EUROMETAUX
EUROPEAN ASSOCIATION OF METALS

Brussels, 21 March 2013

Mr. Karel De GUCHT
Commissioner for Trade
European Commission
200, Rue de la Loi
B-1049, Brussels
Belgium

Dear Commissioner,

In view of a possible EU initiative on minerals originating from conflict-affected countries, EUROMETAUX, the Association of the European Non-Ferrous Metals Industry, would like to present you with its views on this important issue and to outline its proposals for initiatives that address the need to increase transparency in trade of certain minerals, originating from conflict areas, without putting the competitiveness of the European industry at risk.

Please find enclosed the EUROMETAUX position paper with our specific recommendations outlined in more detail. We hope our views and suggestions will assist your work and that of your colleagues within the European Commission and of course, we would particularly welcome an exchange of views with your services in order to provide any necessary information in more depth.

Kindly note that this position paper has also been sent to Mr. Tajani, Commissioner for Industry and Entrepreneurship and Ms. Ashton, High Representative of the Union for Foreign Affairs & Security Policy.

Yours Sincerely,

Guy THIRAN
Secretary General

Copy to: Mr. Marc Vanheukelen, Cabinet of Mr. De Gucht

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EUROPEAN ASSOCIATION OF METALS

Brussels, 21 March 2013

Mr. Antonio TAJANI
Vice-President
European Commission
200, Rue de la Loi
B-1049, Brussels
Belgium

Dear Mr. Vice-President,

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Secretary General

Copy to: Mr. Diego Canga Fano, Cabinet of Mr. Tajani

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Brussels, 21 March 2013

Mrs. Catherine ASHTON
High Representative of the European Union for Foreign Affairs and Security Policy/Vice-President of the European Commission,
200, Rue de la Loi
B-1049, Brussels
Belgium

Dear Mrs. Vice-President,

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Yours Sincerely,

Guy THIRAN
Secretary General

Copy to: Mr. James Morrison, Cabinet of Ms. Ashton

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February 2013

Eurometaux Position and Proposals on a possible EU initiative on minerals originating from conflict-affected countries

Background information

During the last few years, the issue of conflict minerals has gained in prominence among legislators, NGOs and industry. Attention has in particular focused on conflict minerals originating from the Democratic Republic of Congo (DRC) and its adjoining countries, and especially the DRC's eastern provinces. The main concern is that the exploitation and trade of certain minerals, defined as conflict minerals, is helping to finance armed conflict in the DRC and its adjoining countries and contributing to a humanitarian crisis.

To address this issue, the US Securities and Exchange Commission (SEC) adopted in August 2012 final rules relating to conflict minerals, including tin, tungsten, tantalum and gold, pursuant to Section 1502 of the Dodd Frank Wall Street Reform and Consumer Protection Act (hereinafter referred to as "the Dodd Frank Act"). According to these rules, as of 2014, companies that manufacture products containing conflict minerals[1] and are publicly listed in the USA, must fulfil certain disclosure and due diligence requirements, concerning the source and the chain of custody of those minerals, identifying whether they contain "conflict" minerals that directly or indirectly finance or benefit armed groups in the DRC or its adjoining countries.

[1] The term "conflict mineral" is defined in Section 1502(e)(4) of the Dodd Frank Act as (A) columbite-tantalite, also known as coltan (the metal ore from which tantalum is extracted); cassiterite (the metal ore from which tin is extracted); gold; wolframite (the metal ore from which tungsten is extracted); or their derivatives; or (B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country. The SEC rules interpreting the DFA provisions clarified that derivatives include only: *tantalum, tin, and tungsten*, unless the Secretary of State determines that additional derivatives are financing conflict. 17 CFR Parts 240 and 249b; 77 FR 56274, at 56363 (Sept. 12, 2012).

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The OECD is also engaged in work on the conflict minerals issue and has developed a voluntary Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (hereinafter referred to as "OECD Due Diligence Guidance"). Though this Guidance does not constitute a mandatory frame, it has been identified as an internationally recognized due diligence framework in the SEC rules implementing Section 1502 of the Dodd Frank Act and has inspired a number of sector-specific voluntary and supporting initiatives led by industry and other stakeholders.

The table below summarises the similarities and differences between the rules and initiatives mentioned above:

Table 1. Comparison of due diligence rules and initiatives.

	Dodd Frank Act	**OECD Due Diligence Guidance**	**Sector-specific initiatives**
Nature	Mandatory	Voluntary	Voluntary
Minerals in scope	Gold, tantalum, tin and tungsten	This guidance provides a framework for detailed due diligence as a basis for responsible global supply chain management of tin, tantalum, tungsten, their ores and mineral derivatives, and gold (hereafter "minerals"[2]).	Specific to each sector
Geographical area	DRC and adjoining countries[3]	Not limited, any conflict-affected and high-risk area	Depends on which rule/guidance the sector aims at implementing

[2] OECD Due Diligence Guidance, Introduction, page 12

[3] **"**DRC and adjoining countries" or "covered countries" – include: the Democratic Republic of Congo (DRC) and those countries sharing an internationally recognized border with the DRC. This currently would include: Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda and Zambia.

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All these facts have recently fuelled discussions at European level indicating the need for the EU to address the challenge of conflict minerals beyond what is already in place to promote transparency and social responsibility.

Considerations about the Dodd Frank Act and SEC Rules

As a result of a 2010 US legislative proposal, exports of minerals from the DRC and its adjoining countries have dramatically decreased, increasing unemployment and poverty and consequently worsening the economic situation of the respective region. Local civil society activists engaged in the mining sector estimate that 1-2 million Congolese artisanal miners and those who work in other aspects of the mining sector are currently out of work. Furthermore, in order to avoid an excessive administrative burden, many companies stopped sourcing the minerals from the DRC and its adjoining countries. The reports reveal that "North Kivu exports of tin… have fallen by 90%. Only three of Goma's 25 exporters are operating…"[4]

The SEC has estimated the costs of initial compliance with the Dodd Frank Act rules to be 3-4 billion USD, and thereafter to 206-609 million USD per year[5]. Since many European companies are listed on US stock exchanges or are also part of the US companies' supply chains, they will be required to conduct, document and report their due diligence practices along the supply chains of the minerals concerned. Thus, whether the EU deploys its own ruling or not, the implementation of the Dodd Frank Act has and will continue to have a significant impact on European companies.

Following a public consultation on its initial 2010 proposal, the SEC made several changes upon issuing its final rule. Examples of some of the changes are provided below:

If it can be demonstrated that a company's minerals are manufactured from recycled or scrap sources rather than from mined sources, the company's products containing such minerals are considered "DRC conflict-free." Without this exclusion, the Dodd Frank Act would have

[4] L. Seay, What's Wrong with Dodd-Frank 1502? , Center for Global Development, January 2012 http://www.cgdev.org/content/publications/detail/1425843/
[5] Rule implementing Section 1502 of the Dodd-Frank Act, the Conflict Minerals Provision, Page 240 http://www.sec.gov/rules/final/2012/34-67716.pdf

inadvertently discouraged the environmentally responsible practice of recycling due to the difficulty of tracing the origins of recycled or scrap material.

Referring to the OECD Due Diligence Guidance Gold Supplement the Dodd Frank Act recognizes that the origin of byproduct gold is the point of separation at the refinery[6].

The final Dodd Frank SEC rules do not demand an external audit of the supply chain, but rather look to appropriate systems to conduct a reasonable country of origin inquiry or due diligence on the source and chain of custody of minerals. Furthermore, "an issuer would have reason to believe representations were true if a processing facility received a "conflict-free" designation by a recognized industry group that requires an independent private sector audit of the smelter, or an individual processing facility, while it may not be part of the industry group's "conflict-free" designation process, obtained an independent private sector audit that is made publicly available"[7].

The adopting release of the SEC Dodd Frank Rules provides that "an issuer is not required to receive representations from all of its suppliers. The standard focuses on reasonable design and good faith inquiry". This means that in order to comply with the obligations of the Dodd Frank Act, a company must reasonably structure an inquiry and conduct the latter in good faith, on condition that it receives representations indicating that its minerals did not originate in the Covered Countries. The focus on reasonable design and good faith inquiry gives companies and their respective industries flexibility to develop risk-based solutions rather than imposing a mandate on companies to perform specific actions, such as independent mass balance audits of suppliers.

Perspectives of the European Non-Ferrous Metals industry

As a global player, the European Non-Ferrous Metals industry acts according to the principles of responsible trading and Corporate Social Responsibility (CSR). The European non-ferrous metals industry is concerned about the human rights situation in the Democratic Republic of Congo and its adjoining countries, and recognises the need to ensure the responsible sourcing of

[6] See, OECD Gold Supplement at Section II A.1. page 23
[7] Rule implementing Section 1502 of the Dodd-Franck Act, the Conflict Minerals Provision, page 149

natural resources from this area and any other. Together with governments and other stakeholders, our industry is prepared to contribute to an effective and workable solution that will increase the level of transparency in trade of minerals originating from conflict zones.

Eurometaux members are in line with the OECD guidelines and actively involved in a number of voluntary sector-specific initiatives which head towards the implementation of more transparency along their supply chains.

Those initiatives include, for example:

- The ITRI Tin Supply Chain Initiative[8],
- The supply chain initiative of EICC/GeSI, i.e. the Electronic Industry Citizenship Coalition and Global e-Sustainability Initiative[9],
- Initiatives by the Gold sector [London Bullion Market Association (LBMA), Responsible Jewellery Council (RJC)]
- Tungsten industry initiative called the *Tungsten Industry Conflict Mineral Commitment* or "TI-CMC" (under development), etc. (non-exhaustive list)

One should not underestimate the complexities, challenges and as consequence, related high costs that are associated with the requirements laid down in these initiatives.

From another perspective, our industry would be open to support from national governments that will incentivize the work of the industry, which is already in place, and will help to develop further industry's engagement.

European Non-Ferrous Metals industry believes that, before deciding how to address this issue at EU level, European authorities should take into account the following considerations:

- The EU should thoroughly analyse the experience of business and other relevant stakeholders in responding to existing requirements or initiatives intended to address conflict minerals.
- The OECD Due Diligence Guidance may assist in developing an EU initiative on conflict minerals, but other voluntary approaches that have proved to be effective should also be taken into account, and not undermined.

8 http://www.itri.co.uk/POOLED/ARTICLES/BF_PARTART/VIEW.ASP?Q=BF_PARTART_31025
9 http://www.gesi.org/Initiatives/SupplyChain/tabid/75/Default.aspx

- The analysis should include a consideration of any unintended impacts and adverse consequences, either on the companies or on the citizens and economies of the producing countries.
- European authorities should avoid creating a generalised suspicion of companies that use raw materials from conflict regions. Nor should it implicitly or explicitly encourage the belief that European companies should be considered responsible for armed conflicts in the Democratic Republic of Congo or other countries, given the often multiple and deep-rooted causes of those conflicts.
- If on the basis of this analysis, the EU decides to proceed with an EU conflict minerals/due diligence initiative, an in-depth impact assessment should be conducted which is able to assess 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 1502.
- The EU should particularly aim to avoid creating an administrative burden on European companies which might reduce their incentive to produce or deal with products containing the concerned minerals, or lead to their withdrawal from the market and replacement by companies from other regions that are not bound by similar regulations.

The European Non-Ferrous Metals industry supports the objective of moving towards increased transparency in trade of certain minerals, originating from conflict areas, and would hence support a comprehensive, pragmatic, and effective proposal without putting the competitiveness of the European industry at risk.

The European Non-Ferrous Metals industry is open to a dialogue with the European authorities in order to address this challenge together.

Eurometaux represents the European Non-Ferrous Metals industry

- **Non-ferrous metals contribute to the European creation of wealth and jobs**: they represent 2% of EU GDP and create **450,000 direct jobs and over 1 million indirect** jobs in Europe. Their use in high-tech and high added-value activities makes them very valuable to the EU's economy and competitiveness.
- **The non-ferrous metals industry is indispensable for modern society**. Thanks to their intrinsic properties – including durability and recyclability - non-ferrous metals are vital in order to meet essential societal needs and to build a low-carbon economy.

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