

Brussels, 1 March 2017

Orgalime comments on the guidance document on the Non-Financial Reporting (NFR) Directive

Orgalime, the European Engineering Industries Association, speaks for 40 trade federations representing the mechanical, electrical, electronic, metalworking & metal articles industries of 24 European countries. The industry employs some 10.9 million people in the EU and in 2015 accounted for more than €1,900 billion of annual output. The industry accounts for over a quarter of manufacturing output and a third of the manufactured exports of the European Union.

Orgalime welcomes the efforts by DG FISMA to provide guidance for the industry on the still to be transposed Non-Financial Reporting (NFR) Directive (2014/95/EU). Nevertheless, on behalf of its members, Orgalime expresses its concern with regard to the thematic aspect “Conflict Minerals” and related Specific Key Performance Indicators (SKPI) of the draft fiches of the said guidelines.

The guidelines on conflict minerals do not reference and/or establish a link to the to be adopted draft regulation on 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”. The regulation follows a voluntary approach for the downstream industry, aiming to encourage due diligence reporting and the possibility to register in an envisaged transparency database. As the guidelines are envisaged to be non-legally binding, this spirit of encouragement rather than expectation should be reflected in the text of Section F.

Furthermore, the guidelines do not highlight the stipulated transition period of the draft regulation, which will only be fully applied in 2021. Only after the draft regulation has become effective and all remaining questions have been fully resolved (for example, geographic scope of conflict and high-risk areas), will there be sufficient information to use the SKPI in a meaningful and systematic way. This is of particular significance when considering the SKPI and definitions listed for Conflict Minerals in the draft guidelines. Here, it has to be reiterated that as per the draft regulation, the geographic scope of conflict and high risk areas is still to be defined during the transition period. By contrast, the NFR Directive mandates reporting of relevant information from 2017.

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In addition, it needs to be ensured that the SKPIs are in line with the requirements of the OECD Due Diligence Guidance and are clearly formulated. We believe that particularly the third SKPI on “the proportion of immediate downstream purchasers contractually requiring conflict minerals due diligence information consistent with the OECD Due Diligence Guidance” does not fulfil these criteria. It is not clear who exactly is meant by “immediate downstream purchaser” (whether that refers to the supplier or the customer of a given company) and the reference to contractual obligations would also need to be clarified. In case this SKPI is to be understood as requiring companies to report on contractual due diligence requirements of their customers it would also be inconsistent with the OECD Due Diligence Guidelines, which focus on / start with the supplier level.

If adopted in the current form, the draft guidelines would therefore create significant problems for engineering industries with regard to:

- Coherence with the draft Regulation
- Planning difficulties due to inconsistencies with the timeline, scope and unclarity regarding the upstream/downstream approach of the draft Regulation
- The implementation of the Directive 2014/95/EU by creating legal and practical uncertainties

Orgalime therefore calls on DG FISMA to revise the draft guidance fiches with the aim to fully reflect the provisions of the draft Regulation, specifically regarding the transition period, mandatory and voluntary specifics (for example the transparency database), geographic scope and definitions.

We remain available for further bilateral exchanges on this topic.

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