



POSITION PAPER

Eurometaux's Position Regarding the EU draft Regulation for a Union system for self-certification of importers of certain minerals and metals originating in conflict-affected and high-risk areas.

Brussels, September 2015

Eurometaux, the European Non-Ferrous Metals Association, reiterates its support for an EU initiative for a system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas.

As stated in our earlier position papers¹²³, the European Non-Ferrous Metals industry supports the objective of moving towards increased transparency in the trade of minerals originating from conflict-affected areas, and would hence support a proposal that is comprehensive, pragmatic, and effective, without putting the competitiveness of the European industry unnecessarily at risk.

In view of the Trilogue process that is expected to start soon, we would like to stress the elements that the EU metals industry considers as fundamental for a successful EU Regulation:

- 1. Existing due-diligence industry schemes have proved to be the most effective system to increase transparency in the trade of conflict minerals and therefore they should remain the basis of any effort towards increased transparency in the trade of minerals with conflict areas**
- 2. Definitions should be clarified and better scrutinized**
- 3. An efficient system needs efficient control organised via a European agency**

¹ Eurometaux's Response to the EU draft regulation setting-up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas, April 2014

² Eurometaux's Position and Proposals on a possible EU initiative on minerals originating from conflict-affected countries, sent to the European Commission's Services, February 2013

³ Eurometaux's Call for a pragmatic and effective proposal on the forthcoming EU initiative on responsible sourcing of minerals from conflict-affected regions, sent to the President of the European Commission Mr. José Manuel Barroso, November 2013

4. **An in-depth impact assessment is needed**
5. **Concise but non-bureaucratic obligation to produce the proof on the origin of resources**
6. **Recycled material should be excluded from the scope of regulation**
7. **Need to incentivize downstream companies to buy conflict-free**
8. **Create a level playing field for all importers placing the minerals in question to the EU.**
9. **An effective foreign policy and a development co-operation initiative are vital in order to break the link between minerals extraction and conflict**

1. **Existing due-diligence industry schemes have proved to be the most effective system to increase transparency in the trade of conflict minerals and therefore they should remain the basis of any effort towards increased transparency in the trade of minerals with conflict areas**

Through the various industry schemes that EU companies apply, the European metals industry has played an important role in increased transparency in the trade of conflict minerals. For example, 99% of cassiterite imports from Central African countries are now covered through the Tin Supply Chain Initiative for due diligence and traceability.

The voluntary system is dynamic and can be more easily adapted to real risk profiles. It can also be reviewed when necessary.

Moreover, the voluntary system can bring more ambitious results. Based on the practices of best companies, it forces others to follow the level of frontrunners. This currently includes other due diligence aspects like social and environmental due diligence, which is not reflected in the Commission's proposal.

Contrary to that, the effect of the mandatory US legislation the Dodd Frank section 1502 (hereinafter referred to as "the Dodd Frank Act") resulted in a *de facto* embargo on exports of minerals from the Democratic Republic of Congo and its adjoining countries. As stated by many independent researchers⁴, unemployment and poverty in the affected regions have

⁴ For example, Michael J. Kavanagh, Congo Tin Sales Tumble 90% as Companies Avoid 'Conflict Minerals', Bloomberg News, 23 May 2011 <http://www.bloomberg.com/news/2011-05-23/congo-tin-sales-tumble-90-percent-as-companies-avoid-conflict-minerals.html>

increased radically, having a devastating effect on social stability and the security of Congolese citizens.

The vast majority of Eurometaux's members producing tin, tantalum and tungsten and gold are already members of one or several industry programmes.

For example, as result of the Conflict-Free Smelter Programme (hereinafter referred to as "CFSP") as from January 2015, 134 smelters or refiners have been authorised as CFSI-compliant, with 52 more working towards compliance.

Considering that the global number of smelters is about 420⁵, the number of participants only in CFSP-Programme constitutes already a very substantial percentage. In addition to that, the membership of industry programmes includes many smelters from third countries that are introducing the requirements laid down in these initiatives in their own systems.

Another advantage of these programmes is participation of the whole supply chain, including downstream companies. In that way, the costs are shared with the upstream part of the supply chain. Thus, recognition of industry schemes as equivalent to the requirements of the future EU Regulation is the key factor for successful regulation.

Moreover, the mandatory scheme requires significant improvement of the current proposal, ensuring as a priority that existing schemes are recognised. This will be an essential part of making the EU system applicable to all relevant economic operators.

2. Definitions should be clarified and better scrutinized.

- a) The definition of "conflict-affected and high-risk areas" leaves too much space for subjective interpretation and legal ambiguity. Today, when conflicts are developing very fast, it is impossible to let companies to decide themselves which country is a conflict area and which is not.

Such a vague and broad definition could well lead to a situation where subjective interpretation by companies or governmental authorities can result in unequal applications, competitive disadvantages and market distortions.

Thus, a clear definition as well as the list of areas that are covered under EU legislation is a necessity to make this legislation effective.

L. Seay, What's Wrong with Dodd-Frank 1502? , Center for Global Development, January 2012

<http://www.cgdev.org/content/publications/detail/1425843/>

⁵ Commission staff working document, Impact Assessment, Accompanying the document to Proposal for a Regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas, Brussels, 5.03.2014, p.19

http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152229.pdf

- b) The scope of the EU Regulation should be further clarified. The current EU proposal is based on several Combined Nomenclature (CN) codes that describe metals ores and some related products.

It is noteworthy that only some and not all items that might be considered component parts for import are covered under the current proposal. Furthermore, the practical application of the current EU proposal, which is based on only a few CN codes, is doubtful.

Many CN codes mentioned in Annex 1 of the EU Regulation can result from primary and secondary operations. *De facto* distinction is not possible. This will lead to costly certification obligations for recycling smelters, since they will have to prove that their products result from recycling activities.

In addition to that, the definition of gold is not identical in different languages (for example, “doré” in French). As result, the current definition does not provide a clear distinction on which materials have to be included.

3. An efficient system needs efficient control organised via a European agency.

The EU proposal requests the competent authorities of each Member State to ensure that the EU legislation is properly implemented. In order to organise an efficient control system, Member States should establish their own agencies, as well as provide training to their civil servants.

Due to the high budget costs, it is actually dubious whether a uniform implementation throughout all Member States can be organised. In addition to that, many companies operate in different Member States and may be subject to review and oversight by several competent authorities.

A solution to this problem would be given by a European agency aiming at harmonising the implementation of the regulation.

4. An in-depth impact assessment is needed

Needless to say, in case of a mandatory scheme, an in-depth impact assessment should be conducted by the EU Commission in order to assess not only the costs and other impacts on the competitiveness of European companies, and the risks of creating multiple regulatory and reporting requirements including the US Dodd-Frank Act, Section 1502, but also the opportunity costs as the EU companies will miss deals towards third-countries' players, who will not be obliged to follow the same obligations.

5. Concise but non-bureaucratic obligation to produce the proof on the origin of resources

The proposal excludes recycled material from the scope of regulation. However, any undertaking needs to provide a reasonable proof that resources are derived only from scrap and recycled material. That obligation is uncertain.

European companies need a clear definition of recycled material, including a concise but non-bureaucratic procedure to prove the origin of resources. These issues have to be discussed in the implementation phase of the current regulation.

6. Recycled material should be excluded from the scope of regulation.

The need to trace back the origin of material should not be applied to recycled materials. The EU Regulation should provide a specific exemption to recycled minerals, as it is technically impossible to trace the source of the original minerals. In line with the definition given by the OECD, recycled metals are generally sourced from reclaimed end-user or post-consumer products.

Recycled metal includes excess, obsolete, defective and scrap metal materials which contain refined metals that are appropriate to recycle in the production of tin, tantalum, tungsten and/or gold. All of these should be exempted from tracing back to the mine of origin.

The European Commission's Raw Materials Initiative promotes manufacturing from recycled materials as the basis for the EU's sustainable economic development and calls for the greatest use of recycled materials as possible. Thus, the inclusion of secondary materials in the Regulation's scope is in clear contradiction to the Commission's goal of securing environmental production in Europe.

Moreover, further attention has to be paid to the implementation of the legislation, specifically for recycling certification. Following the common practice developed in other certification schemes, the EU legislation should ensure that its system can follow a practicability path, applied for recycled materials.

7. Incentivize downstream companies to buy conflict-free.

Although the upstream sector is naturally closer to mines, the supply chain might include up to 30 supply operations, with a very few major contributors (as is the case for tungsten). One should not undermine that the costs are extremely significant also for the upstream sector.

Moreover, for metals that are traded globally via the London Metal Exchange (hereinafter referred to as "LME") or other similar metals exchanges, there is no possibility to differentiate between conflict-free and non-conflict-free metal, as the physical settlement of LME contracts is the seller's option. So, the buyer cannot distinguish which sort of metal he will receive.

At the same time, the difference in values between conflict-free and non-conflict-free metal could be substantial. As a consequence, the LME price would be subject to non-transparent premiums for conflict-free status of metal, which will affect the stability of metals pricing.

Thus, without any buy-in commitment, it is natural that a downstream company will buy metals following the lowest market price offered. Furthermore, without monitoring of imports of “semi-finished” and finished goods, all efforts of the upstream sector on proving conflict-free minerals will remain in vain.

Moreover the London Metal Exchange should be involved in the introduction of a regulation on conflict minerals because the LME is the most important exchange for several metals in question.

8. Create a level playing field for all importers placing the minerals in question to the EU.

Furthermore, the initiative that focuses only on smelters might work, if similar efforts are taken world-wide.

However, in the case of the European Union, which entails only 5 % of the global number of tin, tungsten, tantalum and gold smelters⁶, mandatory requirements introduced only on smelters will make no sense, as it would be obviously more convenient to avoid a more expensive conflict-free smelter than source metals from a third country’s producer that does not have the same obligations.

Thus, in addition to importers of ores and concentrates, the European system should introduce requirements for importers of metals.

9. An effective foreign policy and a development co-operation initiative are vital in order to break the link between minerals extraction and conflict.

The legislative Initiative should include not only measures related to import requirements but simultaneously focus on developmental co-operation.

As pointed out by many civil society activists, other measures, apart from trade-related measures, need to be introduced in order to solve chronic issues occurring in the affected regions, such as corruption, the lack of involvement of governments and the impunity of armed groups.

The Joint Communication of the European Commission and European External Action Service providing foreign policy and developmental co-operation actions is a very positive

⁶ Commission staff working document, Impact Assessment, Accompanying the document to Proposal for a Regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas, Brussels, 5.03.2014, p.19

http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152229.pdf



step in order to improve the situation on the ground. Thus, we urge the EU authorities to advance with further improvement and implementation.

Se Al Cu Ni Pb Sn Zn Au Ag Pt Sb W Be Si Cr Co Mo Ge V Mn Ir Ru Rh Ta