

20

From: [4.1 (b)]
Sent: mardi 15 avril 2014 15:11
To: [4.1 (b)]
Cc: [4.1 (b)]
Subject: Conflict minerals compliance conference - london 10-11/04

[4.1 (b)] participated in a conflict minerals compliance conference in London to present and explain the EU approach. The event was well attended notably by representatives of the business community including downstream, smelters/refiners, and chain of custody experts (Bentley, Umicore, Vodafone, PAMP, Metalor, i-point, PTC etc.) as well as EICC/CFSI and global witness. The discussion focused on practical aspects of due diligence in view of upcoming deadlines under the DFA but it also allowed for a useful debate on some of the most salient difficulties faced by companies who seek to source responsibly. In this context, the EU strategy presented by [4.1 (b)] was well received notably by refiners, smelters and dd consultants. One downstream company expressed the concern that the EU's voluntary approach would make upstream companies feel "off the hook" thereby reducing the downstream's leverage on their suppliers. The public procurement incentive and the expected legislative process regarding the regulation were also explained. Main points discussed throughout the conference were the following:

- All organisations praised the work of EICC/GESI and referred to the importance of the CMRT (reporting template) as an industry standard allowing for a certain degree of automation between companies and being applicable to all industries well beyond electronics. The 3rd version of the CMRT will soon be available and all agreed that the more widespread the template the better for reporting purposes. Participants also raised the difference between "product reporting" and "company reporting" which will have consequences under DFA but also under the EU approach [4.3]
[4.3] CFSI continues to push for company reporting (although acknowledging its downsides) but companies may have a tendency to establish split systems which raises questions in terms of auditing, smelter lists etc.
- The conference was attended by a number of model smelters and gold refiners with tested due diligence systems in place since well before DFA. They described auditing procedures as being among the strongest existing protocols (note: this view was not shared by all and external auditors seem to be still struggling to establish their credibility). Refiners described their policy of "dynamic due diligence" including a substantial role for individual experts + on site visits to exercise common sense in suspicious circumstances involving their suppliers. Their main message was that dd requires full senior management attention and experienced professionals implementing a company-wide policy over the long term. Under such conditions it can deliver good results.
- Boeing's public statement on the impossibility for them to be totally conflict free triggered a discussion on the risk of seeing a 2 tier supply chain emerge notably as of the 1/1/15 deadline on determinations. This appeared as a serious concern for some of the most experienced dd experts from the downstream side. This view is based on the assessment that some companies not directly involved in mass consumer products will renounce the conflict free determination given the cost it would entail and the uncertain results. [4.3]
- Finally, a well-known discussion also took place on confidentiality vs. disclosure. Participants seem to agree that the way forward is to develop data aggregation + standardisation (CMRT) in order preserve a sufficient degree of business confidentiality.

In a side meeting with CFSI we obtained the following information which is also worth noting:

- The CFSP smelter list is progressing: now c. 100 listed smelters of which 15 are sourcing from the region and 20 are located in China.
- Regarding the risk of inconsistencies between the EU approach and DFA and its consequences on the status of smelters (i.e.: geographical scope and public and private security forces); [4.1 (b)] explained that they are in the process of making their approach more flexible precisely to match the scope of the OECD. So he did not appear to be concerned with the EU's proposal. We will have to touch base in Paris in May. However he perceived the risk of the global scope leading to embargo situations in regions other than the GLR if adequate capacity for responsible sourcing is not rapidly installed. [4.3]

[4.1 (b)]



European Commission
DG TRADE
Unit G3

CHAR 8/99
B-1049 Brussels/Belgium
+32 2 2955360

[4.1 (b)]

MINUTES

16-04-2014, 14:30–16:00

Meeting with Eurometaux on the integrated EU approach on the responsible sourcing of minerals originating conflict-affected and high-risk areas.

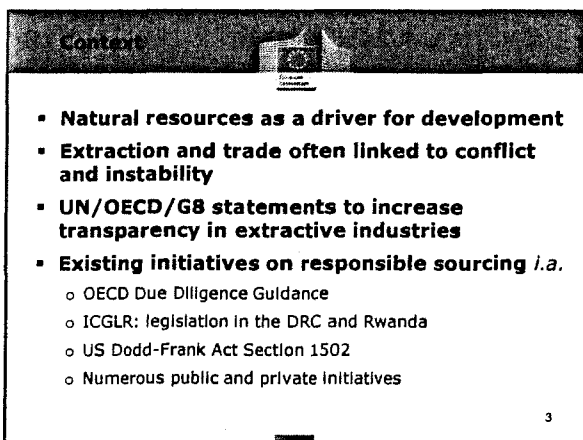
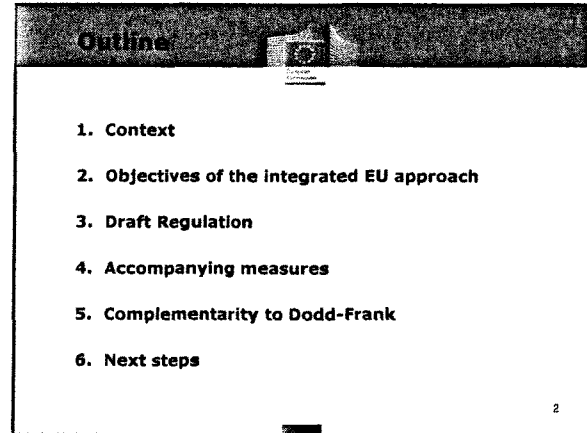
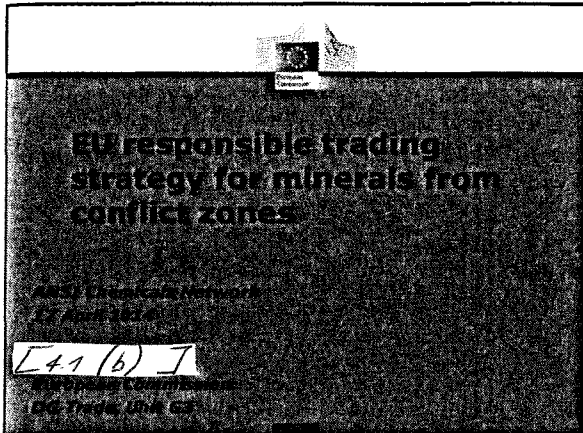
Commission:  4.1 (b) 

German Non-Ferrous Metals Association, Aurubis, Eurométaux, Atlantic Copper SLU, Umicore

The purpose of the meeting between the **Commission** and **Eurométaux** was to exchange views on the proposed draft Regulation to set up a Union system for supply chain due diligence self-certification of responsible importers of the 3ts and gold in conflict-affected and high-risk areas. **Eurométaux** emphasized the importance of an effective foreign policy and development cooperation approach to break the link between minerals extraction and conflict. Also, they stressed the need to engage the emerging economies in supply chain due diligence efforts in order to avoid a competitive disadvantage for EU importers. Furthermore, **Atlantic Copper SLU** asked for clarification of the purpose of a white list of responsible smelters/refiners and expressed concerns regarding the disclosure obligation on mineral quantities and date sourced in conflict regions. **Aurubis** expressed its concern on the definition of conflict-affected or high-risk areas, the potential extension of the product-scope of the scheme, and pointed out that disclosure obligations beyond OECD Due Diligence Guidance could conflict with business confidentiality concerns vis-à-vis its competitors. Also, **Eurométaux** stressed that existing voluntary initiatives such as the LBMA and CFSI should not be undermined and that the voluntary self-certification scheme should be complementary to existing self-certification industry schemes. **Eurométaux** pointed out that retrieving data from the supply chain on points (iii), (iv) and (v) of Article 4(f) of the draft Regulation is almost impossible. **Eurométaux** asked COM to provide a clear definition of conflict in the form of a detailed list. Further, the **German Non-Ferrous Metals Association** emphasized the need to state clearly that secondary raw materials are excluded from the scope of the draft Regulation. On third party auditing, **Eurométaux** asked who bears the costs, recognition of an audit by other clients/responsible investors, and indicated that the frequency of such audits is unclear. Finally, **Eurométaux** asked for clarification of Articles 8(2) and 8(4) of the draft Regulation and enquired about potential removal of responsible smelters/refiners from the list.

COM recognized the need to cooperate with the EEAS and DG DEVCO in order to integrate foreign policy and development cooperation measures. **COM** clarified that the public procurement incentive aims to engage downstream companies in supply chain due diligence through performance clauses in the procurement contracts for winning bidders. Also, **COM** stressed that it envisages a process-based approach on the basis of the OECD Due Diligence Guidance in order to avoid a conflict-free determination. Further, **COM** stressed that full information contained into the management systems of companies should not be disclosed to the public (e.g. quantities) and that it will provide guidance to MS to deal with business confidentiality. **COM** highlighted that further guidance will be provided for the level of information required to disclose on the supply chain when sourcing from conflict-affected and high-risk areas. Further, **COM** clarified that the product scope of the draft Regulation will not be automatically extended on the basis of the OECD supplements. **COM** expressed its intention to develop a consistent approach with other existing due diligence initiatives based on the OECD and

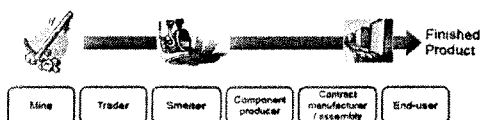
explained that its public procurement incentive and letters of intent will also focus on downstream companies. Also, **COM** indicated its intention to assist in efforts to retrieve data from the extraction level in cooperation with the OECD. **COM** clarified that a committee will assist in the implementation of the Regulation on the definition of conflict by developing clear criteria and that it will ensure a harmonised application by MS at the EU level. **COM** confirmed that the exclusion of scrap will be further detailed in the guidelines and confirmed that the company audited needs to bear the costs for third-party auditing. On the potential removal of responsible smelters/refiners from the EU white list, **COM** explained its focus on EU importers because of its legal basis but expressed its intention to refer to other initiatives in line with the OECD. **COM** asked **Eurométaux** for a clarification on its written comment on Chapter 10 of the Accounting Directive, which **Eurométaux** will answer in writing. **COM** asked industry whether LBMA or LMA can be considered as EU importer. **Industry** clarified that those exchanges only function as clearing houses and set references for prices for the metals traded.



Context

■ Operating environment for EU companies

- 150,000-200,000 EU companies indirectly affected by US Dodd-Frank Act
- 420 EU importers (traders, smelters/refiners, component manufacturers)
- EU trade share of ores is about 35% (tin, tantalum, tungsten, gold) and 15-25% for the metals



5

Objectives of the integrated approach

■ Based on public consultation outcome and impact assessment findings, an integrated EU approach proposed to promote responsible mineral sourcing

■ Complementary objectives established:

- Break the link between mineral extraction, trade and the financing of armed conflict
- Preserve and further develop a market in the EU for responsibly traded minerals from conflict regions
- Improve the ability of EU operators to comply with existing due diligence frameworks (OECD DDG, US Dodd-Frank)

6

Draft Regulation

■ Main elements of the draft Regulation:

- Voluntary self-certification by EU importers of tin, tantalum, tungsten and gold (ores, concentrates and metals) regardless of origin
- Obligations based on the OECD DDG (5-step framework)
- Publication of an annual EU list of responsible smelters/refiners
- Ex-post checks by EU Member States competent authorities
- Review no later than three years after entry into force

■ Aim: to act at the most effective level of the EU supply chain and to facilitate the flow of due diligence information down to end users

7

Accompanying measures

■ Additional measures to promote supply chain due diligence in the EU and beyond

- Public procurement incentives for companies selling products containing tin, tantalum, tungsten and gold
- Financial support to SMEs to promote the uptake of self-certification and to the OECD to promote due diligence among EU and non-EU smelters/refiners
- Visible recognition for the efforts of EU companies who source responsibly from conflict-affected countries or areas
- Policy dialogues and diplomatic outreach with governments in extraction, processing and consuming countries to encourage a broader use of due diligence
- Development cooperation with the countries concerned

8

Complementarity to US Dodd-Frank

- Dodd-Frank indirectly responsible for due diligence efforts among EU downstream users
- Weakness in the present system is the flow of information from upstream to downstream
- Focus of the EU proposal on upstream and in particular on smelters/refiners
- Incentive-based EU approach corrects the current deficiency in order to open up the EU market for responsibly sourced minerals from conflict regions

9

Next steps

- Draft proposal transmitted to the European Parliament and the Council
- Legislative discussion through ordinary legislative procedure
- Entry into force once legislative procedure is over and final Regulation adopted

10

Contact

Further contact/information

[4.7 (b)]

http://europa.eu/rapid/press-release_IP-14-218_en.htm

11

Minutes

Meeting Business Europe 24/04/2014 (11hr30–13hr00)

Chair: [4.1 (b)] assisted by [4.1 (b)]

Representatives from the **Market Access Working Group on Raw Materials**: Business Europe, Eurométaux, Hitachi, European Construction Industry Federation, General Motors, German Electrical and Electronic Manufacturers' Association.

Commission: [4.1 (b)] and [4.1 (b)]

EEAS: [4.1 (b)]

Overall:

Good meeting with keen interested from participants where **COM** presented the integrated EU approach on a responsible trading strategy for minerals from conflict areas. **EEAS** presented the additional measures of the joint Communication that accompany the proposed draft Regulation.

Industry showed a constructive attitude but **critical on the "mandatory" public procurement dimension** and asking for **recognition of existing industry schemes**. A broad range of SMEs should be eligible for assistance under COSME. Finally, although challenged industry not forthcoming on the issue of sourcing commitments.

Details:

The following questions we put up for discussion:

The European Construction Industry Federation asked why only SMEs are targeted for additional financial incentives. **General Motors** wondered who bears the responsibility to define CA/HR areas, and whether Russia would fall under this definition. Second, she enquired whether compliance with US DFA is sufficient to obtain the status of a responsible EU importer by default. **Business Europe** enquired about the scope of the voluntary certification scheme and whether it also applies to importers of end-products.

Eurométaux stressed the importance of concrete actions on the ground and pointed out the importance of the recognition of existing voluntary initiatives, such as LBMA. Further, she asked for a clarification of annual reporting. **The German Electrical and Electronic Manufacturers' Association** expressed a critical view on the dynamics between the voluntary self-certification scheme for upstream companies and the mandatory public procurement incentive for downstream companies. Further, she asked whether COM would consider financial support for SMEs willing to bid under the public procurement incentive.

Business Europe expressed its concern that the public procurement incentive is more intrusive and compulsory to other parties in the supply chain than expected. Also, he stressed that business efforts can only be effective when progress on the ground is ensured by diplomatic outreach to other global actors. **The European Construction Industry Federation** pointed out the difficulties companies that encounter to have access to information on their supply chain, which may hamper the uptake of the public procurement incentive. **Hitachi** enquired about the labelling and consumer information requirements as referred to in the joint Communication.

The **German Electrical and Electronic Manufacturers' Association** emphasized that the five-step OECD based due diligence requirements in the public procurement incentive may be onerous for SMEs and warned that SMEs may therefore stop bidding for public procurement contracts. **Business Europe** pointed out that the preparation of guidelines for the accompanying measures is unnecessary before the adoption of the final text.

The European Construction Industry Federation enquired about the view of EP on the voluntary nature and the product-scope of the proposed scheme. **Eurométaux** stressed that MS control may be difficult regarding the small amount of EU importers of 3ts and gold.

The following replies were provided:

COM emphasized that implementing guidance on the definition of conflict-affected and high-risk areas will be offered via the guidelines and a MS Committee. **COM** explained that a significant percentage of the EU importers constitute smaller traders, therefore assistance under COSME is offered to these importers. **EEAS** clarified the definition of CA/HR areas, which differs from the OECD definition of such areas, and stressed that this determination takes place at the company level.

COM referred in this respect to Annex 2 of the OECD Due Diligence Guidance, which provides a detailed description of conflict. **COM** stressed that due diligence means that a risk management and mitigation system needs to be in place. Compliance with DFA does not mean automatic compliance with the EU voluntary certification schemes because of its different geographical scope. **COM** explained that the voluntary self-certification scheme applies to upstream companies. It clarified that the public procurement incentive targets downstream companies and is mandatory for successful bidders and that its uptake will be promoted to the MS. **EEAS** recognized the importance of diplomatic and environmental efforts in order to achieve progress on the ground. **COM** explained its intention to build upon private initiatives such as LBMA and CFSI and clarified its intention to develop a complementary and consistent approach.

COM indicated that companies need to carry out their own due diligence by third party auditing, but stressed that this process will be facilitated by the uptake of due diligence by other parties in the supply chain. **COM** clarified that it based its decision for a voluntary scheme on the impact assessment and emphasized that this scheme will support downstream companies in the uptake of the due diligence efforts. **COM** acknowledged the effectiveness of offering financial support to SMEs for public procurement. Further, **COM** referred to the new Public Procurement Directive and the extension of its scope to life cycle production. **COM** stressed that the voluntary certification scheme aims to improve the ability of EU operators to comply with existing due diligence frameworks and that the public procurement incentive will be OECD based. **COM** clarified that the uptake of labelling measures is mainly promoted by NGOs but does not expect MS to adopt such measures with priority.

Further, **COM** stated that "equivalence" on due diligence measures needs to be recognized under the public procurement incentive to avoid a discriminatory approach. **COM** clarified that the EP position on the voluntary nature and product scope of the draft Regulation is difficult to predict. Finally, **COM** stressed it will offer guidance to MS to implement the scheme in order to ensure a harmonized approach.

Subject : RJC conference on CSR in London on 15/5/2014

Participants : [4.1 (b)]

Summary: Good attendance with about 125 participants from the jewelry (gold, diamonds) sector where undersigned delivered the opening speech on the EU state of play on 'conflict-minerals'. Other speakers covered issues related to human rights and responsible supply chain, value creation with CSR and the perception of consumers.

The chair [4.1 (b)] highlighted that in 2013 the RJC reached a mile stone in number of companies that became RJC certified (producers, refiners, manufacturers, retailers, and service industries). To follow-up on the RJC standard and certification a meeting with [4.1 (b)] (RJC Director on Standard Development) is scheduled at the May OECD forum.

Details: The following issues were raised in response to the EC presentation:

An Italian gold refiner was concerned about the small family jewelry businesses importers of gold lacking the resources/knowledge to carry out due diligence. He suggested the draft Regulation to include a company-size threshold (e.g. turnover, number of employees) to establish its application. COM advised specific comments to be channeled through the Member State authority who are currently looking into the file.

World Gold Council brought up the issue of discrimination of gold versus other metals (silver, platinum) that are not subject to the Regulation. COM informed that the focus had been on minerals for which detailed OECD guidance was available.

State of play US DFA: inquiries were made as to whether in response to the Court ruling the recent changes made by the SEC reporting on 'non DRC conflict-free' impacted the EU draft. COM replied that no impact as reporting on facilities using not DRC conflict-free minerals should still be listed (name and shame).

EU Timber Regulation: to what extent would the existing implementing guidance under this Regulation be useful for the draft 'conflict minerals' Regulation. COM indicated that the implementing guidance for Timber may be used as a model.

The CEO of a jewelry company inquired if the existing auditing arrangements such as under the LBMA are valid under the draft Regulation. COM replied that the draft Regulation is OECD modelled, as long as other programs are also OECD modelled this would suggest that there is compatibility. Detailed work on this would be carried out by COM when position of EP and MS becomes clearer.

MISSIONS REPORT – DF 14 907741 AND 14 907620

26-28 MAY 2014

Subject: 7th ICGLR-OECD-UN GoE Forum on Responsible Minerals Supply Chains

Participants: [4.1 (b)] (partial participation), [4.1 (b)] and [4.1 (b)]

Elena PERESSO (partial participation) (Cabinet)

And EEAS and FPI participants

Summary: Three-day OECD conference on the state of play on the responsible sourcing of minerals from conflict zones. [4.1 (b)] presented the **EU integrated approach**. [4.1 (b)] intervened in a session on **due diligence and SMEs**. The EEAS contributed to a session on the role of the government in enabling responsible sourcing.

Bilateral meetings were conducted with the **Conflict Free Smelters initiative (CFSi)** and the **London Bullion Market Association (LBMA)** as well as with the **Responsible Jewellery Council**. A meeting with the **US State Department** and the **Chinese Chamber of Commerce** on minerals and metals (CCCMC) were useful where the Chinese announced intentions to start working on due diligence for importers and smelters. US focussed on the problem of a licence provided by Burundi to set up a gold refiner in Bujumbura where it is unclear if this refiner will conduct due diligence

Several contacts have been made with **auditors** for follow up on our EU audit approach Useful contacts were established with representatives from DRC to prepare the KDG visit as well as with donors supporting close pipeline projects.

Finally, Representatives of the Dutch government inquired the extent to which the EU would be interested in a **honest broker role** of a wolframite (tungsten) project including a Rwandan mine, Austrian smelter, Philips and Fair phone.

Details: An important session on the **definition of conflict-affected and high-risk areas** was conducted on Monday where the **Geneva Academy** of International Humanitarian Law and Human Rights presented ongoing work on full global mapping of such areas which should support business to conduct due diligence. We should follow-up on work of which a first edition is scheduled by end 2014.

A second important session on the state of play in producing countries revealed only **limited progress** on the validation of mine sites and the issuing of **ICGLR export certificates**. As the EU initiative relies on sound supply chain oversight, this should be further discussed if possible with DRC authorities.

Participants of the CFSi and the LMBA, as well as Bureau Veritas, Ernst and Young, Enhesa and RCS Global showed interest in the Commission's further work and **standards on third party auditing** for importers and producers of end products under the EC public procurement schemes. Auditors referred to **audit standard ISO 19011** and **accreditation standard ISO 17021** and some other standards mentioned in the OECD Due diligence Guidance (footnote 50). The standards are important but the **additional skills and competences should be assured**. After further discussion with our ENTR colleagues in charge of standards and EU accreditation procedures, we will re-contact them.

Representatives of the Dutch government suggested the EU could take over the coordination of an emerging tungsten project as Jaime de Bourbon Parme is leaving soon. This issue should be discussed within DG TRADE and with the EEAS as notably [4.1(b)] seems to be willing to take the role of **honest broker** in this case. We were also approached by the Solidaridad [4.1(b)] who showed interest in setting up a **closed gold pipeline**.

[4.1 (b)]

[4.1 (b)]

From: [4.1 (b)]
Sent: 01 August 2014 15:31
To: [4.1 (b)]
Cc: [4.1 (b)]
Subject: RE: follow-up meeting with Eurometaux

Dear [4.1 (b)]

Thank you very much for your time yesterday discussing with us further suggestions on the EU draft regulation on responsible sourcing of minerals from conflict affected areas.

I believe, our discussion was very interesting. As I informed you during the meeting, currently we are consulting our experts within companies' members in order to develop detailed suggestions. I hope, to be able to share it with you in one-two month time.

Shall you have any further questions, please do not hesitate to contact me,

Best regards,

[4.1 (b)]

[4.1 (b)]

Head of International Trade and Economics Department
 Eurometaux - European Association of Metals
 Avenue de Broqueville 12
 B-1150 Brussels, Belgium
 Tel. + 32 2 775 63 15
 Email: [4.1 (b)]
www.eurometaux.eu

From: [4.1 (b)]
Sent: Friday, July 25, 2014 6:00 PM
To: [4.1 (b)]
Cc: [4.1 (b)]
Subject: RE: follow-up meeting with Eurometaux

Dear [4.1 (b)]

Yes some of us are still here!

Would 29/07 pm be suitable?

[4.1 (b)]

From: [4.1 (b)]
Sent: Thursday, July 17, 2014 5:12 PM
To: [4.1 (b)]
Cc: [4.1 (b)]
Subject: follow-up meeting with Eurometaux

Dear [4.1 (b)]

How are you?

In Eurometaux together with companies' experts we are developing further suggestions on the EU draft regulation on responsible sourcing of minerals from conflict affected areas. We believe, it would be of benefit to share it with your team and to discuss it further.

Would you/or your colleagues in charge available for a meeting with Eurometaux delegation? Considering the period of vacations, we would like to propose the last week of July. Hope, it might suit your schedule as well,

Best regards,

[4.1 (b)]

Head of International Trade and Economics Department

Eurometaux - European Association of Metals

Avenue de Broqueville 12

B-1150 Brussels, Belgium

Tel. + 32 2 775 63 15

Email: [4.1 (b)]

www.eurometaux.eu

From: [4.1 (b)]
Sent: mercredi 20 août 2014 19:17
To: [4.1 (b)]
Cc: [4.1 (b)]
Subject: RE: Meeting with [4.1 (b)] Brussels
Attachments: Gold GD bars REACH Position Paper 20100305.pdf

Dear [4.1 (b)]

Looking forward to seeing you tomorrow. I attach the 2010 industry position paper regarding treatment of bullion bars for REACH import controls.

I mentioned this during our Paris meeting and I think it would be useful context given the customs codes you are currently referencing in the draft EU legislation.

I'd also very much like to discuss with the possible audits and whether this will be consistent with the OECD Gold Supplement, particularly with reference to ISO audit standards as well as ISEA 3000.

Kind reminder, I am also bringing our new general counsel and Head of Regulatory Affairs, [4.1 (b)]

I look forward to seeing you soon!

Kind regards,

[4.1 (b)]

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From: [4.1 (b)]
Sent: 11 August 2014 15:32
To: [4.1 (b)]
Cc: [4.1 (b)]
Subject: RE: Meeting with [4.1 (b)] Brussels

Dear [4.1 (b)] this is agreeable for us.

Regards,

[4.1 (b)]

From: [4.1 (b)]
Sent: Monday, August 11, 2014 4:22 PM
To: [4.1 (b)]
Cc: [4.1 (b)]
Subject: RE: Meeting with Ruth Crowell, Brussels

Dear [4.1 (b)]

Great, let's schedule for the same time of 2pm.

Kind regards



[4.1 (b)]

[4.1 (b)]

Office Manager


London Bullion Market Association

1-2 Royal Exchange Buildings, Royal Exchange, London EC3V 3LF - [Show on Google Maps](#)

Tel: 020 7796 3067 DD: 020 7337 9772 Email: [4.1(b)] Web: www.lbma.org.uk  

The LBMA Precious Metals Conference 2014 will be in Lima, Peru, 9-11 November, 2014. Click on the image below for more details and how to register for the premier event in the industry.



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From: [4.1(b)]
Sent: Monday, August 11, 2014 12:28 PM
To: [4.1(b)]
Cc: [4.1(b)]
Subject: RE: Meeting with [4.1(b)], Brussels

Dear [4.1(b)]

21st is still fine, what time do you prefer?

[4.1(b)]

From: [4.1(b)]
Sent: Monday, August 11, 2014 12:03 PM
To: [4.1(b)]
Cc: [4.1(b)]
Subject: RE: Meeting with Ruth Crowell, Brussels

Dear [4.1(b)]

Next week would be more suitable for Ruth, please could you let me know what your availability is on Thursday 21st?

Kind regards


[4.1(b)]

[4.1(b)]
Office Manager

London Bullion Market Association

1-2 Royal Exchange Buildings, Royal Exchange, London EC3V 3LF - [Show on Google Maps](#)

Tel: 020 7796 3067 DD: 020 7337 9772 Email: [4.1(b)] Web: www.lbma.org.uk

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From: [4.1(b)]
Sent: Monday, August 11, 2014 10:12 AM

To: [4.1 (b)]
Cc: [4.1 (b)]
Subject: RE: Meeting with Brussels

Dear [4.1 (b)] for us tomorrow is still convenient, but next week would also be fine.
Up to you.

Regards
[4.1 (b)]

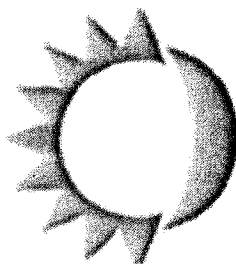
From: [4.1 (b)]
Sent: Monday, August 11, 2014 9:53 AM
To: [4.1 (b)]
Cc: [4.1 (b)]
Subject: RE: meeting with Ruth Crowell, Brussels

Dear [4.1 (b)]

I hope all is well. I'm looking forward to our meeting tomorrow in Brussels. I will also be bringing our new Head of Regulatory Affairs [4.1 (b)]

If this time/date is no longer convenient, please let me know. Happy to do next week if you prefer. Please just let us know.

Kind regards,
[4.1 (b)]



[4.1 (b)]
Chief Executive
London Bullion Market Association
1-2 Royal Exchange Buildings
Royal Exchange
London EC3V 3LF
Tel: +44 20 7796 3067
Mobile: +44 7850318234
[4.1 (b)]

Please consider the environment before printing this message

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From: [4.1 (b)]
Sent: 18 July 2014 09:48
To: [4.1 (b)]
Cc: [4.1 (b)]
Subject: RE: Meeting with [4.1 (b)] Brussels

Dear [4.1 (b)]

Grateful to meet on 12/8 at 14hr00 (CET) in the Charlemagne Building, office 5/97.

Regards,

[4.1 (b)]
Policy Officer



European Commission- DG TRADE
Unit G.3 - Market Access, Industry, Energy and Raw Materials

CHAR 08/029
B-1049 Brussels/Belgium
+32 2 298 61 31

[4.1 (b)]

From: [4.1 (b)]
Sent: Thursday, July 17, 2014 4:18 PM
To: [4.1 (b)]
Cc: [4.1 (b)]
Subject: RE: Meeting with [4.1 (b)] Brussels

Dear [4.1 (b)]

Great lets schedule the meeting for Tuesday 12th August.

Could you please send me the details of where [4.1 (b)] should meet you and what time so I can prepare her travel accordingly.

Kind regards

[4.1 (b)]

[4.1 (b)]

Office Manager

London Bullion Market Association

1-2 Royal Exchange Buildings, Royal Exchange, London EC3V 3LF - [Show on Google Maps](#)

Tel: 020 7796 3067 DD: 020 7337 9772 Email: [4.1 (b)] Web: www.lbma.org.uk

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From: [4.1 (b)]
Sent: Thursday, July 17, 2014 3:14 PM
To: [4.1 (b)]
Cc: [4.1 (b)]
Subject: RE: Meeting with [4.1 (b)] Brussels

Dear [4.1 (b)] 11-13 Aug would be fine with me.

Regards,

[4.1 (b)]

From: [4.1 (b)]
Sent: Thursday, July 17, 2014 3:44 PM
To: [4.1 (b)]
Cc: [4.1 (b)]
Subject: RE: Meeting with [4.1 (b)] Brussels
Importance: High

Dear [4.1 (b)]

I am just following up on my email below. I am conscious that you are away from next week so would like to get a date firmed up if at all possible.


Kind regards
[4.1 (b)]

[4.1 (b)]
Office Manager

London Bullion Market Association

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From: [4.1 (b)]
Sent: Monday, July 07, 2014 9:53 AM
To: [4.1 (b)]
Subject: RE: Meeting with [4.1 (b)] Brussels

Dear [4.1 (b)]

That is no problem, it would have to be after as Ruth is on leave next week and her diary is busy until then.

The following dates would work:

4-6 Aug
11-13 Aug
15 Aug

Please let me know which date suits you best.


Kind regards
[4.1 (b)]

[4.1 (b)]
Office Manager

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From: [4.1 (b)]
Sent: Monday, June 30, 2014 8:55 AM
To: [4.1 (b)]
Subject: RE: Meeting with [4.1 (b)] Brussels

Dear [4.1 (b)]

I will be on annual leave from 21/7 – 2/8 and would therefore be grateful for fixing a meeting before or after these dates.

Thanks for your understanding,

[4.1 (b)]

From: [4.1 (b)]
Sent: Friday, June 27, 2014 4:36 PM
To: [4.1 (b)]
Cc: [4.1 (b)]
Subject: Meeting with Ruth Crowell, Brussels

Dear [4.1 (b)]

You met with [4.1 (b)] at the OECD meeting in Paris, last month, in reference to the launch of a draft EU Regulation.

Would you be available to meet with [4.1 (b)] on one of the following dates:

23rd July

25th July

w/c 28th July

Please could you let me know as soon as possible so we can arrange travel.

Kind regards

[4.1 (b)]

[4.1 (b)]
Office Manager

London Bullion Market Association

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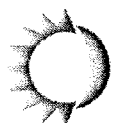
Tel: 020 7796 3067 DD: 020 7337 9772 Email: [4.1 (b)] Web: www.lbma.org.uk

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PRECIOUS METALS AND RHENIUM CONSORTIUM
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IMPORTED GOOD DELIVERY GOLD BARS IN RELATION TO REACH

Note: This document has been produced by the London Bullion Market Association ("the LBMA") and the Brussels-based Precious Metals and Rhenium Consortium ("the Consortium") and has been reviewed by the undersigned legal experts on the REACH regulation who agree with the conclusions. The LBMA is the trade association representing the wholesale bullion market focussed on loco-London trading but with a global client base. The Consortium was formed by the great majority of precious metal manufacturers and refiners in the EEA in order to comply with the REACH Regulation.

The purpose of the document is to describe the argument of the LBMA and the Consortium that imported Good Delivery (GD) gold bars are articles.

1. INTRODUCTION AND BACKGROUND

The REACH Regulation applies to, *inter alia*, the placing on the market, including import (and use) of chemical substances on their own, in preparations or in articles. According to Article 3 of the REACH Regulation:

A substance is "a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition".

A preparation is "a mixture or solution composed of two or more substances".

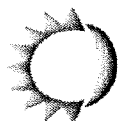
An article is "an object which during production is given a special shape, surface or design which determines its function to a greater degree than its chemical composition".

Substances imported on their own or in preparations are subject to registration. This does not apply to substances in the form of articles, except for those substances contained therein that are "intended to be released under normal or reasonable conditions of use".

The European Chemicals Agency Guidance Document on Requirements for Substances in Articles (2008 and 2009 draft version 2.0) clarifies that in order to determine whether an object fulfils the "article" definition, one should (i) determine the function of the object and (ii) compare the importance of the physical and chemical characteristics for achieving the object's function. According to the Guidance Document:

- "The term **function** in the article definition should be interpreted as meaning the basic principle determining the use of the object rather than the degree of technical sophistication determining the quality of the result of using the article."
- "**Shape** means the three-dimensional form of an object, like length, width, height and degree of undercut. **Surface** means the outmost layer of an object. **Design** means the arrangement of the "elements of design" in such a way as to best accomplish a particular purpose."

The argument in this document is that GD gold bars imported into the EEA are investment articles *with no intended release* and the gold of which they are made should thus be excluded from the calculation of a potential registrant's tonnage band for gold. The amounts of gold that are imported



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into the EEA in the form of a substance or in preparations must, however, be covered by a REACH registration.

2. FORMS OF GOLD COMMONLY PLACED ON THE EEA MARKET

Gold, in common with other precious metals is produced in refineries, using a variety of techniques. Depending on the method of refining, the fineness (expressed in parts of pure gold per thousand) of the final product may vary from around 995 to 999.9 or more.

Amongst the forms of gold that can be placed on the EEA market (Table 1), **only the Variable-weight gold bars (e.g. large gold bars or GD gold bars) fulfil the definition of article under REACH.** The gold in form of grains and exact-weight gold bars (e.g.: kilobars) are commonly used as raw material for further fabrication. Both grains and kilobars as well as gold in alloys must be covered by a REACH registration.

Table 1. Forms of Gold commonly placed on the EEA Market

GOLD GRAIN: Melting the refined metal then granulating it by pouring into an agitated bath of cold water to produce grain.	EXACT-WEIGHT GOLD BARS: Grain can be used in the manufacture of exact-weight gold bars such as kilobars.
CARAT GOLD ALLOYS: Grain can be used to manufacture carat gold alloys of varying fineness (e.g. 18 karat gold is 750 fine) which may be produced in the form of semi-manufactures such as wire and sheet.	VARIABLE-WEIGHT GOLD BARS: Molten gold is poured into moulds to form gold bars of variable (as opposed to exact) weights, known variously as market gold bars, large gold bars or GD gold bars .

3. GOOD DELIVERY GOLD BARS AS INVESTMENT ARTICLES

There are various ways for investors or savers to invest in gold or gold based derivatives:

- **Gold mining company shares, exchange-traded funds, futures, forwards, structured products, and options.** These products are sold by securities dealers and banks.
- **Coins.** This is a popular method though essentially only in the retail market. Because of the significant manufacturing premium, coins are virtually ignored by institutional investors and central banks, though for historical reasons, the latter may still have substantial quantities of old coins in their vaults.
- **Bars.** For many institutional investors and especially central banks, the preferred option is to purchase the physical asset. Whether accounts are held on an allocated basis (investor owning specific bars) or an unallocated basis (investor having an ownership claim on a specific quantity), the vaults in the EEA market will hold the vast majority of their gold in the form of GD bars.

4. SPECIFICATIONS OF GOOD DELIVERY GOLD BARS

To be accepted as a GD bar on the London market, whose rules are adopted in all major gold trading centres, the gold bar shape, size, weight and markings on the top surface must be within the specifications and recommendations contained in the LBMA Good Delivery Rules (Table 2) (hereinafter the "Rules").



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Table 2. LBMA Specifications and Recommendations for Good Delivery Gold Bars

RECOMMENDED DIMENSIONS: Length (Top): 250 mm; width (Top): 70 mm; and height: 35 mm	GROSS WEIGHT: between 350 troy ounces (approximately 10.9 kg) and 430 troy ounces (13.4 kg)
MARKS: Serial number, stamp of refiner, fineness (to four significant figures), year of manufacture (expressed in four digits)	FINENESS: the minimum acceptable fineness is 995.0 parts per thousand fine gold

Many of the requirements for GD gold bars relate to the need to fulfil their basic purpose, namely to be stacked safely in the vault, to be acceptable as a financial asset or store of value (i.e. an investment article), and as such to be auditable. The design of these gold bars is aligned with the needs of the investors and of the vaults.

GD gold bar surfaces have to be flat and free from protrusions to ensure stackability, in other words the ability to be stacked safely on top of each other. GD bars in a vault are subject to audit; for this they must be stacked in such a way that the marks on the bars are clearly visible to the auditor, who is then in a position to verify the origin, fineness and age of the bar. GD gold bars may also have to be moved between vaults (e.g. when ownership changes) which involves manual handling; the sloping sides and ends facilitate lifting and the allowed weight range is also convenient in this regard.

The Rules also specify freedom from physical defects such as holes because over time such holes can accumulate dirt or dust in the vault which could result in the measured weight increasing (or in other words dust counting as gold). The insistence on the part of many owners (and therefore also of the vaults who hold their metal) that gold bars should be of good physical appearance and follow the highest standard in every way is a reflection of the **long-term investment nature¹** of these bars.

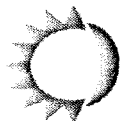
5. IMPORTED GOOD DELIVERY GOLD BARS AND REACH

The attributes of GD gold bars are consistent with the definition of an article in REACH. Without these physical attributes, the objects would lose their utility as investment articles, including their suitability for storage and handling or transport. Support for this view based on the definition of "article" under REACH, as clarified in the REACH Guidance, and further confirmed by the answers to the indicative questions is provided in Annex 1.

An object is an article if it can be unambiguously concluded that the shape, surface or design is more relevant for the function than its chemical composition. Therefore the article definition requires an assessment of the primary contributor to function, i.e. whether it is the chemical composition or the shape, surface, and design of the manufactured object that is most important to function. It requires the shape attribute to override the inherent chemical composition in terms of function.

The term **function** implies an ability to carry out the specific activity for which it was made; the function of GD Gold Bars is to serve as an investment article. It is indeed important that the object is comprised of gold but the inherent chemical properties of gold are not what makes gold bars an investment article. Rather, the investment value of gold is attributable to complex historical and emotional factors. Gold as the constituent material does not play any role in terms of function of the object, its importance being restricted to the conventional value that gold represents for the recipient.

¹ Although investment bars could be melted and used as raw materials, fabricators of precious metal products resort to grains and smaller gold bars such as kilobars. Imported investment bars are distributed to European fabricators only in limited circumstances and in very small annual quantities per importer to respond to sudden increase in demand or transient shortage of other gold products traditionally used as feed stock. REACH obligations arising from using investment articles as feed stock are fully addressed in the gold registration dossier prepared by the Precious Metals and Rhenium Consortium.



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What would lead the recipient of the gold bar to regard it as not being functional for investment? The shape, surface, dimensions, and form are crucial for investment; and at a more detailed level the marking is crucial for investment. In fact any deviation from the specified format and marking (for example, a missing bar number or a nodule on one of the surfaces or a hole) will result in the gold bar being judged unacceptable and being rejected by the vault manager. In other words, the gold bar would fail to function as an investment article.

The investment function of a gold bar does not depend on its fineness. A 999.5 fineness gold bar has a greater value than a 995.0 gold bar of the same gross weight. But both are equally valid in terms of their function as investment articles. We can therefore reasonably conclude that the shape, surface, dimensions, form and marking attributes of a GD gold bar are of more importance to its investment function than the specific composition.

6. CONCLUSION

Imported Good Delivery gold bars fulfil the definition of "Article" under REACH.
The gold they are made of is not subject to registration, and should be excluded from the calculation of a potential registrant's tonnage band for gold imported into the EEA.

Co-authors:

Stewart Murray
Chief Executive
London Bullion Market Association

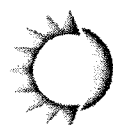
Caroline Braibant
Secretariat & Trustee
Precious Metals and Rhenium Consortium

Attorneys supporting the conclusions:

Herbert Estreicher
Partner
Keller and Heckman LLP

Giovanni Indirli
Avvocato
Mayer Brown International LLP

5th March, 2010



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Annex 1 - Illustration of the Article Status of Good Delivery Gold Bars under REACH

- In Table 12 of Appendix 3 Part 1 of the 2008 ECHA Guidance and Table 10 of Appendix 2 Part 1 of the 2009 ECHA Guidance documents a set of questions is proposed to facilitate the substance versus article interpretation.
- Although there is no doubt on the article status of GD gold bars under REACH, answers to the indicative questions for GD gold bars are presented here below in relation to coins (Table 3) to confirm and illustrate this view.

Table 3. Questions of the ECHA Guidance on Substances in Articles (2008 and 2009 Draft Version 2.0) applied to Good Delivery Gold Bars in relation to Coins

QUESTION (AS PER GUIDANCE DOCUMENTS)	ANSWER FOR GOOD DELIVERY GOLD BARS	ANSWER FOR COINS
Does the material have a function other than being further processed?	Yes. GD Gold Bars have an investment and storage value and therefore have a function unrelated to further processing.	Yes. Coins have also an investment value and therefore also have a function unrelated to further processing.
Does the seller put the material on the market and/or is the customer mainly interested in acquiring a material because of its shape/surface/design (and less because of its chemical composition)?	The customer (eg, an investor) is interested in acquiring GD gold bars and coins because of the historic and emotional importance attributed to gold which is unrelated to its chemical properties. The shape and markings of the GD gold bars and coins contribute predominantly to the investment function as, in this specific case, ease of storage, handling, token nature and portability are very important attributes that allow such objects to be held as investment articles.	
After which processing step is the function determined to a larger degree by the shape/surface/design?	After: - pouring molten gold (as per the required fineness) into moulds to provide them a bar shape with the required dimensions, and - adding the required marks.	After: - manufacture of the coin blank, and - marking (minting) of the coin.
When further processed, does the object undergo only "light processing", i.e. no forming processes?	Not further processed before placed on the market.	
Does the chemical composition of the material as such remain similar in the next processing steps?	Not further processed before placed on the market.	

✓

From: [4.1(b)]
Sent: mardi 16 septembre 2014 16:39
To: [4.1 (b)]
Subject: JBCE CSR Committee: conflict minerals update - 16/09/2014

Dear All,

I gave a presentation on conflict minerals at the Japanese Business Centre (JBCE) CSR Committee meeting today. Participants were Japanese downstream companies, the JBCE Secretariat and the OECD (a presentation preceded mine).

Following my presentation, the following feedback/questions were received from the audience.

Implementation:

- Which competent authorities will be in charge of implementation, customs?

Smelters/refiners list:

- Constitution of the list (EU and foreign smelters/refiners)? Which smelter countries supply most to the EU?
- Incentives for smelters to be on the list + EU confidence for the success of the list
- Risk of proliferation of list of smelters (US, EU, industry lists), there should be a single reference point
- Strong need to take action with processing countries to regulate in their jurisdiction
- EU & OECD to work towards recognition of CFSI as a guarantee for Dodd-Frank compliance

Public procurement:

- Which products targeted + processing facilities as well?
- Works as a mandatory measure for downstream; very burdensome for industry in view of the future accreditation/certification system
- Whether foreign companies participation is possible + what other requirements (production in the EU?)

Producing countries:

- Industry efforts are needless if local governments are not taking responsibility

So nothing really new but I thought it is useful to summarise. The JBCE is preparing a position paper which will be submitted to us soon. !

[4.1 (b)]

From: [4.1 (b)]
Sent: 16 September 2014 19:33
To: [4.1 (b)]
Cc: [4.1 (b)]
Subject: Re: JBCE CSR Committee: conflict minerals update - 16/09/2014

Thank you [4.1 (b)] also had a good meeting today with the association of swedish engineering industries. Besides Ericsson, Saab and Electrolux there were a number of intermediate operators manufacturing components and even smelters directly importing mostly tungsten and tin. [4.3]

[4.3] They are concerned that they will have to change their sourcing practices (ie some of their suppliers) if the list of smelters does not allow for inclusion of foreign smelters that are not signalled in the supply chain of a responsible importer

[4.3] So the issue of establishing a form of equivalence with a broadened CFSI or alternatively allowing smelters to apply to the list without being in the supply chain of a responsible importer will probably intensify.

[4.1 (b)]

Sent from my iPhone

[covered in document 28]

]

From: [4.1 (b)]
Sent: lundi 22 septembre 2014 18:11
To: [4.1 (b)]
Subject: FW: Airbus - conflict minerals meeting

FYI

From: [4.1 (b)]
Sent: Monday, September 22, 2014 6:10 PM
To: [4.1 (b)]
Subject: Airbus - conflict minerals meeting

Participants: [4.1 (b)] []

Conflict Minerals:

1. Airbus follow-up on the importers definition, the public procurement scheme and the legislative process.
2. Importer: clarification was provided as to the definition including on the possible eligibility of representatives
3. Public procurement: Airbus asked clarification on the scope of the public procurement: product or company based? I clarified that the company system will be subject to certification but that it could only involve the products purchased. Moreover, Airbus is concerned about the cost of traceability of the smelter and inquired about the credibility of 'flow-down' clauses which could be a problem as long as the EU has not published its responsible smelters/refiners list. I concluded that timing of the two initiatives (Regulation/list and public procurement scheme) is important as it can reasonably be expected that smelters list are available before traceability is effective.