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EU metals industry's comments to EU trilogue negotiations on Conflict Minerals

Eurometaux, the European non-ferrous metals association, has been consistently supportive of the EU initiative to enhance transparency in the trade of Tin, Tantalum, Tungsten and Gold (3Ts and Gold) originating in conflict-affected and high risk areas. Our priorities for a successful EU regulation have been outlined in successive position papers: [here](#) and [here](#).

In this paper, we provide concrete comments on the draft EU proposal being discussed in trilogue negotiations. In particular, the paper reacts to the reported stance of the European Commission towards a possible compromise, whereby the EU's supply chain due-diligence system would be compulsory for importers of 3Ts and Gold.

The EU metals industry has continued to support a voluntary EU scheme for importers of 3Ts and Gold. Voluntary certification has already provided concrete results, and now covers the overwhelming majority of EU companies, which are frontrunners of due diligence. This forces other global players to follow the same practice¹. Additionally, voluntary certification includes elements not reflected in the European Commission's proposal, including social and environmental due-diligence. Existing schemes are also applicable worldwide and guarantee full supply chain coverage, allowing a level playing field for Europe.²

A mandatory system for importers would be detrimental to our shared objectives for a worldwide coverage and efficient implementation of the EU proposal:

- 1. The good practice and efficient coverage of the existing schemes will be duplicated by a new set of conditions on the basis of the EU proposal. The only way to avoid that is by fully recognizing existing supply chain due diligence initiatives, based on existing certification standards as set in the OECD Due Diligence Guidance and which are applicable in industrial realities.** Policy makers should avoid that the EU regulation forces supply chain due diligence systems to adapt to new rules, in order to be recognized. We therefore recommend that widely applied certification schemes (like CFSI, TI-CMC, LBMA, iTSCI) are directly mentioned in the text of the regulation in order to provide legal certainty. There could be serious competitiveness consequences from an unclear recognition process of the auditing schemes from existing initiatives. Requiring companies to undertake a double auditing for the same due diligence process would have significant administrative and cost burdens for EU companies. Moreover, it will penalize the efforts of importers of metals as raw materials (especially SMEs) that strive with global traders unwilling to provide the required audit reports as long as they can supply clients in other parts of the world where such certification is not being asked. As a result, EU access to raw materials would be undermined.
- 2. Recycled Materials should be left out of the scope of the regulation. The need to trace back the origin of material cannot be applied to recycled materials and so attention has to be paid to the implementation of the legislation, specifically for recycling certification.** Following the common

¹ During the last year (Jan 2015-Jan 2016), the number of smelters who are either compliant or working towards compliance with the Conflict Free Smelter Assessment Proposal significantly increased. CFSI website visited February 2016 <http://www.conflictreesourcing.org/conflict-free-smelter-refiner-lists/>

² Please see an indicative list of voluntary certification schemes developed for and by the metals industry enclosed.



practice developed in other certification schemes, the EU legislation should ensure that its system can follow a practicability path applied for recycled materials. Fostering recycling is a key factor for a successful circular economy with benefits for environmental and climate protection and therefore it should not be penalized by a regulation targeting trade.

3. **All parts of the supply chain should support due diligence.** As other parts of the value added chain are not directly in the scope of the regulation, this will have an impact on EU manufacturers: if they buy metals from non-EU smelters and refiners to manufacture electronic devices they are 'importers' and will need to do their supply chain due diligence; whereas if they buy semi-finished compounds (metals in a subpart of an electronic device), they don't have due diligence obligations, neither do importers of the complete device. This creates an additional manufacturing cost in the EU and puts EU smelters and refiners in disadvantageous position
4. **The definition of the conflict-affected and high-risk areas is not clear and provides no certainty to companies.** The proposed handbook to economic operators that includes steps to companies to define whether an area is conflict-affected or not does not provide clarity. The more stringent the disclosure requirements are for companies in case of a mandatory scheme - not only to report on their transparency policies but also to disclose whether and how much they source from conflict-affected areas - the more the assessment of whether an area is a conflict-affected or not becomes an issue of legal compliance. As non-compliance is subject to sanctions, rules must be unambiguous. We understand the difficulty to define unambiguous rules. An alternative option could be a UN/EU approved sanction list (black list) of upstream companies.
5. **It is very difficult for the competent authorities of member states to ensure the effective and uniform implementation of the EU regulation throughout the Union.** Non-binding Guidelines are not enough to give precise guidance for ex-post checks. Thus member states will have difficulties to ensure the uniform implementation of the EU regulation throughout the Union, while additional cost and administrative burden will be created for companies operating several sites in the EU.
6. **The assessment of the impact of a mandatory EU regulation, measured against the possible costs for the EU industry,** is not clearly defined. Additional impact assessment would be needed if a fundamental change is applied and the EU industry should be involved in the assessment procedure.
7. **The regulation should ensure that EU operators that extract 3TG metals from internal EU sources or that import raw materials to extract 3TG other than those listed in Annex I can also be voluntarily whitelisted as 'responsible smelters and refiners'.** Several EU operators that extract 3TG's from other sources are frontrunners in social responsibility (recycling, valorisation of tailings, internal EU supply chain) and they should be recognized for their role and efforts. In case of a mandatory EU scheme, this exclusion will create serious market problems to those companies.