

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 recognizes 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 10.3 million people in the EU and in 2013 accounted for some €1,800 billion of annual output. The industry not only represents some 28% of the output of manufactured products but also a third of the manufactured exports of the European Union.

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 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.