.2011, <<https://www.indiatoday.in/magazine/the-big-story/story/20110516-high-demand-diamond-traders-in-india-import-stones-from-africa-killing-fields-745966-2011-05-07>>.

200 Overdorf J., ‘India plays the middleman’, The World, 06.10.2011, <<https://www.pri.org/stories/2011-10-06/india-plays-middleman?page=0%2C0>>.

201 Miklian J., ‘Rough Cut’, Foreign Policy, 02.01.2013, <<https://foreignpolicy.com/2013/01/02/rough-cut/>>.

prices.²⁰² Tight profit margins in the midstream may incentivise polishers to ignore ethical considerations and assist in obscuring the controversial origin of such diamonds.²⁰³ As India is by far the main exporter of polished diamonds to Belgium, this evidently causes challenges for the industry and authorities in guaranteeing the ethical nature of the Belgian polished diamond trade.

4.1.4. *The mixing lacuna*

The KPCS was not designed to enhance traceability of diamonds, but rather to avoid having to deal with it. As mentioned above, after stones enter a KP participant country they can be re-exported under a KP Certificate of Mixed Origin that only mentions the country of last export.²⁰⁴ The KP certificate that accompanied the incoming shipment is kept by the importing country, which is not required to send it (or a copy) along with the ensuing export of the diamonds. As noted by the FATF, “this legitimate procedure may be exploited by criminals and is one of the major vulnerabilities of the KPCS whereby the actual origin of the rough diamonds is often concealed and practically impossible to retrieve”.²⁰⁵ One Belgian official even called it “the bankruptcy of the KP”.²⁰⁶

Dubai, in particular, is often accused of failing to stop, and thereby to attract, mixing practices that serve to mask mining origin.²⁰⁷ According to several sources, the UAE’s KP authorities are not allowed to question information on KP certificates,²⁰⁸ and have allegedly even actively participated in circumventing KP rules.²⁰⁹ This is causing considerable frustration in Belgium as the now common Dubai stopover of many diamond shipments on their way to Antwerp is frustrating the ability of Belgian supervising authorities to control compliance with KP and AML regulations (see further section 4.2.).

4.1.5. *The improbability of meaningful KPCS reform*

Whereas the KPCS has played an important role in regulating the rough diamond trade, its narrow scope stands in sharp contrast to the inflated significance it acquires through messaging by powerful actors in the industry and governments.²¹⁰ This has resulted in KP certificates often being seen as a guarantee for responsible sourcing, while in fact, due to the above-mentioned loopholes, they cannot even provide full assurance as to the claim that the diamonds are not associated with funding rebel movements. Given the broad sense of legitimacy instilled by KP certificates, they might even, as pointed out by the FATF, “serve unintentionally as a [money laundering] tool” since their existence can lead government authori-

202 Levina Y., ‘Diamonds from Zimbabwe affect the market stronger than you think’, Rough & Polished, 13.07.2015, <<https://www.rough-polished.com/en/analytics/97831.html>>.

203 Kimberley Process Civil Society Coalition (2019), pp. 19-20; India’s Gems and Jewellery Export Promotion Council (GJEPC) appears to be formalising this approach with a purchase programme of discounted Zimbabwean diamonds (‘Diamantaires may buy 12 mn carats of rough from Zimbabwe’, Times of India, 08.04.2019, <<https://timesofindia.indiatimes.com/city/surat/diamantaires-may-buy-12-mn-carats-of-rough-from-zimbabwe/articleshow/68769228.cms>>.

204 In 2018 the KP decided to slightly change the terminology on KP Certificates, replacing “Country of Origin” by “Country of Mining Origin”, but the fact remains that “where the parcels consists of rough diamonds from more than one mining origin country, the field for Country of Mining Origin on the Certificate should be filled with asterisks” (Kimberley Process, Administrative Decision: Compilation of modifications to technical definitions - Section I of the KPCS Core Document, 2018, KP/2018/Plenary/Administrative Decision 03 Brussels). FATF (2013), pp. 57-58.

205 FATF (2013), pp. 57-58.

206 Interview with Belgian officials involved in monitoring the diamond sector, 01.09.2020.

207 See for instance: Financial Action Task Force, Anti-money laundering and counter-terrorist financing measures: United Arab Emirates Mutual Evaluation Report (FATF, Paris, 2020), 285p.

208 IPIS, Interview with independent KP expert, 14.07.2020.

209 A 2006 telex from the US embassy in Dubai, exposed by Wikileaks, includes an account by the former CEO of the Dubai Diamond Exchange, Noora Jamsheer, describing how the executive chairman of the DMCC offered her a 2% commission per suspicious shipment that she let through without implementing KP controls. A 2007 US embassy telex from the same source describes the refusal by the UAE to respond to Belgian law enforcement requests related to diamond investigations (Sauviller and Di Rosa (2014), pp. 291-295).

210 In October 2020, for instance, the WDC President explained during a jewelry industry conference how “the Kimberley Process changed dramatically over the past 20 years ... from the simple definition of conflict diamonds into the total concept of responsible sourcing of diamonds, including social responsibility, environmental rights and human rights” (‘WDC President discusses the regional approach within the Kimberley Process’, CIBJO’s Jewellery Industry Voices seminar at the VOICE Vicenzaoro trade, 02.10.2020, <<https://www.youtube.com/watch?v=pbUMEyTjpl>>).

ties to overlook ML/TF considerations.²¹¹

The limitations of the KPCS have not only been pointed out by NGOs for years,²¹² industry stakeholders²¹³ and several governments²¹⁴ increasingly acknowledge the problem. Why is it then that all attempts to meaningfully reform the scope and functioning of the KPCS have failed, the most recent being the three-year reform cycle that ended with a stalemate at the November 2019 KP plenary meeting in New Delhi?²¹⁵

A first and major part of the explanation is that decision-making in the KP is based on consensus. This implies that no votes are cast and decisions are only taken if none of



Address by then WDC President Stephane Fischler to the 2019 KP Plenary Meeting in New Delhi, India (Photo: IPIS, 2019)

the 56 Participants express disagreement. The fact that any member can thus block any decision explains why this system is strongly biased towards the status quo. This is compounded by competing economic and political interests among participants that overshadow responsible diamond governance considerations.²¹⁶ For instance, for many participants, and particularly the great powers such as China, the Russian Federation and the US, geopolitical factors tend to predominate. While large consumer markets, such as that of the US, may be more concerned with ethics, for many trading, manufacturing and producer countries commercial interests are far more important. Various producer countries in particular, especially those with large artisanal mining sectors, fear stigmatisation when – what they consider ‘Western’ – human rights considerations rise on the KP’s agenda. In an opinion piece in 2014 in Belgian newspaper *De Tijd*, then Dubai Diamond Exchange President, and former AWDC Director, Peter Meeus gave a gist of the form that this opposition to KPCS reform takes (own translation): “More than 99.8 percent of all diamonds produced are certified by the Kimberley Process (...) Who is 100 per cent perfect? Is 99.8 percent not good enough? (...) It is a public secret that the NGOs working on minerals are mainly subsidised by Western powers. Has anyone ever made the link with the declining economic importance of the superpowers in Africa? (...) Add to this that Russia, China, India, South Africa, Namibia, Angola, Zimbabwe, Congo and the United Arab Emirates are getting tired of a small minority of member states unashamedly imposing their agenda on the vast majority in the decision-making process of the Kimberley Process. In the name of human rights, but nobody still believes this...”²¹⁷

211 FATF (2013), p. 133.

212 Katz S., ‘NGO Warns of Kimberley Process Loopholes’, *Diamonds.net*, 24.04.2003, <<https://www.diamonds.net/News/NewsItem.aspx?ArticleID=7984&ArticleTitle=NGO+Warns+of+Kimberley+Process+Loopholes>>; Southward (2013), pp. 9-12; PAC (2013), pp. 24-28.

213 See for instance: World Diamond Council, WDC President urges governments to act on the important KP reforms to support the future of the Process, 19.11.2019, <<https://www.worlddiamondcouncil.org/2019/11/19/wdc-president-urges-governments-to-act-on-the-important-kp-reforms-to-support-the-future-of-the-process/>>. Also telling are the numerous industry self-regulation schemes broadening the ethical scope of sourcing standards (to human rights, labour conditions, environmental criteria, etcetera) and thus adapting the normative framework of the sector to present-day expectations. Examples include the De Beers Best Practice Principles Assurance Programme, the Responsible Jewelry Council code of practices and Signet’s Responsible Sourcing Protocol.

214 See for instance: Delegation of the European Union to the United Nations, EU Statement – United Nations General Assembly: Adoption of the draft resolution on the Role of Diamonds in fuelling Conflict, New York, 03.03.2020, <https://eeas.europa.eu/delegations/un-new-york/75481/eu-statement-%E2%80%93-united-nations-general-assembly-adoption-draft-resolution-role-diamonds_en>; United States Department of State, Media note - Conclusion of the 2019 Kimberley Process Plenary, Washington, 25.11.2019, <<https://2017-2021.state.gov/conclusion-of-the-2019-kimberley-process-plenary/index.html/>>.

215 Kimberley Process Civil Society Coalition, Press Release: Conflict diamond certification scheme unable and unwilling to reform, 22.11.2019, <<https://www.kpcivilsociety.org/press/conflict-diamond-certification-scheme-unable-and-unwilling-to-reform/>>.

216 Merket H., ‘Focus on Kimberley Process after failed reform cycle’, IPIS Briefing, November 2019, <<https://ipisresearch.be/weekly-briefing/ipis-briefing-no-2/>>.

217 Meeus P., ‘Waar zijn al die bloeddiamanten?’, *De Tijd*, 23.01.2014, <<https://www.tijd.be/opinie/analyse/Waar-zijn-al-die-bloeddiamanten/9455002>>.



Artisanal diamond rush in Tanzania's Mwanza region (Photo: IPIS, 2018)

These competing interests have given rise to a dynamic within the KP whereby the emphasis on state sovereignty is growing and trust among participants is decreasing. This is leading to ever more legalistic proceedings, whereby word choice, punctuations and procedures far outweigh discussions on the KP's core task, namely the fight against conflict diamonds. The insular logic in which the KP has become entangled, combined with the confidential nature of KP deliberations, is moreover increasingly alienating outsiders, with ever less media reporting and public interest in the outcome of KP meetings. This is a vicious cycle that, in turn, leads to even less pressure on participants to achieve results, with those supporting reform refraining from putting their full political weight behind it, and those opposing change not being held publicly accountable for derailing discussions. Consequently, simple decisions take years in the KP, while substantial reform is becoming decreasingly likely.

Despite the serious shortcomings of the KPCS, the dominant narrative remains one of success, which undercuts the reform incentives. The standard phrase, repeated endlessly by governmental actors and industry bodies, that thanks to the KPCS 99.8% of the world's diamonds are now conflict-free, has remained unchanged over the past ten years.²¹⁸ The problem with these statements and this vaunted statistic is that they ignore not only the narrow meaning of conflict under the KPCS, but also the numerous loopholes in KP controls through which smuggled diamonds can continue to contaminate the legal trade. Arguably, the main reason why this narrative persists, despite evidence to the contrary, is that governments and industry, whether or not they want the KPCS to reform, believe that they depend on it to maintain consumer confidence. Admitting to the KPCS's shortcomings is admitting that they cannot give full assurances that none of the diamonds they trade is tainted by conflict.

The Belgian government and the AWDC are amongst those that perform this balancing act.²¹⁹ While admitting that the KP is not the most legitimate forum if it comes to "ambition or scope"²²⁰ and pleading for expanding "the rigid definition" of conflict diamonds,²²¹ they contradictorily continue to uphold the pre-

218 See for instance: Kimberley Process, The Kimberley Process In Action, n.d., <<https://www.kimberleyprocess.com/en/kp-action>>; 'India to work with global players for 'conflict-free' diamond trade', The Economic Times, 18.06.2019, <<https://economictimes.indiatimes.com/news/economy/foreign-trade/india-to-play-active-role-in-evolution-of-kimberley-process/articleshow/69829548.cms?from=mdr>>; World Diamond Council, Trade in Conflict Diamonds Has Been Virtually Eliminated Worldwide, n.d., <<http://www.diamondfacts.org/>>.

219 Smyth A. and Merket H., 'Non, vos diamants ne sont toujours pas éthiques', La Libre, 04.03.2020, <<https://www.lalibre.be/debats/opinions/non-vos-diamants-ne-sont-toujours-pas-ethiques-5e5e751cd8ad5830ae872e6d>>.

220 AWDC (2019a), p. 66.

221 'When are diamonds truly conflict-free?', Belgium – FPS Foreign Affairs, Foreign Trade and Development Cooperation, 14.02.2020.

sumed 99.8% effectiveness of this system.²²² Even in the ‘world’s diamond capital’²²³ the public scrutiny of the KP is very limited. It rarely forms the subject of political discussions, not even when the KP held its two annual gatherings in Antwerp and Brussels during the 2018 EU presidency at the start of the latest reform and review cycle of the certification scheme. The last political discussion dates from 2014 when a Parliamentary Resolution was adopted calling on the Belgian government to advocate in the KP for a broader conflict diamond definition and a stricter application of minimum requirements in order to halt ongoing human rights abuses.²²⁴

4.2. Limitations of the Belgian controls

While the deficiencies of the KPCS are an external factor influencing the ethical nature of the Antwerp diamond trade, the Belgium control system equally has its own limitations that make it vulnerable to exploitation by criminals. These include limits as to what can be detected by controls on all shipments, blind spots associated with administrative controls, limits to public-private cooperation, and challenges of restricted governmental resources and coordination.

4.2.1. Limits of shipment controls

Belgian government and industry representatives tend to assert that it is highly unlikely that conflict diamonds still enter the Antwerp market given the rigorous controls in the DO. In a reaction to a 2015 Amnesty International report alleging the ongoing circulation of CAR conflict diamonds in Antwerp,²²⁵ the AWDC for instance countered that this report ignored both the “foolproof system of controls through which each and every of shipment is verified on value, weight, classification (HS Code) and documented origin”, and the “immense expertise [of] experts to determine even in the case of a shipment of mixed origin ... if the parcel contains diamonds that could originate from KP banned areas such as the CAR”.²²⁶

An important nuance to be made, in line with the above section 4.1., is that the DO controls are grafted onto the KPCS and are therefore confined to its limited scope. Concretely, this means that in the past years controls against conflict diamonds have only been concerned with the detection of rough diamonds from non-compliant zones in the Central African Republic. The AWDC indeed acknowledges that the Antwerp diamond industry, trading goods from all over the world, “is de facto linked to issues that diamonds are associated with in many developing countries: unfair prices or practices, low governance, unregulated markets, illegal exploitation, human rights abuses, etc.”²²⁷ Taking into account this significant nuance, it is important to better understand the nature and scope of the DO expert controls.

222 See for instance: Reynders D., Deputy Prime Minister and Minister of Foreign and European Affairs, Speech at the Opening Session of the Kimberley Process Plenary Meeting, Brussels, 12.11.2018, <https://www.kimberleyprocess.com/en/system/files/documents/speech_dr_-_kp_plenary-final.pdf>; Rentmeesters K., ‘About That Diamond Mine in China... Let’s Talk Facts’, The Diamond Loupe, 19.05.2021, <<https://www.thediamondloupe.com/depth/2021-05-19/about-diamond-mine-china%E2%80%A6-let%E2%80%99s-talk-facts>>. <https://www.kimberleyprocess.com/en/system/files/documents/speech_dr_-_kp_plenary-final.pdf>.

223 See for instance: City of Antwerp, ‘Antwerp Diamond Capital since 1447’, n.d., <<https://visitantwerpen.maglr.com/antwerp-diamond-capital-engels/antwerp-diamond-capital-since-1447>>.

224 Belgian Chamber of Representatives, Resolution on Supporting the Kimberley Process, 12.12.2013, DOC 53 2747/003 (available in Dutch and French).

225 Amnesty International, Chains of Abuse: The global diamond supply chain and the case of the Central African Republic (Amnesty International, London, 2015), 85p.

226 Antwerp World Diamond Centre, Press Release: Amnesty International Report on CAR Ignores Antwerp Controls, 30.09.2015, <<https://www.awdc.be/sites/awdc2016/files/press/AWDC-%20Amnesty%20International%20Report%20on%20CAR%20Ignores%20Antwerp%20Controls.pdf>>.

227 AWDC (2019a), p. 25.

ments.²³⁰ Due to the absence of country of origin information, such shipments are subject to enhanced vigilance in only two scenarios. One of these is where the involvement of a certain company raises red flags. This was reportedly the case for the seizure of the Kardiam shipments, which would have resulted from an earlier suspicious activity report concerning Kardiam that had been submitted to the CFI.²³¹ The other scenario is where the expert's standard scan of a parcel reveals similarities to the typical features of diamond parcels from CAR. In this case, the key question is how easily and up to what level of mixing diamond experts can discern such similarities. According to one DO expert they can be determined with a high degree of probability if CAR diamonds make up more than 20 to 50% of the stones, depending on the size of the parcel.²³² Mixing smaller portions of CAR stones in mixed origin shipments, however, would go unnoticed in DO controls.

Another complication is that CAR diamonds resemble diamonds from certain zones in countries like Guinea-Conakry and Liberia, and diamonds from Western CAR are indistinguishable from those across the border in eastern Cameroon.²³³ There are technologies that determine origin by assessing trace elements in individual diamonds – rather than comparing the composition of parcels – but these are costly and cumbersome, and therefore do not lend themselves to everyday use. According to contacts in the DO, the only time they submitted diamonds for laboratory testing was in the context of the Kardiam case, when diamonds were sent to the renowned South African Mintek institute. Yet even in this case, it remains to be seen whether these tests provide conclusive evidence. As discussed above, the Kardiam case is still pending and experts are not sure whether the outcomes of these tests would be accepted as evidence by the Court.²³⁴

This points to a larger problem with DO controls, which concerns the legal threshold for seizing KP-certified mixed origin shipments on suspicions of containing (CAR) conflict diamonds. A Belgian government official explained that they have to assume that the previous trading centre certifying the shipment duly performed its controls, as a DO expert analysis would not on its own be considered sufficient evidence if challenged by an importer.²³⁵ In case of doubt, DO experts can take pictures and send them to the KP Working Group of Diamond Experts, but again the results of their analysis would not amount to more than grounds for reasonable suspicion. At the time of the Kardiam seizure, the legal basis for seizure was relatively more solid as the CAR still fell under a full-fledged KP embargo in 2014. This meant that all CAR diamonds were put on the Customs' list of prohibited goods due to the removal of CAR as a KP participant under the EU's implementing Regulation 622/2013. The KP decision in 2015 to again allow exports from a number of compliant zones in CAR, however, meant that this legal basis no longer exists.

Therefore, according to a Belgian government official, enhanced vigilance at present basically means that suspicions stemming from DO expert analyses feed into a broader risk analysis and contribute to gradually building evidence on particular players that can be shared with other governmental agencies for further investigations.²³⁶ Yet, such investigations face also considerable limitations, as will be discussed below.

4.2.2. Blind spots of the Belgian supervisory authorities

In Chapter 3 we identified the challenges arising from the burden of proof applicable in conflict diamond cases. Evidence gathering predominantly relies on the paper trail accompanying incoming and outgoing diamond shipments, which forms the primary focus of controls by Belgium's supervisory authorities. As these controls start and stop at the border, they provide only a snapshot of the full trail. This is evidently a key limitation as most (Belgian) diamond companies, with their foreign branches, subsidiaries and sister companies (see section 1.4.), have a reach that exceeds this purview. Ill-intentioned players can therefore

230 IPIS, Interview with Belgian official involved in monitoring the diamond sector, 20.10.2020.

231 IPIS, Interview with UN expert, 16.07.2020.

232 Guided visit of IPIS to the Diamond Office, 15.09.2020.

233 IPIS, Interview with gemologist, 09.03.2021.

234 IPIS, Interview with diamond industry expert, 19.01.2021.

235 IPIS, Interview with Belgian official involved in monitoring the diamond sector, 20.10.2020.

236 Ibid.

exploit increasingly complex corporate structures to deliver paperwork that meets administrative requirements and hence satisfies controls in Belgium. This issue is exacerbated by the opacity that often surrounds shareholder structures and ultimate beneficiary ownership, which in turn obscures business affiliations and prevents the detection of suspicious transactions. Several government agencies identified how this facilitates the recurring practice of round-tripping, whereby companies with branches in Free Trade Zones such as those in the UAE, transfer money between entities owned by the same natural persons without any economic rationale, and are suspected of drawing up fake invoices to fictitiously boost turnover.²³⁷ Such companies further obscure corporate transactions through financial accounts in countries with little banking transparency, such as the British Virgin Islands, the Seychelles or Guernsey.²³⁸

Because Antwerp is known for its robust monitoring system, smugglers and fraudsters are likely to seek weaker links in the chain, where controls are more relaxed, and make sure their paperwork is in order by the time it reaches Antwerp. Dubai, in particular, is repeatedly mentioned as a problem for controls in Antwerp, including by most Belgian officials and industry representatives interviewed for this research. It has even been named Antwerp's "fraud branch",²³⁹ as the creation of the KPCS, and the stricter Belgian controls that followed, would have led to an outsourcing of particular practices by Antwerp diamantaires to their branches in Dubai to avoid such controls.²⁴⁰ According to sources formerly with the police, early investigations into conflict diamond smuggling still found some evidence of such outsourcing, whereby Antwerp businesses unwillingly disclosed that they had in fact organised the initial trade of diamonds between Africa and Dubai to conceal origin before the goods arrived in Antwerp. This evidence took the form of e-mail communications, diamonds arriving in Belgium in the initial packaging that had been used for the first transport from Africa or the insuring of Africa-Dubai transports by Antwerp businesses.²⁴¹ Meanwhile such practices have become much more refined and therefore harder to detect.

Rather paradoxically therefore, the introduction of the KPCS may have contributed to the rise of a new and less strictly regulated global diamond hub, partly at the expense of Antwerp and its strict controls.²⁴² Despite having no diamond reserves or history in diamond trading, the UAE rose from a relatively small player at the initiation of the KPCS in 2003, accounting for only 6% of the EU's rough diamond imports by value, to the second largest exporter representing 21% of the total EU rough diamond import value in 2019. Notably, 68% of those imports by value were, in the past five years, of mixed origin.

237 CFI (2018), p. 19; IPIS, Interview with Belgian official involved in monitoring the diamond sector, 08.11.2020.

238 CFI (2019), p. 19.

239 Sauviller and Di Rosa (2014), p. 261.

240 The trend whereby diamonds and funds stopped flowing directly from Africa to Antwerp and started transiting through the UAE first, was also noted in the FATF's 2013 report on ML/TF through the trade in diamonds (FATF (2013), p.128).

241 Sauviller R. and Di Rosa S., 'De duistere diamant (2): speurders over fraude, belastingontduiking en handel in bloeddiamanten', Humo, 27.03.2012, < <https://www.humo.be/nieuws/de-duistere-diamant-2-speurders-over-fraude-belastingontduiking-en-handel-in-bloeddiamanten~b8d7849c/>>.

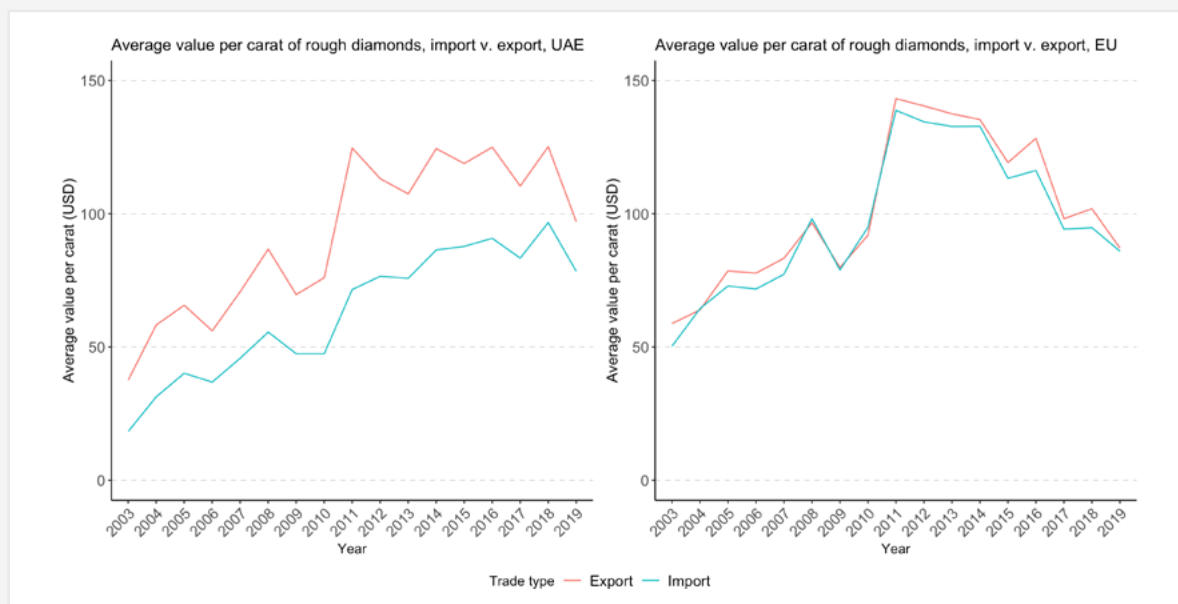
242 Diamond giant De Beers, the main industry force behind the creation of the KP, has arguably also played a part in causing Antwerp diamantaires to move to Dubai. Barred from the US market for half a century due to charges of breaching anti-trust legislation, De Beers in the early 2000s overhauled its 'sightholder' sales programme to a new 'supplier of choice' (SoC) strategy (Labaton S., 'De Beers Agrees to Guilty Plea To Re-enter the U.S. Market', The New York Times, 10.07.2004, < <https://www.nytimes.com/2004/07/10/business/de-beers-agrees-to-guilty-plea-to-re-enter-the-us-market.html>>). That strategy introduced a number of objective and transparent criteria for the selection of long-term buyers of De Beers' production in a successful bid to satisfy the demand of US (and EU) legislators that the company provide a credible answer to allegations of backroom marketing policies leading to an opaque and anti-competitive distribution structure, price-fixing and monopolisation of the market. The SoC among others raised the bar for De Beers buyers' market capitalisation as part of an overall strategy to cut off the weaker links its sales chain. Bound by strict regulations under Belgian corporate law, many diamantaires found a regulatory environment in Dubai with more leniency for creative accounting, which reportedly allowed them to increase their market cap and hence continue their vital business relationship with De Beers (IPIS, Interview with Belgian diamond industry member, 16.02.2021).

Box 8: Fiddling with diamond values

Certain trading centres, and Dubai in particular, have been blamed for failing to prevent companies from tampering with diamond values to fraudulently reduce profits and thus taxes due in Belgium or other destinations.²⁴³ This practice rests on the absence of fixed prices in the diamond market. Although there are price lists for diamond categories,²⁴⁴ these serve merely as an indication and a starting point for negotiation between sellers and buyers. Such negotiation involves a process influenced by a considerable number of variables which can cause a differential of up to 20 to 30% among experts valuing the same stone or parcel.²⁴⁵ While controlling agencies in Belgium are aware of the dubiousness of certain value claims of diamond importers, there is often little they can do to counter this. At the individual level of shipments, creative explanations, for example invoking a large amount of loss due to cutting and polishing, are difficult to counter. At company level, the problem is compounded by the fact that many of the larger importers in Belgium have branches in other trading hubs, which can be engaged to deliver paperwork that satisfies any administrative enquiries regarding dubious valuations.

The problem is clearly highlighted when analysing it statistically at a higher level of data aggregation. The figures below compare the annual average carat value differential between imports and exports of the UAE and the EU between 2003 and 2019. Over the reference period, the recorded average carat values of UAE exports have consistently exceeded import values by 25 to 50%, while the differential between EU imports and exports is negligible. Such undervaluation of diamond imports is particularly problematic for the many African producer countries, which are in this manner deprived of much-needed revenues.²⁴⁶

Figures 4 a and b: Comparison of the difference between the UAE and the EU in the average value of imported and exported rough diamonds shipments (KP data)



243 'UAE Plans to Address Transfer Pricing in Diamond Trade', The Diamond Loupe, 28.03.2016, <<https://www.thediamondloupe.com/articles/2016-03-28/uae-plans-address-transfer-pricing-diamond-trade>>.

244 The most commonly used is the Rapaport price list: <<https://rapaport.com/rappricelist/>>.

245 Guided visit of IPIS to the Diamond Office, 15.09.2020.

246 Partnership Africa Canada, All that Glitters is not Gold: Dubai, Congo and the Illicit Trade of Conflict Minerals (PAC, Ottawa, 2014), 24p.

The problem with weak links in the KP import/export certification chain resembles that of the ‘garbage in, garbage out’ challenge that is associated with blockchain traceability solutions.²⁴⁷ This refers to the fact that the trust in this distributed ledger technology to establish end-to-end traceability in mineral supply chains risks overlooking the fact that the input of poor quality data anywhere along the chain will still produce faulty outputs further downstream. Indeed, when trade hubs or producer countries with weak internal controls allow illicit or conflict diamonds to enter the supply chain, these receive the KP quality mark and there is little chance that other KP participants will be able to detect their introduction, no matter how strict the controls.

Representatives of various Belgian government entities interviewed for this research indeed pointed to limits in their mandates which inhibited capacity to detect abuses related to diamond shipments that have satisfied controls in other jurisdictions. Inspections at Customs are reportedly based on a risk analysis that is still in its infancy and is mainly based on intelligence from previous infringements or from other investigative bodies.²⁴⁸ FPSE’s Economic Inspectorate indicated that their controls only concern a selection of companies and are limited in scope, purely administrative in nature and not repressive of approach. Consequently, they are more likely to detect administrative negligence than tampering or fraud, as these would be carefully concealed in the paperwork.²⁴⁹ The controls by FPSE-LS in the DO are more comprehensive. In 2019 they detected 924 irregularities for 2018, which predominantly concerned administrative mistakes such as calculation errors or missing documents.²⁵⁰ Only in a minority of cases do such infringements require filing a suspicious transaction report. Filing of the latter mandates the CFI to investigate the associated financial flows, which increases the chances of uncovering a possible smuggling scheme. Yet, the CFI points out that this is complicated by the subjective valuation of diamonds, which have no standardised world market price (see Box 8).²⁵¹ This and the sector’s mixing, cutting and stockpiling practices preclude flows of goods being one to one comparable with financial flows. Even KP statistics, which only apply to rough diamonds and are subject to an annual reconciliation exercise, continue to show considerable discrepancies year on year.²⁵² Police and judicial authorities have the broadest investigative mandate in Belgium’s control system, but they expressed that they are seriously limited by a lack of international cooperation and information exchange.²⁵³ While this is slowly improving according to some sources, what happens in other jurisdictions remains a major blind spot for Belgian law enforcement.

4.2.3. *Limits of public-private cooperation*

In light of the above challenges, it is all the more important to establish cooperation between government and industry in rooting out unlawful practices. Such cooperation has come a long way in this traditionally regulation-wary industry.

The sector’s low reporting level of suspicious transactions used to be a source of frustration among Belgian authorities. In response to the meagre 5 STRs submitted by diamond companies in 2013, the CFI President complained that “the inevitable conclusion is that the sector does not participate.”²⁵⁴ According to the several government sources this has since improved considerably, particularly in relation to the industry’s risk awareness and vigilance, which these sources consider more important than the

247 Calvão F. and Archer M., ‘Digital extraction: Blockchain traceability in mineral supply chains’, *Political Geography*, 87 (2021), p. 8.

248 IPIS, Interview with Belgian official involved in monitoring the diamond sector, 29.09.2020.

249 IPIS, Interview with Belgian official involved in monitoring the diamond sector, 11.08.2020.

250 Bové L., ‘Recordaantal inbreuken ontdekt in diamantsector’, *De Tijd*, 22.10.2019.

251 IPIS, Interview with Belgian officials involved in monitoring the diamond sector, 01.09.2020. One illustration of how this lack of commoditisation opens up a space for fraud is a case in 2015 in which an employee of the AWDC’s certification entity was convicted for tampering with the values recorded on diamond certificates at the behest of various Antwerp diamantaires (‘Celstraffen en verbeurdverklaring voor gesjoemel met diamantcertificaten’, *De Morgen*, 18.11.2015, <<https://www.demorgen.be/nieuws/celstraffen-en-verbeurdverklaring-voor-gesjoemel-met-diamantcertificaten~bc12bb59/>>).

252 Discrepancies between imports reported by the EU and exports reported by trading partners tend to concern about 5% of the total volume of EU imports, which corresponds to several millions of carats each year (IPIS, Interview with independent KP expert, 14.07.2020.).

253 IPIS, Interview with law enforcement representatives, 25.08.2020.

254 Lallemand (2012), p. 143.

number of STRs submitted.²⁵⁵ Nonetheless, the relatively low reporting rate of the diamond sector to date, with for instance only 18 STRs submitted for relatively small amounts in 2018, continues to attract criticism from other parties.²⁵⁶

Among representatives of state agencies interviewed for this research there was consensus that industry cooperation has improved over the past ten years, to a great extent due to the efforts of the AWDC. Yet, most sources also indicated that there was room for improvement. As set out in its mission statement,²⁵⁷ the AWDC's primary concerns remain the strengthening of Antwerp's business position and the image of diamonds. This does not always correspond with and may take precedence over proactively cooperating with law enforcement to ensure compliance. One government source, for instance, indicated that it still considerably easier to get cooperation from the financial sector than from diamond companies.²⁵⁸

Since the creation of the KPCS there has been increasing momentum behind industry self-regulation. Numerous initiatives, by both individual companies and industry associations, have sought to fill the voids left by the KPCS. In addition to the above-mentioned WDC System of Warranties, one of the most prominent initiatives is the Code of Practices of the Responsible Jewellery Council (RJC). In 2018, the RJC counted 110 Belgian diamond traders among its members, which together represented over 50% of the sector's annual turnover.²⁵⁹ Furthermore, various big players have set standards which they require their suppliers and customers to follow. These include Signet's Responsible Sourcing Protocols, De Beers's Best Practice Principles and Alrosa's Regulation on Responsible Diamond Supply Chain Management. All these industry schemes are said to centre on a commitment to responsible sourcing principles that draw from international normative frameworks such as the UN Guiding Principles on Business and Human Rights (UNGPs).



Presentation by AWDC to the KP Intersessional Meeting in New Delhi in June 2019 (Photo: IPIS, 2019)

These initiatives have contributed considerably to greater industry awareness and dialogue on issues of responsible sourcing, yet they also share important limitations. These include their voluntary nature, the lack of strong and transparent monitoring and enforcement mechanisms, and a lack of meaningful public reporting. If they are underpinned by audits, these mainly serve to check whether companies

255 IPIS, Interviews with Belgian officials involved in monitoring the diamond sector, 01.09.2020 and 20.10.2020.

256 See for instance: United States Department of State (2020), p. 59; and Bové L., 'Recordaantal inbreuken ontdekt in diamantsector', De Tijd, 22.10.2019.

257 "Our mission is twofold: strengthening Antwerp's position as the world's leading diamond trading center and strengthening the image of diamonds to a general audience" (AWDC Mission: <<https://www.awdc.be/en/mission>>).

258 IPIS, Interview with Belgian officials involved in monitoring the diamond sector, 02.10.2020.

259 Verbruggen D., Due Diligence and the Kimberley Process - A study commissioned by the Antwerp World Diamond Centre (Unpublished, 2018), p. 42.

have their paperwork and policies in order. On-the-ground or mine of origin assessment visits are rare to non-existent, and the human rights expertise of auditors has been reported to be limited.²⁶⁰ This implies that limited steps are taken to actually identify, prevent, mitigate and account for human rights risks and impacts along the supply chain, as prescribed by the UNGPs as well as the mineral-sector specific OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. In other words, these industry initiatives are more about publicly committing to rather than proving, or necessarily reflecting, respect for human rights. Industry insiders noted that for some companies commitment to these standards basically means that one staff member gets the role of compliance officer on top of his or her other responsibilities, which does not lead to broader organisational reform. A source in one of Antwerp's largest diamond companies, for instance, indicated that the provenance requirements of some of these standards led, in some cases, the company's management to fabricate origin proofs, as it lacked the appropriate traceability mechanisms.²⁶¹

Nonetheless, many companies rely strongly on these standards to claim that all diamonds they are selling or producing are responsible.²⁶² A 2020 evaluation of the jewellery industry's responsible sourcing practices by Human Rights Watch concluded that these "voluntary standards can play a role in generating dialogue and supporting companies that are ready to do more than what is legally required. But they are not fit-for-purpose to reliably detect abuses and hold corporations to account for harm, nor to provide remedies to victims of corporate abuse."²⁶³ Another complication is the interaction between all the different standards, which was recognised by the AWDC in 2019, when it called "for a more coordinated and less political collaboration between these organizations".²⁶⁴

WDC's System of Warranties was revised in 2018 to address such concerns, in particular "to strengthen and expand the scope of the original system, and to encourage its use and implementation across the diamond and jewellery industry".²⁶⁵ Yet, it has been criticised as being "more of a token attempt to appease criticism of the diamond industry's failings than a real step towards ensuring that the diamond trade does not continue to fuel human rights abuses".²⁶⁶ The 2020 Human Rights Watch report quoted above concluded that the new SoW Guidelines continue to "fall below international responsible business norms and leave mining communities at the very real risk of exploitation and other serious harms".²⁶⁷ Such concerns are particularly relevant for Belgium, given the central role of the SoW implementation in its regulatory framework (see section 2.2.4.).

Even though the AWDC has made considerable efforts to improve compliance in the sector, it has little influence over the actions of individual companies. As the AWDC itself acknowledges, it "is burdened with the issues of the industry, even when it has no real power over them".²⁶⁸ Moreover, "with no membership base, and side-by-side with four Bourses, there is a risk of dilution of leverage that can slow [the AWDC's] effectiveness".²⁶⁹

If the AWDC only has a limited role in the day-to-day operations of a Belgian diamond company, it has even less influence over what they do in other jurisdictions. The lenience of its biggest competitor, Dubai, where most large Belgian diamond companies also have a seat, is a source of particular frustration. The AWDC did not therefore miss the opportunity of the seizure of the Kardiam shipments, which had passed controls in Dubai, to note the discrepancy and call "upon all diamond centres to implement the same strict controls on import and export procedures and KP requirements".²⁷⁰

260 Human Rights Watch, *Sparkling Jewels, Opaque Supply Chains: Jewelry Companies, Changing Sourcing Practices, and Covid-19* (HRW, New York, 2020), p. 15.

261 IPIS, Interview with diamond industry member, 20.06.2020.

262 Human Rights Watch, *The Hidden Cost of Jewelry: Human Rights in Supply Chains and the Responsibility of Jewelry Companies* (HRW, New York, 2018), p. 13.

263 Human Rights Watch (2020), p. 41.

264 AWDC (2019a), p. 64.

265 World Diamond Council, *Introducing the WDC System of Warranties*, n.d., <<https://www.worlddiamondcouncil.org/introduction-system-of-warranties/>>.

266 Amnesty International et al., *Press Release: Diamond Industry Fails to Clean up its Act*, 12.11.2018, <<https://www.amnesty.org/en/latest/news/2018/11/diamond-industry-fails-to-clean-up-its-act/>>.

267 HRW (2020), p. 47.

268 AWDC (2019a), p. 28.

269 Ibid.

270 Antwerp World Diamond Council, 'Reactive Statement reg. press release "Belgian FPS Economy discovers shipment of potential conflict diamonds from the Central African Republic"', 06.06.2014, <<https://www.awdc.be/en/reactive-statement-reg-p>>.

4.2.4. *Challenges of governmental resources and coordination*

Due to the intricacy of diamond supply chains, and complexities such as those associated with diamond classification and valuation, monitoring and investigating diamond-related crimes requires specific training, experience and expertise.²⁷¹ In response to the various scandals plaguing the Antwerp diamond sector since the late 1990s, police and justice departments in particular started investing considerable time and resources in the matter. The federal police put in place a dedicated diamond squad in 1998 and the public prosecutor's office developed considerable expertise, concentrated in diamond prosecutor Peter Van Calster – nicknamed 'Fraud hunter' in the Belgian press – and a team of fiscal experts brought in from the Finance ministry.

Yet in recent years, most of those that gained experience investigating those cases, have been re-assigned or discharged. The chief inspector of the federal police's diamond squad was convicted for forgery in 2017.²⁷² Shortly thereafter the squad was dismantled, and at present diamond-related crimes are just one of the many areas covered by the federal police's Economic and Financial Crime (ECOFIN) unit. The public prosecutor's office also experienced its share of public upheaval, with a widely publicised dispute – labelled 'Diamond War'²⁷³ – between diamond prosecutor Van Calster and attorney-general Liégeois due to conflicting approaches regarding the HSBC leaks (see section 2.1.2.). This culminated in the suspension of Van Calster in 2018 and his discharge from any diamond-related cases thereafter. Likewise the fiscal experts, who worked with Van Calster on the main diamond investigations, left the public prosecutor's office in 2012 as a result of this internal conflict.²⁷⁴ At present, diamond-related matters are dispersed across several divisions and prosecutors.²⁷⁵ This exodus of diamond-related crime experts from justice and police departments,²⁷⁶ led one prominent journalist to contemplate that "Belgian authorities may have thought that the scandals of the early 2000s were bad for Antwerp's image, and decided to stop digging up dirt".²⁷⁷

While reality is likely more nuanced, several state agents expressed frustration over the limited resources and appetite to open and unravel diamond-related cases. Part of this frustration stems from the different and sometimes competing objectives of the various state agencies and departments supervising the diamond trade. The interviews indeed revealed a relatively compartmentalised approach, with the outlook and concerns of each agency confined to the limits of their respective mandate, be it licensing, administrative controls or law enforcement. The overarching tension is that which exists between the objectives of facilitating and supporting trade, which is more prominent for the FPS Economy, and those of detecting and combatting abuses, which define the work of justice, customs and police (see Box 9 for a practical illustration). Law enforcement representatives in particular expressed frustration that their work was being hindered by the current priority given to the smooth flow of the trade.

271 IPIS, Interview international diamond-related crime expert, 02.11.2020.

272 Even Zohar C., 'Betrayal of Trust: Uncovering Police Corruption in the Belgium Diamond Sector', IDEX, 21.04.2016, <<http://www.idexonline.com/FullArticle?id=41912>>.

273 'Antwerp public prosecutors wage diamond war', VRT flandersnews.be, 01.09.2012, <https://www.vrt.be/vrtnws/en/2012/09/01/antwerp_public_prosecutorswagediamondwar-1-1418021/>.

274 Vanschoubroek C., 'Diamantoorlog bij Antwerpse parket nog niet ten einde: Onderzoeksteam naar diamantfraude uitgekleeft', De Standaard, 08.05.2012, <<https://www.standaard.be/cnt/LE3PPILI?s=1>>.

275 IPIS, Interview with Belgian journalist, 04.02.2021.

276 Sauviller and Di Rosa (2014), p. 334-345.

277 IPIS, Interview with Belgian journalist, 02.11.2020.

Box 9: Reservations on value

The tension between economic and law enforcement considerations is illustrated by the contest over the process for handling the practice called ‘reservations on value’ applied in the DO. The practice refers to cases where DO experts express reservations regarding a large discrepancy between the declared value of diamonds, and their own assessment, which may indicate fraud. As such reservations concern both the FPSE and Customs, they set out a joint procedure in a 2010 bilateral agreement. Disagreement over the balance struck between avoiding trade disruptions and enabling thorough investigations led both sides to abandon the agreement in 2014. This reportedly caused a drastic increase in the number of shipments blocked by Customs based on its concerns regarding the valuation of diamonds contained therein.²⁷⁸ While the tension eased in 2016, when both services recommitted to the 2010 agreement, the agreement, according to the AWDC’s 2019 Election Memorandum, was still not fully respected by Customs, causing “administrative nuisance, legal uncertainty and high fines, which has a particularly negative impact on the Belgian diamond sector and affects the efficiency of the control mechanism within the Diamond Office”.²⁷⁹

The AWDC’s call presumably had an effect as the matter appears to have been settled in favour of a swift flow of the trade, with the main procedure established in a November 2019 Royal Decree. According to the stipulated procedure, DO experts submit reservations on value in writing to the FPSE, which can decide whether to open an investigation.²⁸⁰ This does not block the shipment in the DO, as the trade may proceed on the condition that the diamantaire signs a commitment to submit evidence substantiating the declared value within three months.²⁸¹ Based on the evidence, the FPSE – which discusses these files in monthly meetings with Customs – decides whether or not to withdraw the reservations and informs Customs as well as the shipment’s importer and exporter about the investigation and the final decision. Following a risk-based approach the FPSE can submit cases to the CFI for further investigation. According to the AWDC such reservations concern about 200 to 300 shipments annually and are withdrawn in over 95% of cases based on ex-post evidence submitted by the trader.²⁸² Whereas the FPSE and Customs have settled their disagreement, sources in law enforcement expressed frustration that this approach undermines the tracking of diamond-related fraud. According to these views, the arrangement makes it too easy for fraudulent companies, with branches across the globe and impenetrable corporate structures, to produce the required justifications and thus remain out of law enforcement’s sight.²⁸³

278 Belgian Chamber of Representatives, Finance and Budget Committee, Parliamentary question by Mr Van Besien L. to the Minister of Finance on the Antwerp World Diamond Centre, No. 11519, 01.06.2016.

279 Antwerp World Diamond Centre, *Werkbaar. Weerbaar. Betrouwbaar*. Memorandum Vlaamse, Federale en Europese Verkiezingen 2019 (AWDC, Antwerp, 2019), p. 13.

280 Royal Decree of 20 November 2019, Art. 8.

281 IPIS, Interview with Belgian official involved in monitoring the diamond sector, 20.10.2020.

282 Guided visit of IPIS to the Diamond Office, 15.09.2020.

283 IPIS, Interview Belgian law enforcement officer, 14.12.2020.

5. CONCLUSION

Antwerp has played a central role in the global diamond industry for centuries. Following the migration of its diamond manufacturing industry to India and the globalisation of the diamond business, its importance in the past decades has been predominantly as the world's wholesale diamond hub. This multi-billion industry today accounts for approximately 5% of Belgium's foreign trade and 15% of all exports outside the EU. This important contribution explains the importance to Belgium of its diamond sector and its considerable efforts to protect it from the rising competition by other trading hubs in countries like UAE, India, China or Switzerland.

Yet as the world's diamond hub, Antwerp not only attracted the best but also the worst of this diverse industry. In no uncertain terms, a series of UN and NGO reports linking Antwerp to bloody civil wars across Africa in the late 1990s and early 2000s revealed the dark side of the city's diamond glory. The pressure was upped even further following a succession of large diamond-related fraud scandals that came to light in the years thereafter. Gradually, these developments provoked government, industry and law enforcement to take action and led to a tightening of controls on the Belgian diamond trade.

Despite the initial hesitance and contests over the need for stricter regulation, today government and industry – the latter being represented by the Antwerp World Diamond Council (AWDC) – together present Antwerp as the world's most ethical and transparent diamond centre. This claim is justified by reference to a diverse range of measures to regulate the profession and monitor the trade, which are unequalled in the rest of the world. Such measures include obligatory registration requirements for diamond dealers, the inspection of all incoming and outgoing shipments, record-keeping and stock declaration requirements, government oversight of industry self-regulation, and anti-money laundering measures.

From the early 2000s, the prioritisation of the fight against conflict diamonds by Belgian law enforcement led to criminal investigations into several individuals, companies and networks involved or allegedly involved in smuggling conflict diamonds from war-torn countries like Sierra Leone, Angola, DRC and Liberia. While these proceedings sought to demonstrate Belgium's determination to address the problem, they immediately revealed some important challenges. Central amongst these is the difficulty of substantiating such charges before the courts due to the complexities involved in directly linking a person or company to the purchase of conflict diamonds in an embargoed country. This difficulty became only more complex as criminal techniques refined and fragmented the smuggling chain through complex corporate and financial structures. Consequently, criminal proceedings became even more protracted and ended with a settlement at best, or risked exceeding the applicable limitation period.

While some of these proceedings are still ongoing, there have been no new revelations of conflict diamonds circulating on the Belgian market since 2014. Should we conclude that the strict Belgian controls beat the problem, or rather *vice versa*, that the problem is at present escaping detection?

The strict Belgian controls do appear to have had a deterrent effect on criminals dealing in conflict diamonds. However, the problem is that these could simply move elsewhere as there remain ample weak links in the global diamond supply chain by which conflict diamonds can enter the formal trade. Notably, the KPCS that was launched in 2003 precisely for this purpose has not managed to prevent this. The limited enforcement of internal controls by KP participants, combined with the KPCS's blind spots when diamonds are mixed or polished, keep the certification scheme both narrow in scope and susceptible to abuse. The problem is that once any of the 56 KP participants allows conflict diamonds to enter the KP certified chain, it becomes nearly impossible to detect this as the scheme does not require that the mining origin be traceable beyond the first point of export.

There is therefore little a single participant like Belgium can do to uncover fraud that occurred in another jurisdiction as its scope of inquiry is effectively limited to the paper trail accompanying diamond shipments that enter or leave its territory. The complexity of diamond supply chains and corporate structures, which tend to span multiple jurisdictions and involve numerous intricate business relations, make it relatively easy for smugglers to hide malpractices and assure that the paperwork presented in Belgium satisfies controls.

This implies that there are also limits to what can be expected from Belgium's renowned inspections of the 450 shipments worth around EUR 190 million that pass through the DO on an average day. These difficulties are apparent in relation to the controls on diamonds from the Central African Republic, which are subject to a regime of enhanced vigilance as the CAR is the only country currently under a (partial) KP embargo. Yet, despite the extra scrutiny of diamonds from the CAR, its neighbouring countries or suspicious companies, DO experts have limited means to detect, and an inadequate legal basis to stop, conflict diamonds from CAR if they have been mixed in other parcels, particularly if this is done in small quantities.

However, attributing problems only to weak links in the global chain may draw the attention away from some of the larger systemic problems that complicate the fight against conflict diamonds in Belgium and elsewhere.²⁸⁴ Indeed, conflict diamonds slip through the Belgian and any other KP participants' net irrespective of loopholes or lax regulation that may exist in other jurisdictions.

This is to a considerable extent due to the changing nature of conflict, which has become more diffused and involves situations where public or private security forces, companies, criminals or armed groups in countries like Zimbabwe, the Central African Republic, Tanzania, Sierra Leone, the Democratic Republic of Congo, Angola, Brazil and Venezuela, are using widespread or systematic violence to secure their economic interests in diamond exploitation. These issues are not captured by the KPCS, due to its singular focus on preventing only diamonds that are fuelling civil wars, which sets arbitrary blinders for the Belgian controls that are grafted onto this scheme. The narrow focus of the KPCS has remained unchanged over the past 20 years. Meaningful reform seems ever less likely as a focus on claims of sovereignty and the absence of trust among KP participants has entrenched this process within an insular and legalistic logic that is strongly biased towards the status quo and that limits public scrutiny and pressure.

Another important regulatory challenge is the difficult balance between efficient trade and efficient law enforcement. As put by the CFI President in 2012 (own translation): "the fundamental question is how far we can go with these controls without shooting ourselves in the foot. Diamond dealers enjoy a de facto power: an economic power. When talking about increased controls, the threat of relocation always looms over Antwerp".²⁸⁵ This presents challenges both in terms of cooperation with the private sector and as between government agencies in Belgium

Regarding public-private cooperation, the AWDC has come a long way in getting the traditionally regulation-wary industry on board. Yet, the AWDC's leverage over the actions of individual companies is limited. Moreover, its primary objectives of strengthening Antwerp's business position and the image of diamonds are not always compatible with attempts to tighten controls on the diamond trade, which involves risks of companies moving to competing locations or generating negative consumer associations with diamonds.

Tension is also evident in relation to the cooperation amongst the various government agencies involved in regulating the diamond sector. This regulation requires a careful balance between preventing unlawful practices within the trade, whilst leaving sufficient breathing space for the sector to function. Such a balance has often been hindered by a relatively compartmentalised approach, with the outlook and concerns of each agency shaped by their respective mandates, be it licensing, administrative controls or law enforcement.

Rather paradoxically, the tightening of controls in Antwerp may have reduced Belgium's grip on the sector, as it has contributed to pushing the economic power and financing of the business increasingly into foreign hands. What is more, other trading centres appear to have taken advantage of Belgium's regulatory efforts by luring away businesses on the basis of a *laissez-faire* regulatory approach. This issue has been particularly apparent in relation to Dubai, which may overtake Antwerp as the world's main diamond trading hub soon. The end result of this delocalisation may not only be less regulation of the diamond business globally, but also increased challenges for Belgian authorities to detect and prosecute conflict diamond smuggling networks that may be abusing the loopholes in other jurisdictions to con-

284 Gibb M., 'Weak Links', Aeon, 11.09.2020, <<https://aeon.co/essays/what-the-supply-chain-metaphor-observes-about-global-justice>>.

285 Lallemand (2014), p. 144.

taminate the global – and thus also Antwerp’s – diamond trade.

Two overarching conclusions can be drawn from the above challenges. Firstly, if even the world’s leading example in implementing diamond sector, and specifically KPCS, controls is not achieving the desired results, this points to the need for a more fundamental rethinking in how to respond to such challenges. Given the difficulties, or perhaps impossibilities, of effectively preventing all diamonds tainted by abusive practices from reaching the market, and thus fuelling human rights violations, this cannot be limited to a consumer-oriented approach. It should equally involve new strategies and efforts aimed at addressing the root causes of diamond-related conflict and violence along the supply chain. Secondly, this report highlights the transnationality of the challenge of conflict diamonds, and the importance of responding to it as such. Therefore, enhancing domestic controls and continuously adapting them to new challenges, needs to be combined with and embedded in efforts to strengthen the intergovernmental regulatory approach and transnational law enforcement cooperation.

6. RECOMMENDATIONS

6.1. To the Belgian authorities

- Make spot-checks on the accounting of diamond companies related to imports, exports and stock as well as those companies' implementation of the System of Warranties more rigorous and unannounced, and scale these up to cover a larger proportion of the sector each year.
- Make the benefits of industry self-regulation in the Belgian regulatory framework (namely the fast-track procedure) dependent on the implementation of thorough third-party audits that accurately assess company efforts to identify, prevent, mitigate and account for human rights risks and impacts along the entire diamond supply chain. Require that such audit procedures and outcomes be publicly transparent while taking into account due commercial privacy.
- Seek a better and more clearly articulated balance between economic and law enforcement considerations, which allows more room for the latter to prevent, detect and stop possible criminal activities within the diamond trade.
- Provide more resources and centralise responsibility for diamond/mineral-related cases in law enforcement entities to enable the necessary specialisation and accumulation of experience and knowledge in handling such cases.
- Revitalise the public debate on ethics in this important Belgian sector, including through parliamentary deliberations and awareness raising of the challenges and opportunities associated with both artisanal and industrial mining, including the shortcomings of the Kimberly Process Certification Scheme in addressing these.
- Push for greater international regulatory and law enforcement cooperation, particularly amongst the most important global diamond trading hubs (Mumbai, Antwerp, Dubai, Hong Kong, Ramat Gan and Gaborone), in monitoring and investigating rough and polished diamond trading and the associated financial flows. Belgium could play a leading role in creating a diplomatic platform for sharing best practices and harmonising control procedures among diamond trading centres, in a bid to work towards a level playing field.
- No longer rely to such an extent on the KPCS as the primary (inter-)governmental effort to prevent conflict and human rights challenges in diamond supply chains, and address their root causes, given that meaningful reform to adapt this mechanism to new realities is becoming ever less likely.
- Address conflict and human rights challenges in diamond supply chains as part of more general efforts to legally require companies to undertake human rights due diligence (HRDD), including through the adoption of a Belgian law on mandatory HRDD, the promotion of an EU corporate due diligence regulation, and a UN binding treaty on business and human rights, as well as the incorporation of diamonds in EU Regulation 2017/821 on Conflict Minerals.

6.2. To the Belgian diamond industry

- No longer rely on the KPCS to make misleading claims about the conflict-free nature of diamond sales and purchases, and communicate openly and honestly about the shortcomings of this international scheme, and the remaining challenges associated with both artisanal and industrial mining.
- Advance filling the gaps left by the KPCS by making third party audits of industry self-regulation more thorough, accountable and transparent. Auditors should moreover have the appropriate human rights expertise and make on-the-ground or mine of origin assessment visits, in order to accurately assess

companies' efforts to identify, prevent, mitigate and account for human rights risks and impacts along the entire diamond value chain.

- Strengthen cooperation with Belgian and international financial intelligence units by continuing to enhance vigilance in relation to money laundering risks and reporting of suspicious transactions, and by sharing insights and information that could facilitate and improve these investigations.
- Continue to enhance and promote transparency and traceability across diamond supply chains, including by undertaking and supporting the collection of publicly available data on the human rights and related impacts of diamond mining and trading, and by supporting and testing new techniques to determine the origin of diamond samples arriving in Antwerp.

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