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From: [41(b)]
Sent: Sunday 9 November 2014 19:40
To: [41(b)]
Cc: [41(b)]
Subject: FW: Orgalime statement on the proposed EU conflict minerals scheme
Attachments: Orgalime_position_on_EU_conflict_minerals_proposal.pdf; Letter_Conflict minerals_Ms Malmstrom.pdf

From: [41(b)]
Sent: Friday, November 07, 2014 6:00 PM
To: [41(b)]
Subject: Orgalime statement on the proposed EU conflict minerals scheme

To: [41(b)]

Orgalime statement on the proposed EU conflict minerals scheme

Dear Madam, Dear Sir,

Please find enclosed a copy of our letter and position paper sent to Commissioner Cecilia Malmström concerning the proposed EU conflict minerals scheme.

Yours sincerely,

[41(b)]
Director General

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The Director General

41/6)
Member of the European Commission
200, Rue de la Loi
B-1049 Brussels

Brussels, 7 November 2014

Orgalime statement on the proposed EU conflict minerals scheme

Dear 41/6)

Orgalime, the European Engineering Industries Association, speaks for 41 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking and metal articles industries of 23 European countries. The industry employs some 10 million people in Europe and in 2013 accounted for €1700 billion of output. The industry represents over a quarter the output of manufactured products but also a third of the manufactured exports of the European Union.

Minerals, after mining and transformation into metals, are a core input of the engineering supply chain forming the basis for most manufactured products. They are therefore vital for the European engineering industry. We are aware that in a few regions of the world, there is a risk that funds obtained from the extraction of raw materials could be used to finance armed conflicts. The European engineering industry unreservedly supports the aim to sever the connection between the mining of minerals and the funding of armed conflict. With regard to concrete political and regulatory measures supporting such an ambition, there are however numerous concerns in industry about the already existing and possible future initiatives.

Orgalime welcomes the Commission's approach in the draft Regulation on setting up a EU system for supply chain due diligence based on the self-certification of responsible importers of the covered raw materials. This systemic approach, based on the OECD Due Diligence Guidelines is preferred over a product-based approach, as incurred by the US legislation on conflict minerals (Section 1502 of the Dodd-Frank Act).

Nevertheless, there are a number of ambiguities and concerns which we have in relation to the Commission proposal. Orgalime feels that these concerns, explained in detail in our position paper, demonstrate that regulatory action on conflict minerals will (naturally) entail serious difficulties in the implementation phase. This makes it essential that the underlying assumptions, the wording and definitions or any suggestions for new requirements for economic operators need to be very clear and reasonable, so as not to cause unnecessary burdens on industry. We moreover believe the Commission's proposal for conflict resolution should be more precise in spelling out tangible activities. Emphasis should be put on promoting good governance and enhancing security in conflict-affected and crisis regions.

A similar letter has been sent to your colleagues High Representative Vice President Mogherini, Commissioner Bieńkowska and Commissioner Vella.

Yours sincerely,

41/6)
41/6)

The European Engineering Industries Association

Position Paper

Brussels, 05 November 2014

Orgalime statement on the proposed EU conflict minerals scheme

I. The overall framework

The European Commission published its proposal on creating a responsible trading strategy for minerals from conflict zones in March 2014. The proposal comprises a draft regulation on setting up a supply chain due diligence system for the importers of the covered raw materials as well as communication that lays down a number of accompanying measures.

Orgalime welcomes the comprehensive approach taken by the Commission, which recognises that dealing with conflict minerals in the supply chain is a complex task that needs to be addressed from different angles. It is essential that the EU initiative is part of a comprehensive framework integrated with foreign policy action that includes activities in the conflict regions themselves. In this regard, we believe the EU proposal should be more precise in spelling out tangible activities for conflict resolution. Emphasis should be put on promoting good governance and enhancing security in the conflict-affected and crisis regions.

To have a substantial effect on the global level, it is essential that the EU reaches out to other governments. The issue of conflict minerals is a global problem that requires active involvement along the entire supply chain and beyond the EU and the US. It is therefore highly important that discussions continue and actions are decided in international fora like the UN and the OECD.

Orgalime welcomes the Commission's approach in the draft **Regulation** on setting up a Union system for supply chain due diligence based on the self-certification of responsible importers of the covered raw materials. This systemic approach based on the OECD Due Diligence Guidelines is preferable over a product-based approach, as incurred by the US legislation on conflict minerals (Section 1502 of the Dodd-Frank Act).

However, a number of ambiguities and concerns remain with respect to the Commission proposal that we would like to address below.

Orgalime, the European Engineering Industries Association, speaks for 41 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 10 million people in the EU and in 2013 accounted for some €1,700 billion of annual output. The industry not only represents over 25% of the output of manufactured products but also a third of the manufactured exports of the European Union.

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II. Identified challenges and demands of the European engineering industry

1. Clear definition of targeted regions, countries and minerals

In our view, there is a degree of uncertainty at the level of the global scope of the Commission's proposal. Unlike the Dodd-Frank Act (DFA), the proposal for European legislation refers not only to the Democratic Republic of the Congo and its neighbouring states, but has a global focus covering all conflict-affected and high-risk areas. The European Commission describes those regions in its legislative proposal, but does not specify a list of affected countries. If the definition is left to the implementing actors, Member States need to be responsible for harmonised implementation. While we understand the difficulties that the creation of a list of covered countries would entail, a situation in which importers themselves would need to make the assessment on whether they are sourcing from a conflict/ crisis region or not should be avoided.

Furthermore, any legal text needs to be very clear regarding the minerals covered by the Commission's proposal. The Commission's text for example mentions also "metals" (containing or consisting of tin, tantalum, tungsten and gold), however it does not clarify that the aim is to cover only metals in the meaning of raw material, which is first products in the supply chain produced by smelting. Ambiguities should be eliminated, since products of the next stage of the supply chain, for example semi-finished products, such as cold-rolled products or bars, obviously do not fall under the scope of the proposed Regulation. Orgalime suggests to be more explicit here.

2. Need to ensure complementarity of EU proposal with existing schemes and initiatives

Many companies in the European engineering industry are already indirectly (as suppliers to SEC listed companies) or directly affected by the requirements of the Dodd-Frank Act. Orgalime therefore stresses the importance of synchronizing the two approaches in order to prevent that European companies have to comply with two differing sets of requirements.

Overall, multiple reporting requirements and inconsistent obligations under different national legislation create unnecessary compliance costs and inefficiencies. It is therefore essential that asymmetries among certification schemes are avoided.

This does not only apply with respect to the EU scheme in relation to the US Dodd-Frank Act, but also applies for existing industry initiatives. As an example, the Conflict Free Smelter Program (CFSP) is widely accepted as an "industry standard", but there exists doubt as to whether it would actually be compatible with the EU scheme.

In this regard, it is important that compliant smelters need to be identified in the form of a globally valid list. Cooperation between the EU and the existing industry initiatives is therefore indispensable. Moreover, a harmonisation of approaches would also make it easier for the smelters and refineries to become certified under different schemes. This is an important point, because the effectiveness of the schemes depends to a large degree on its acceptance and

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adoption by the smelters and refineries. In order to ensure that downstream companies can source conflict-free raw materials, a sufficient number of smelters has to become certified.

The ultimate goal should be that the existing schemes are fully compatible and accepted as equivalent to one another, so that a company that fulfils one scheme is considered to be compliant also with regard to any other scheme.

3. Public procurement requirements that would be particularly burdensome to comply with for SMEs

Most importantly, however, we would like to express our strong concern with regard to some of the outlined, but not comprehensively defined, accompanying measures set out in the Communication. We are particularly concerned about the inclusion of performance clauses for public procurement in the scope of the Communication. This incurs the danger of creating a *de facto* obligation for all entities interested in participating in public procurement to retrace the origin of minerals over the *entire supply chain*. For companies at the end of the supply chain such *retracing* is very complex and often not possible. Particularly for smaller companies with limited resources this may lead to an exclusion from the public procurement market, as it is harder for these companies to fulfil the due diligence requirements.

The Communication also sets out the possibility that the EU member states establish parallel incentive schemes for their national procurement. However, it is unclear at the current stage how the member states will be required to implement these criteria and consistency across EU member states would be a key concern.

Moreover, there is a substantial degree of uncertainty as to how the performance clauses will be made operational. The Commission plans the adoption of "Guidelines" relating to the inclusion of public performance clauses. However, we would like to stress that the key elements of the legislative proposal should be defined in the course of the decision making process and not outside of it. Draft Guidelines on performance clauses in public procurement should therefore not be adopted independently of the legislative proposal.

In general, Orgalime fears that the inclusion of public procurement would create a heavy burden for manufacturing industry, particularly for smaller companies with limited resources. This is of particular concern to us at a time when the Commission is seeking to stimulate an industrial renaissance including through rendering the conduct of business by SMEs simpler. We therefore advocate the exclusion of public procurement from the scope of the Commission's legislative proposal.

4. No labelling requirements

Orgalime finds unacceptable the proposal in the Communication that member states should consider introducing complementary initiatives in the area of consumer information and labelling. Mandated product-specific labelling could undermine the systemic company-level due diligence approach established by the Commission and lead to complex but ineffective and unnecessary obligations of proof. Moreover, requiring differing labelling by product and market would clearly undermine the internal market. Orgalime therefore rejects any product-specific labelling.

5. More clarity with regard to audit standards and financial help to SMEs

In Orgalime's view, there is a need to clarify the audit standards foreseen in the OECD Due Diligence Framework. Step 4 of the OECD Guidance is to carry out independent third party audits of smelter/refiner's due diligence programmes. Currently there is work ongoing in the OECD context and it would be important to reflect this in the framework of the legislative dossier.

In addition, the Communication foresees funding measures via the COSME program, but does not spell out how such measures would be made operational. Orgalime invites the Commission to provide more information on what type of support would be granted to SMEs and under which conditions.

III. Conclusion

In conclusion then, Orgalime feels that the concerns and ambiguities which we have highlighted demonstrate that regulatory action on the topic of conflict minerals will (naturally) entail serious difficulties in the implementation phase. This makes it essential that the requirements for economic operators are spelled out as clearly as possible and are as simple as possible, so as not to cause unnecessary burdens on industry.

In the same line of argumentation, Orgalime is against an expansion of the foreseen scheme that would go beyond the current scope of minerals affected. It took time to develop the existing sourcing mechanisms for tantalum, tin, tungsten and gold (3TG) and the corresponding OECD due diligence supplements. It will take even more time to ensure these schemes become fully operational. Covering additional minerals would therefore in our opinion be counter-productive.

Ultimately, the most effective measures to cut the link between the mining of raw materials and the financing of conflicts can only be implemented in the affected regions themselves. We therefore advocate to strengthen the foreign policy aspects in the Communication.

The European Engineering Industries Association

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POSITION PAPER

on the European Commission 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 - COM (2014) 111 final**

and on the

**JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT AND THE
COUNCIL**

**Responsible sourcing of minerals in conflict-affected and high-risk areas. Towards an
integrated EU approach – JOINT (2014) 8 final**

(Conflict Minerals)

INTRODUCTION

ASD welcomes the European Commission proposal for a regulation on responsible sourcing of minerals in conflict affected areas and high-risk areas which suggests a voluntary approach by stakeholders and limits the scope to tin, tungsten, tantalum and gold.

We support the current supply chain scope of the proposal and appreciate that the Commission requirements apply to the importers of minerals into the European Union, rather than negatively affect producers of manufactured goods and downstream users.

The proposed Regulation would complement existing US legislation on responsible sourcing of conflict minerals and contribute to the harmonization of global compliance programmes.

The Aerospace Security and Defence Industry is committed to operate with transparency and to implement necessary changes in its supply chain to tackle this important global issue.

Nonetheless, ASD has major concerns with regards to the proposed Regulation, its Annexes and related Communication. The purpose of this Position Paper is to draw the attention to those important issues and to propose some recommendations.

BACKGROUND

By this proposal, its Annexes and the related Communication, the European Commission intention is to establish an EU system of self-certification for importers of tin, tantalum, tungsten and gold. More generally, the objective is to avoid the financing of armed groups in conflict or high-risks areas through mineral proceeds by supporting and further promoting responsible sourcing practices of EU Companies in relation with these minerals from such unstable regions. The publication of this proposal has been accompanied by a joint Communication from the European Commission and the High Representative of the EU for Foreign Affairs and Security Policy.

The proposal is based on a due diligence framework allowing EU importers to apply the principles and processes set out in the OECD Due Diligence Guidance and thereby addressing the risk of financing armed groups and security forces and mitigating other adverse impacts including serious abuses associated with the extraction, transport or trade of the minerals in scope.

The due diligence framework requires responsible importers of the minerals and metals within the scope of the Regulation to establish a strong company management system; to identify and assess risks in the supply chain; to design and implement a strategy to respond to identified risks; to carry out independent third-party audits of supply chain due diligence at identified points in the supply chain; and to report on supply chain due diligence.

Responsible importers of those minerals and metals are required to make available on an annual basis, where applicable, the identity of all smelters and/or refiners supplying them, as well as to provide independent third-party audit assurances and pass them on to Member States' competent authorities and to downstream purchasers, with due regard to business confidentiality and other competitive concerns. In case of non-compliance, and after notice of remedial action, the importer as well as the smelters and refiners of the related supply chain will be removed from the list of responsible smelters and refiners.

Three years after implementation of the regulation the EC intends to carry out a review and make some modifications including the possibility for a mandatory scheme, increasing the number of minerals subject to the Regulation or high-risk areas.

The proposal is the European Commission's response to the United States Dodd-Frank Act, whose Section 1502 defines "conflict minerals" as tin, tantalum, tungsten and gold originating from Democratic Republic of Congo - DRC and neighbouring countries (the Great Lakes region of Africa). In the paragraph (D), 'Publication in the Federal Register', it is stated that "The Secretary of State shall add minerals to the list of minerals in the definition of conflict minerals under section 1502, as appropriate."

ANALYSIS, CONCERNS and RECOMMENDATIONS

ASD has the following concerns:

1. Definition of Importer lacks clarity.

The Importer (Art.2 of the Regulation) is described as any natural or legal person declaring minerals or metals within the scope of this Regulation for release for free circulation within the

meaning of Article 79 of Council regulation (ECC) No 2913/1992 establishing the Community Customs Code.

The importer is the “natural or legal person” and in case of a legal person, the specific legal entity in whose name the Customs declaration is made. For Customs declaration of the minerals or metals concerned, only the natural person or specific company/legal entity in whose name the Customs declaration is made for import of the minerals or metals concerned can be regarded as an importer. Companies further downstream the supply chain are not concerned. If an intermediate (e.g. agent) fills in the custom declaration on behalf of a company/legal entity, the latter, and not the agent, should be regarded as the importer. In essence, the Regulation would rely upon the notion of “Importer of Record” which is systematically used in custom declaration.

It would be recommendable to amend the definition of importer provided in the Regulation as follows:

“‘importer’ means any natural or legal person established in the Community in whose name the Customs declaration is made (Importer of Record) for the physical introduction into the customs territory of the Community of the minerals or metal within the scope of this Regulation for release for free circulation within the meaning of article 79 of Council Regulation (EEC) No. 2913/1992”

2. Public Procurement: responsibility downstream supply chain.

The compliance requirements for downstream users (i.e. companies which purchase products already imported in the EU) should be avoided or at least kept as light as possible. We fear that these provisions would create an excessively burdensome and costly scheme, if they were to be interpreted as constraining all candidates to EU or national public procurement contracts to implement due diligence obligations inspired OECD Guidance on internal.

This would in fact alter the center of gravity of the Regulation by de facto extending the Regulation’s scope far beyond “importers”: all candidates to public procurements, even downstream companies, would have to comply with significant obligations under the Regulation that would otherwise effectively be addressed by importers upstream.

Given the fact that such important issue would be dealt with in a non-legislative text (communication or guidelines), it would be key to ensure an early and transparent consultation process with stakeholders, including the European Parliament, Council and industry.

On substance, a solution which could in our view provide a full level of security without creating excessive administrative burden would consist in requiring that candidates to EU (or national) public procurements demonstrate that they resort only to compliant smelters, refiners or importers in their sourcing for the considered public contract. Hence, an evidenced declaration from the candidate, possibly together with controllable flow down clauses in subcontracts, would be sufficient to meet the objectives set out by the draft Communication, namely to promote the uptake of the responsible importer or smelter/refiner certificate at a proportionate cost for all stakeholders (including for EU institutions and States, who would have to control that rules are complied with). In order to facilitate implementation and avoid unnecessary costs, provisions on public procurement would enter into force only when a mature and stable list of responsible importers exists, for instance a couple of years after the entry into force of the proposed Regulation.

3. Review of the Regulation: modifications after 3 years of implementation.

ASD strongly supports the voluntary approach and the reference to the OECD due diligence guidance. However, given the global scope of the proposal it is required that our trading partners put in place a similar strategy as the EU, in this way the competitiveness of European companies should not be affected.

The precise definition of the 'conflict-affected' and 'high-risk' areas is essential, as the current term leaves room for interpretation and uncertainty.

Such a precise definition would provide a long-term, predictable legal framework which is essential to any business' sustainable development.

We support the current proposal to limit the scope of minerals to tin, tungsten, tantalum and gold. This is in line with established global OECD standards and we are opposed to any expansion of the metals/minerals covered by the proposal.

4. Due diligence process: auditing requirements

Aerospace Security and Defence products supply chains are complex and involve several subcontracting levels. We are concerned about the third party auditing requirements that are outlined in the Regulation proposal. Their invasive nature and in depth coverage of commercially sensitive processes may result in high costs. These costs will potentially affect other parts of the supply chain, resulting in negative impacts for the industry.

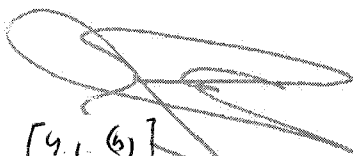
We would welcome a more comprehensive assessment of the potential impact of these auditing requirements to allow the industry to better prepare for when any proposals are implemented.

5. Implementation and enforcement by Member States.

Implementation of the Regulation befalls to the Member States. Common approach should be taken by Member States during the implementation in areas like public procurement, reporting requirements or responsible importer certification audits.

Member States should ensure the implementation of the Regulation based on a common approach and in a consistent way across the EU.

The industry calls on the EC to produce corresponding guidelines, and wishes to be involved in their drafting.



[9.1.6)]
Secretary General

24th November 2014

ASD represents the Aeronautics, Space, Security and Defence industries in Europe. Based in Brussels, the organisation's membership today comprises 16 major European aerospace and defence companies and 27 member associations in 20 countries (Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey and the UK). These industries reach a turnover of 186.8 billion euros, invest 17.6 billion euros in R&D, employ more than 750.000 people and counts over 3000 companies, 80 000 suppliers, many of which are SMEs.

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From: [41(b)]
Sent: 25 November 2014 15:26
To: RATSO Signe (TRADE); [41(b)]
Subject: FW: Concise BUSINESSEUROPE position on the EU Initiative on Responsible Sourcing
Attachments: RAW-pp241114-Concise BUSINESSEUROPE position on Responsible Sourcing of minerals.pdf

FYI

From: [41(b)]
Sent: Tuesday, November 25, 2014 3:02 PM
To: [41(b)]
Cc: [41(b)]
Subject: Concise BUSINESSEUROPE position on the EU Initiative on Responsible Sourcing

Dear [41(b)]
Dear [41(b)]

I would like to share with you a concise BUSINESSEUROPE position on the EU Initiative on Responsible Sourcing. Our position has not changed, but this document is an effort to concentrate our argumentation in a more clear and concise manner.

We are dedicated to an open and constructive dialogue and remain at your disposal for any further information.

Sincerely yours,

(sent on behalf of)

[41(b)]
DIRECTOR
INTERNATIONAL RELATIONS

BUSINESSEUROPE

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[41(b)]
www.busesseurope.eu

EU Transparency register 3978240953-79

24 November 2014

EU Initiative on Responsible Sourcing – BUSINESSEUROPE's views

KEY MESSAGES

- 1 The EU Initiative should remain **voluntary**, focusing on the **upstream** part of the supply chain and the scope of mineral coverage should be limited to **tin, tungsten, tantalum and gold**.
- 2 **Clarifications** need to be provided with regards to the global geographical scope of the Initiative, the definition of 'conflict-affected' and 'high-risk areas', as well as the definition of 'importer'.
- 3 The EU Initiative should **be aimed at improving the situation on the ground**. Therefore, the accompanying measures included in the Joint Communication should start being implemented as soon as possible. The **Commission** and the **EEAS** should play a key role in this context.

BUSINESSEUROPE's POSITION

- *BUSINESSEUROPE overall recognises and supports the European Commission's efforts to (a) break the link between trade and conflict, (b) help European companies in their implementation of the Dodd Frank Act section 1502 and (c) promote legitimate trade in conflict-affected and high-risk areas.*
- *However, trade is only one part of a global, multi-stakeholder solution. The problem of conflict is complex and is comprised not only of economic, but also of governance, security, development and social aspects. It is also a global problem: it cannot be solved by EU and US efforts alone, other major partners have to join forces. A strong EU raw materials diplomacy can play a crucial role to this end. European business is deeply engaged in contributing to a viable solution to conflicts but cannot do it alone.*

Practically:

- *The nature of the draft Regulation should remain voluntary. As experience with the implementation of the U.S. Dodd Frank Act section 1502 has shown, rigid legislation by itself does not contribute to the solution of the actual problem – which is conflict. Rather the opposite is happening: de facto trade embargos*

BUSINESSEUROPE

occur and, as a consequence, socio-economic problems increase, including unemployment, social unrest, deterioration of the livelihood of people.

Voluntary approaches have merits: Companies can put in place systems tailor-made to the needs of their supply chains, but based on the same internationally recognised principles. A mandatory system does not offer such flexibilities, which may lead to the above mentioned results.

Furthermore, many companies have already voluntarily installed due diligence processes in their supply chains. The Conflict-Free Tin Initiative, the Conflict-Free Smelter Program or the Conflict-Free Gold Standard are only a few of such successful initiatives. These have to be further supported and recognised as compliant to the EU Initiative.

Finally, given the significant costs of conducting due diligence, which affect SMEs as well as competent authorities, it would be better to maintain the voluntary nature of the EU Initiative to help build capacity and expertise first.

- The scope of mineral coverage has to remain limited to the four minerals (tin, tungsten, tantalum and gold). With regard to other raw materials, international experience and expertise in similar schemes does not exist yet, so their inclusion under the EU Initiative should be avoided. As supply chains differ, this would further complicate the implementation and monitoring of the scheme.
- The focus should remain on the upstream part of the supply chain, which seems to be considerably more effective and less bureaucratic than product-based approaches, such as the one pursued by the Dodd Frank Act section 1502.
- The implementation of the draft Regulation also presents a number of challenges:
 - Definitions (Art.2) – too broad, especially the definitions of 'conflict-affected and high-risk areas'. As companies will have to identify themselves whether they operate or not in such an environment, clarifications are necessary in order to facilitate risk assessment.
 - Due Diligence procedure (Art. 4, 5, 6 & 7) – significant costs are implied, especially by the auditing requirements. This will be particularly challenging for SMEs.
 - Ex post checks by Member States (Art. 10) – a step further from the procedures described under the OECD Due Diligence Guidance. Particularly problematic are the 'on-the-spot inspections' as it is not clear by the draft text who bears their cost.
- As regards the Joint Communication, the performance requirement clause for public procurement raises significant questions, as it seems to derogate from the principle of the draft Regulation (focusing on the upstream part of the supply chain). More clarifications are required on how this clause could become operational without overburdening downstream users, including SMEs.

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From: [41(b)]
Sent: 05 December 2014 14:17
To: RATSO Signe (TRADE); [41(b)]
Cc: [41(b)]
Subject: INTA Hearing and
Attachments: DigitalEurope INTA Hearing_Dec 2014_FINAL.pdf; DigitalEurope INTA Hearing_Dec 2014.pdf; John Kaninda.ppt; ATT00001.txt; ATT00002.htm

Dear [41(b)]

We greatly appreciated your interventions at yesterday's EP INTA Hearing.

Attached you will find the DigitalEurope intervention in case you did not have it. We have had numerous meetings with MEPs, Assistants and Advisers over the past few weeks. All political groups have expressed interest to have a technical dialogue on practical application of and experience with OECD due diligence guidance/ reporting, the various voluntary initiatives (CFSP, Gold Std. , RJC, tungsten initiative), ICGLR, iTSCi, in-region traceability schemes, etc. We identified Jan 20th. in the afternoon for a possible workshop in the EP. I discussed this with [41(b)] OECD and [41(b)] Global Witness yesterday who were both favourable to the idea. The INTA Secretariat has filled its quota of workshops for 2015 so we will try to get this sponsored by a couple of political groups to take the politics out of it and keep you posted of developments.

I also attach an interesting presentation given by Congolese mining consultant [41(b)] at an event hosted yesterday afternoon by AmCham EU with the Africa Forum Mazungumuzo <http://www.mazungumzo.eu/>

Enjoy the weekend.

Best regards,

[41(b)]

[41(b)]
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European Parliament Committee on International Trade

Public Hearing on

**“TRADE IN MINERALS ORIGINATING IN CONFLICT-AFFECTED
AND HIGH RISK AREAS”**

4th. December 2014

Mr. Chairman, Members of the European Parliament, ladies and gentlemen, thank you for inviting me here this morning.

I work for Intel and am representing DigitalEurope, the European digital technology industry. This is an important sector which forms the backbone of the digital single market, economy and society which is given such prominence by the Juncker Commission.

[Slide 2: pie charts] This remains a priority for us because all of the so-called 3TG are used in electronic devices, notably tantalum and tin. We have been involved since the beginning, pre-Dodd Frank [Act], which not only US but also European companies like Ericsson and Philips

have to comply with. There is still room for improvement. What the electronics industry has done is far from perfect, but we will describe what we have achieved to help inform the debate.

However, we are not the only 3TG consuming sector. For any EU scheme to be effective, all the affected industries have to pull in the same direction. There needs to be concerted buy-in.

[Slide 3: supply chain complexity] We are a global industry with a complex global supply chain. The supply chain has many tiers and there could be up to 10.000 companies only in the first tier. The products we manufacture often contain thousands of components. After the second tier of suppliers, downstream companies have no leverage whatsoever over their suppliers' customers.

[Slide 4: CFS programme] Given these challenges, we helped to set up the Conflict Free Sourcing Initiative, a multi-stakeholder dialogue, the flagship of which is the Conflict Free Smelter programme (CFS) to avoid conflict minerals entering into the electronics supply chain and to enable continued, but responsible trade also with high-risk areas. As there are often 7+ tiers between manufacturers and the mine, we feel that the correct point to focus on is the smelter/refiner (believed to be around 400 worldwide). This is consistent with Step 4 of the OECD Guidance as well as with the EU proposal. Smelters/ refiners are fewer in number than miners / traders or downstream users and they are the only actors who can still trace back the origins of the minerals. Once the minerals are processed into metals, it becomes impossible to identify where they originated.

We like to think that the CFS programme, which now incorporates other sectors such as automotive and aerospace, has played its role to improve the situation on the ground in the DRC, at least in terms of continuing the engagement in the region, as opposed to avoiding

doing business in the region. The CFS Protocol is currently being updated to be more risk-based and provide the necessary framework to be non-region specific and expand to consider other social issues. Some information on this is available in the meeting room.

On the questions for this panel, we believe that smelters and refiners are likely to participate if there is pressure from customers, which are downstream companies. Every tantalum smelter worldwide has been certified because the electronics sector is their largest customer. After the smelter/refiner step in the production chain, it is impossible to distinguish a conflict free from a non-conflict free mineral. Therefore, downstream companies need and will require participation by the smelters/refiners to fulfil their customers' requirements, EU public procurement incentives and the Dodd Frank Act. This is why we see the EU initiative as complementary to Dodd Frank which addresses downstream users.

We feel that the incentives for the take up of the EU scheme are probably sufficient including public procurement if it is done properly. The EU scheme has to be seen in the context of other existing instruments (e.g. Dodd-Frank Section 1502, OECD Guidance and voluntary initiatives) that are already driving considerable pressure in the marketplace.

If the draft Regulation is made mandatory it runs the risk of hindering smelters and refiners to comply in an effective manner that is adapted to their business situation and procurement organisation.

The “EICC/GeSI Reporting Template”, which also has become an industry standard (IPC 1755)¹ facilitates communication in the supply chain and helps downstream users obtain information from upstream companies.

¹ IPC 1755 - Conflict Minerals Data Exchange Standard

We also believe that auditing and reporting requirements relating to the scheme as proposed in the draft Regulation have the potential to be burdensome.

There should obviously be a common approach to implementation which should include a common internationalised auditing standard. The EU Commission should manage the “white list” of smelters in conjunction with OECD taking into account other lists and smelter certification as far as possible. In terms of avoiding market fragmentation, annual reporting on supply chain due diligence is Step 5 of the OECD Guidance. This is consistent with the existing EU Directive on disclosure of non-financial and diversity information under which companies should have the flexibility to disclose relevant information in the way they consider most effective.

[Slide 5: SMEs] SMEs have similar challenges to those of bigger companies when asked about origin of products and their supply chain due diligence reporting. This is

more difficult to implement for SMEs because of limited resources and lack of staff.

SMEs have limited bargaining power as compared with larger customers and suppliers. This can make it difficult for SMEs to, for example, acquire info from other companies as to origin of the products of their suppliers. It is easier for companies with more market power.

We should be cautious when considering applying procurement rules. Particular difficulties for SMEs in implementing the guidelines could lead to their *de facto* exclusion from the public procurement market.

Lastly, COSME funding should be made available for all SMEs that want to implement the OECD due diligence guidelines regardless of whether they are importers of the covered raw materials or are situated further along the supply chain.

It is very important to build on existing schemes such as the CFSP, Responsible Gold Standard, Chain of Custody Certification in the Jewellery sector and the Tungsten industry's TI-CMC initiative.

[Slide 6: conclusions] It is important that there is a clear definition of “conflict-affected, high-risk areas”. While we appreciate the challenges not to stigmatise regions, it is not necessarily for companies to have to define what conflict zones are? Once a conflict zone has been identified, capacity building and improving local infrastructure takes a lot of time and effort before you can introduce in-region traceability schemes.

To close, we support the EU proposal because it:

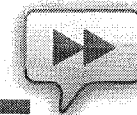
1. Is based on the OECD Guidance (risk-based due diligence process of companies) which is about **mitigating** risks, as opposed to **zero risk**
2. Complements Dodd Frank Section 1502 targeting upstream with a broader geographical scope
3. Comes as a package including a series of potentially important accompanying measures in the Joint Communication such as public

procurement, SME assistance, dialogue with third countries and capacity building etc.

[Slide 7: need for technical dialogue] A final comment would be that in order to inform the regulatory discussions and as a matter of urgency, we strongly urge a technical level discussion on what is involved, for example, OECD due diligence reporting, compliance with the US Dodd Frank Act and SEC rules, third party auditing, in-region traceability schemes, etc. This should take the form of a multi-stakeholder dialogue.

Thank you for your attention.

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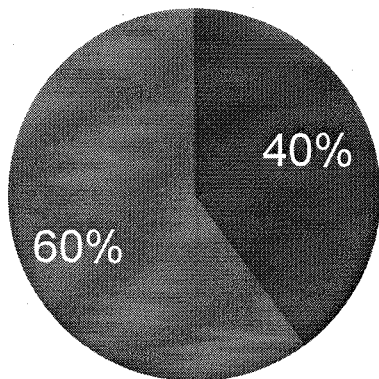
INTA Public Hearing

4th. December 2014

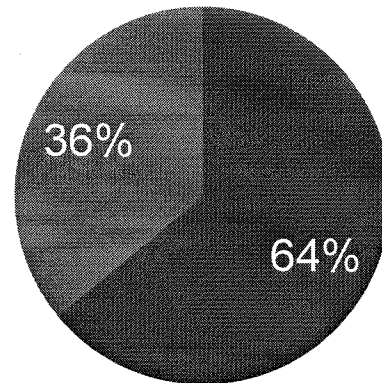
Rue de la Science 14, 1040 – Brussels [Belgium]
T: +32 2 609 53 10 F: +32 2 431 04 89
www.digitaleurope.org - info@digitaleurope.org

Usage of 3TG

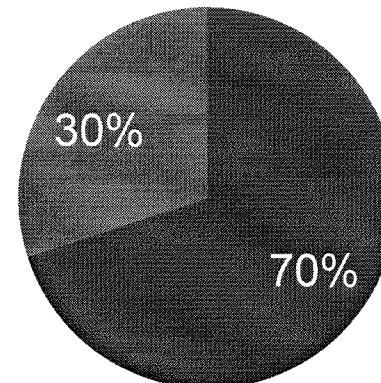
Tantalum (Ta)



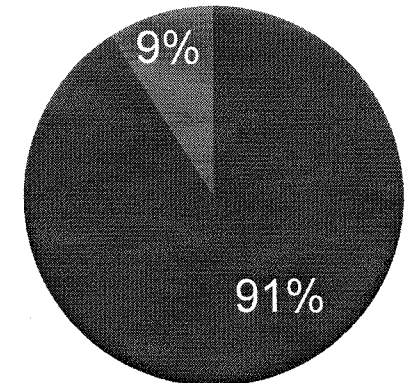
Tin (Sn)



Tungsten (W)



Gold (Au)



Electrical

Non-electrical

Downstream Supply Chain

Downstream
User

Supplier

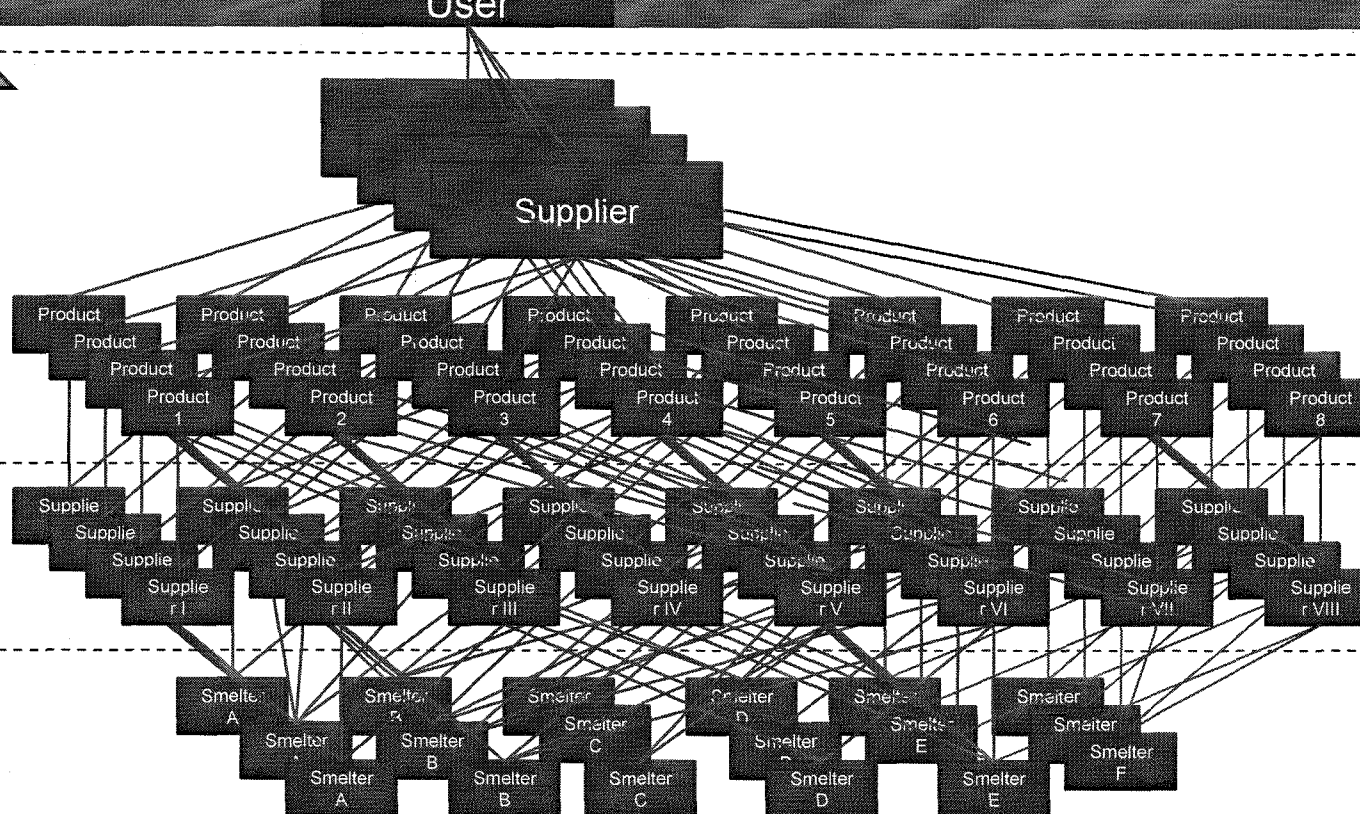
Tier 1

Tier 2 +

Tier x
(Smelters)

Request

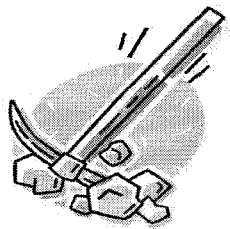
Information



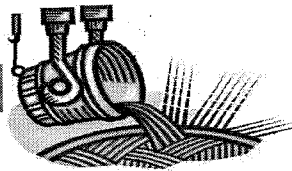
Smelters: Approximately 400 major smelter/refiner companies.

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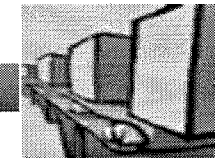
We are working as an industry to avoid conflict minerals entering into the electronics supply chain



MINE



SMELTER / REFINERY



OEMS

Finished Product

Conflict Free Smelter Programme (CFSP)

Smelter is at key point in supply chain to enforce responsible sourcing
→ identify conflict free smelters via independent audits

Often 7+ tiers between end equipment manufacturer and mine

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SMEs

- Same challenges as bigger companies (origin of their products and implementing due diligence systems for their supply chain)
- Requirements more difficult to implement (limited resources, lack of available staff)
- Limited bargaining power as compared with larger customers and suppliers which can make it difficult for SMEs to acquire info from other companies as to origin of the products of their suppliers
- Cautious approach on procurement; particular difficulties for SMEs in implementing the guidelines could lead to their *de facto* exclusion from the public procurement market
- COSME: funding should be available for all SMEs that want to implement the OECD due diligence guidelines regardless of whether they are importers of the covered raw materials or are situated further along the supply chain

Conclusions

Need clear definition of “conflict-affected, high-risk areas” (not up to companies?)

Build on existing schemes

We support the EU proposal:

- Based on OECD Guidance

- Complements Dodd Frank Section 1502

- Part of package with accompanying measures

Conclusions

Urgent need for multi-stakeholder technical level discussion
to inform the regulatory discussions

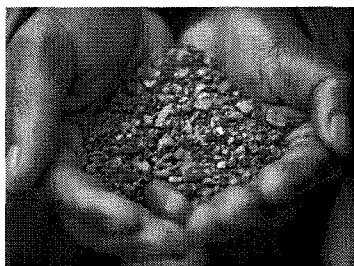
Thank you !

Back-up

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Panel 2 questions

- Incentives probably sufficient, including procurement (if done properly)
- If scheme is mandatory, smelters/refiners might not be able to adapt to their business situation and procurement organisation
- IPC 1755 standard based on EICC/GeSI helps downstream users obtain info from suppliers
- Auditing and reporting requirements could become burdensome
- Ensure a level playing field across the EU Market
- Smelter “White List” owned by COM in conjunction with OECD
- Care when regulating SMEs, in particular procurement
- Common [international] auditing standard
- Explore EU Directive on non-financial reporting



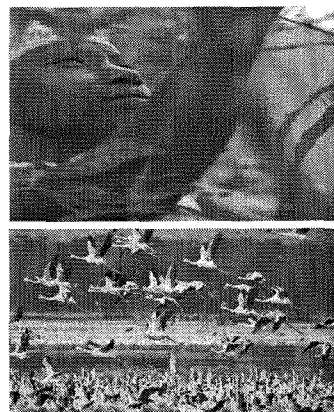
**An analysis of the political, economic and social complexities
in Africa's conflict affected zones**

Presentation at the AmCham EU-Mazungumuzo Workshop on the
responsible sourcing of minerals originating from conflict-affected areas,

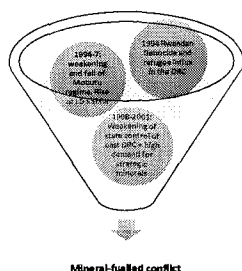
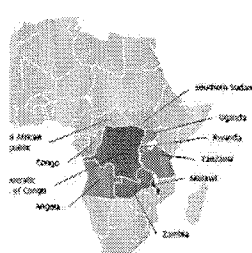
By John Kaminda
Brussels, 04 December 2014

The context

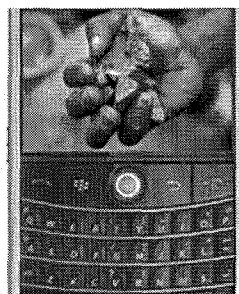
- Conflict minerals are associated with DRC eastern provinces (North and South Kivu, Ituri in Province Orientale and Maniema)
- Eastern provinces always better known for their agricultural production (tea and coffee mainly) and farming and ranching (cattle)
- Provinces' economies sustained through tourism (Virunga/Volcanoes National Park, mountain gorillas, etc.)
- Provinces have important gold and tin reserves, which are being exploited
- In 1957, Congo is world's 2nd biggest tin producer behind Bolivia
- Coexistence of the formal mining sector with ASM (today 2-10 million small-scale miners)
- All provinces are at peace despite the presence of minerals



The context: change of dynamics in the Great Lakes



The context: change of dynamics in the Great Lakes

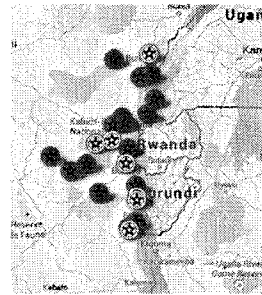


- Conflict took regional proportions with the involvement of neighboring countries
- Coincided with the global shortfall in tantalum owing to high demand for electronic products
- Consequence: a "Klondike-style" rush for minerals with miners moving into national parks (World Heritage) with shovels and sieves
- Rebel and militia take control of mines and mineral trade, organize supply lines
- However, coffee & tea smuggling, drug trafficking, poaching remain important source of funding
- Miners are mostly former farmers lured into a far more lucrative business. (Similarities with liberalization of the diamond trade in the 1970s)
- ex-militia men also turned to mining for survival after disarmament initiatives
- Corporates secure supply lines and by the same token play a key role in perpetuating a trade that feeds on violence and human rights violation

Ending the conflict and illicit trade of minerals: available options

- The military option: fight the rebel and armed groups with help from the UN
- Policy option: efforts to regulate trade of 'conflict' minerals
- For the corporate interested in sourcing minerals from the DRC, there are two options:
 - ✓ Keep away from the DRC and its "conflict minerals" (easy option and good PR)
 - ✓ Join efforts to regulate the trade and sourcing of minerals

Ending the conflict through military option: outcome



- White circle with black star: rebel movements and militias, which have been neutralized (e.g. M23)
- Red circles with black stars: armed groups and militias still active in eastern DRC
- Reports quoting UN say that almost 80% of armed groups have been disarmed and are under control but map shows there is still a lot to do

Ending the conflict: policy options

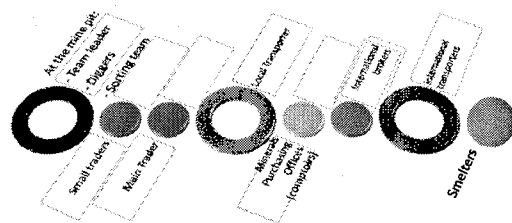
There have been different policy options taken by the stakeholders. Among them, the:

- OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas
- International Conference on the Great Lakes Region (ICGLR) Regional certification mechanism
- Dodd Frank Act, Section 1502

Both aim at reducing the perpetuating of conflicts by encouraging corporate using the "3T" to carry out due diligence of those minerals supply chain and make sure their supply is free from conflict

Of all these policy approaches, the Dodd Frank is the one that has had the most effects on the actors, economies and countries in the region

A description of the 'conflict minerals' supply chain in Eastern DRC

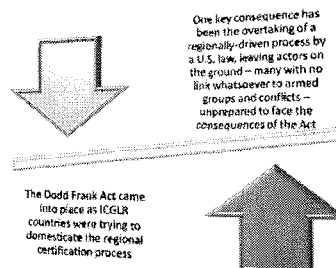


Positive impact of the Dodd Frank Act

- Realization and awareness among actors that a "clean up" of the trade of those strategic minerals was needed
- Armed groups and the Congolese army are no longer present at two-thirds (67%) of tin, tantalum, and tungsten mines surveyed in the country*
- Minerals that do not go through conflict-free programs now sell for 30 to 60% less, thus reducing profits for armed groups trying to sell them
- Bisie, one of the world's largest tin mines which generated hundreds of millions of dollars for a number of armed groups and criminal units of the army, is now largely demilitarized

*Source: <http://www.enoughproject.org>

Negative impacts/limits of Dodd Frank



Dodd Frank Act: view from an Entrepreneur

"While with the assistance of the ministry of mines, we were working at cleaning up the minerals sector (in eastern DRC) by introducing traceability mechanisms, the OECD Guidelines on due diligence and the (ICGLR) regional certification mechanism, the enactment and subsequent implementation of this (Dodd Frank) Act has effectively undermined our efforts."

John Kanyonyi, Entrepreneur, Head of the Mining Section, Federation of Congolese Enterprises

Negative impacts and limits of Dodd Frank

- Limited certification: only a small fraction of the hundreds of mining sites in the eastern DRC have been reached by traceability or certification efforts
- Implementation of the Dodd Frank has created an 'effective' embargo of DRC mineral products irrespective of their provenance causing financial losses among 'legal' miners
- Loss of jobs and in areas where mining has ceased, local economies have suffered. To put this in context, an estimated eight to ten million people across the country are dependent on artisanal mining for their livelihood.
- For the few mining sites fortunate enough to be reached by Joint Assessment Teams responsible for determining their 'conflict-free' status, these teams have been unable to provide the regular, three-month validation visits envisaged in legislation
- Limited scope of multinational corporations' auditing/due diligence processes: auditing limited to smelters to determine the conflict-free status of the minerals they source, and not the mines themselves

The way forward

“There is broad consensus for the need to clean up the eastern Congo’s minerals sector, yet much disagreement about the international community’s current model for achieving this goal. As such, efforts to improve transparency in the eastern DRC’s mineral supply chains should continue. Yet a more nuanced and holistic approach that takes into account the realities of the eastern DRC’s mining sector and the complexity of the conflict is needed.”

The way forward (follow)

- **Improve consultation with government and communities:** Congolese government and civil society were not appropriately consulted on Section 1502 of the Dodd-Frank Act prior to its passing, and as a result many were unaware of its implications
- **Work towards meaningful reform:** The audit process should be designed to improve policies and practices rather than to just provide window-dressing. The dominant belief that static oversight and validation processes ensure ‘conflict-free’ mineral trade is misplaced given the volatile security situation in most of the eastern DRC
- **Create incentives towards better practice:** Legal frameworks must be supported by real projects on the ground that can meet their requirements. Similarly, former conflict actors should be incentivized where appropriate to join new ‘conflict-free’ schemes. This may help avoid the eventual subversion or infiltration of the ‘clean’ system put in place, as has been seen to date.

The way forward (follow)

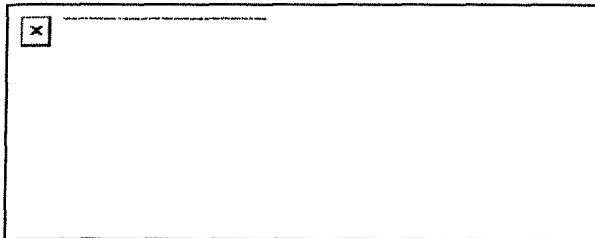
- **Promote fair competition:** Regulation must be based on competition that allows not only international businesses but also Congolese producers to influence (i.e. increase) local price schemes. This in turn would encourage a regime that ensures minimum wages which mining cooperatives can guarantee to their members based on their increased leverage on the price fluctuation.
- **Widen the lens:** Root causes of conflict such as land, identity, and political contest in the context of a militarized economy, rather than a single focus on minerals, must be considered by advocates seeking to reduce conflict violence.
- Finally, other critical challenges such as access to credit, technical knowledge, hazardous working conditions, and environmental degradation should not be ignored by multinational corporations if they seek to improve business practices and increase transparency in their supply chains

END

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From: RATSO Signe (TRADE)
Sent: 09 December 2014 16:20
To: [4.1(b)]
Cc: [4.1(b)]
Subject: FW: Conflict Minerals Workshop with African Forum
Attachments: Conflict Minerals Workshop with African Forum - Final Programme and list of attendees.pdf

From:
Sent: Tuesday, December 09, 2014 4:04 PM
To: RATSO Signe (TRADE)
Subject: Conflict Minerals Workshop with African Forum



Dear Ms. Ratso

On behalf of the American Chamber of Commerce to the EU (AmCham EU), I would like to take this opportunity of attending Thursday's workshop on the responsible sourcing of minerals of conflict-affected areas, hosted **Forum in Brussels - Mazungumzo**. We hope you enjoyed participating in what we believe was an open and inclusive range of stakeholders, and we very much look forward to engaging with you in future on this key issue, with its implications across the globe. Please find attached the final participants list.

The presentations delivered by our guest speakers from the African Forum in Brussels- Mazungumzo: **John M. M. M.** African-European Affairs Consulting and expert on the African mining sector, who presented an analysis of social complexities in Africa's conflict affected zones and **Andrew Kakabadse**, Professor of Governance at the Business School, University of Reading, who presented a review of the key factors affecting global governance available on our website.

We would also like to thank [4.1(b)] Chairman of the African Forum in Brussels – Mazungumzo for his concluding remarks, and [4.1(b)] (EPPA), Chair of AmCham EU's Environment Committee, for his

If you require any further information about the event or AmCham EU's position, please do not hesitate to

AmCham EU Secretariat.

Kind regards,

[41(b)]

[41(b)]

American Chamber of Commerce to the EU (AmCham EU)

Avenue des Arts 53, 1000 Brussels

Direct line: +32 (0)2 289 10 15 | Mobile: +32 (0)484 795 809

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mazungumzo
THE AFRICAN FORUM IN BRUSSELS

**Workshop on the responsible sourcing of minerals
originating from conflict-affected areas**

*with guest speakers from
The African Forum in Brussels - Mazungumzo*

4 December 2014

13:30 - 15:30

The American Chamber of Commerce to the EU (AmCham EU)
53 Avenue des Arts, B-1000 Brussels

Programme

Opening remarks:

- [41(b)] Chair of AmCham EU Environment Committee
[41(b)] Chairman of the African Forum in Brussels - Mazungumzo

Guest speakers:

[41(b)] Senior consultant, African-European Affairs Consulting (AEAC)
A lawyer and consultant to leading mining companies in central Africa, John is currently a member of the team led by the former President of South Africa Thabo Mbeki to develop transparency rules for the UN Economic Commission for Africa & the African Union. An expert on the mining sector in Africa, he will present an analysis of the political, economic, ecological and social complexities of the mining sector.

[41(b)] Professor of Governance and Leadership at Henley Business School;
Emeritus Professor of International Management, Cranfield University School of Management.
Andrew is an advisor to the United Nations and to businesses and governments worldwide.

Presentation of AmCham EU position:

[41(b)] Manager, Public Policy & Government Affairs, Europe, 3M; issue rapporteur

Open dialogue with workshop participants

Moderated by [41(b)] Chair of AmCham EU Environment Committee

Participants

First Name	Last Name	Organisation
		DigitalEurope
		John Deere GmbH & Co. KG.
		Albemarle
		Apple
		Daimler Corporate Representation
		European Parliament
		DigitalEurope
		Belgian Federal Service Public Economy
		Applied Materials
		The European Centre for Development Policy Management
		Permanent Representation of Sweden to the EU
		Eu Office of the Austrian Federal Economic Chamber
		US Mission to the EU
		Freshfields
		Permanent Representation of Lithuania to the European Union
		FTI Consulting
		Permanent Representation of Latvia to the European Union
		Hewlett-Packard
		Intel
		Kreab Gavin Anderson
		AmCham EU Secretariat
		AmCham EU Secretariat
		Permanent Representation of the Grand Duchy of Luxembourg to the EU
		Congo Calling
		Amnesty International EU Office
		EPPA

	The Boeing Company
	European Commission
	Hume Brophy
	ACADHOSHA, Democratic Republic of Congo
	Permanent Representation of Ireland to the EU
	Trans-Atlantic Business Council
	Dell
	3M
	ALSTOM
	AmCham EU Secretariat
	TechAmerica
	Austrian Federal Economic Chamber
	European Parliament
	European Parliament
	EU Parliament Groen Links
	TRIVAROP
	Eurometaux
	Fleishman Hillard
	Global Witness
	Belgian Federal Public Service Foreign Affairs

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From: [4.1(b)]
 Sent: 10 December 2014 10:21
 To: [4.1(b)]
 Cc: [4.1(b)]
 Subject: FW: Aktualisierter Draft COM: Our meeting on 3 December

Dear [4.1(b)]

I would like to thank you very much for our meeting on 3 December 2014 and the chance to present to you some of the concerns that we have as a distributor of electronic components regarding the Commission's proposal on conflict minerals.

For us it really boils down to this one question: Customers keep asking us about the content of the electronic components that we re-sell (we do not produce). We go to our suppliers (component manufacturers) and we ask them to provide information on the content of the electronic components. However, we receive incomplete, inconsistent or – depending on the manufacturer – no information at all. Most of these statements probably would not survive a legal challenge.

The current information situation is dissatisfying for our customers and thus for us. If customers demand answers, we cannot provide it or only partially, as we are, despite our size, not in any power position to force information. I am sure that our suppliers have a similar issue in their supply chain. Furthermore, it is not really possible to diversify the supply chain and switch to more transparent suppliers, because many of our electronic components are "single source", i.e. there are no other suppliers and we would lose a big market share to our competitors – who might not strive to be responsible downstream-suppliers themselves – if we stopped distributing "nontransparent" products. Hence, the solution that we see is to make the legislation mandatory and to provide for a "duty to provide information on the substances in a product" (as in Art. 33 REACH).

In order to keep the obligations manageable it would be necessary to keep the regulation's scope focused on the upstream part – as it currently is. Thus such a duty to provide information should apply to the mine, the trader of minerals, the smelter/refinery and the trader of the refined product – with a possible addition of the first user of the targeted minerals/metals (i.e. for example a manufacturer who uses refined gold to produce an electronic component).

In any system – voluntary or mandatory – it is essential that it stays/will be compatible with the US Dodd-Frank Act, both in form and substance. The best way forward would be a mutual recognition clause under TTIP or in any bilateral negotiations. That means a self-certified company under the EU-regime should be able to use the certificate - which it receives after complying with the OECD Due Diligence Guidelines - in the US in order to obtain for example the "DRC conflict free label".

In order to avoid regulatory arbitrage, any regulation – voluntary or mandatory – should aim for limited leeway for Member States when it comes to control diligence and implementation surveillance. A situation should be avoided where inadequate controls by national customs authorities lead to companies choosing the "easiest", "least diligent" Member State to get certified. In that regard the regulation itself should contain e.g. sanctions for false information and specify more clearly the duties of the national competent authorities. Uniform implementation and market surveillance are always hot topics in the EU, whether it concerns REACH or eco-labelling, or CE-certification. Fewer rules on the European level, however, often mean market distortions either due to slacking national authorities or - on the other side of the spectrum - through gold-plating of European regulations/directives by overzealous Member States.

I would be grateful if this confidential dialogue with the Commission could be continued in the future.

Yours sincerely,

[4.1(b)]

[4.1(b)]
 Vice President Environmental Affairs & Compliance
 Avnet Electronics Marketing EMEA
 [4.1(b)]



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