
Brussels, 14 July 2015

ORGALIME statement on the amendments adopted by the European Parliament on 20 May 2015 on the proposal for a Regulation 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

1. INTRODUCTION

ORGALIME is very concerned about the results of the plenary vote which significantly diverges from the European Commission's proposal.

The engineering industry supports the aim to sever the connection between the mining of minerals and the funding of armed conflict.

However, the narrowly adopted amendment 155 would introduce obligations for downstream companies that are not workable in practice and would thereby not contribute to improving the situation in third countries.

The vote in the plenary contradicts the European Commission's proposal focused on an upstream approach based on self-certification, which ORGALIME supports. In contrast to the Dodd-Frank Act (DFA), which has incurred tedious and very often unverifiable reporting obligations for downstream companies, upstream regulation would create the necessary transparency in the supply chain.

ORGALIME calls for a more informed debate about the effects of regulation at the different levels of the supply chain, as this will demonstrate that the careful and pragmatic approach of the European Commission has better chances to bring positive effects for the local population than a regime that is not feasible to implement.

2. ORGALIME's POSITION

ORGALIME would like to recapitulate its long-term involvement in the dossier and the reasons why we strongly favour the European Commission's approach.

In March 2013 the European Commission launched a public consultation focused on a possible EU initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas.

Orgalime, the European Engineering Industries Association, speaks for 43 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 24 European countries. The industry employs some 10.3 million people in the EU and in 2014 accounted for more than €1,825 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.

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The results of this consultation were used to decide whether and how it would be possible to complement the existing initiatives for good governance on the European level.

ORGALIME contributed¹ to this consultation calling for a solution-oriented, practicable and verifiable approach that takes into account the already existing, non-legislative initiatives devoted to promote responsible supply chains of minerals from conflict-affected areas at world-wide level.

The engineering industry therefore suggested **a systemic approach. Certification should be limited to the level of the smelters, because a geological proof of origin (fingerprint) is possible only until smelting.** Furthermore, the industry proposed a **comprehensive approach combining government support measures in third countries with a smelter-level approach** through which transparency can be introduced throughout the entire supply chain.

In March 2014, the European Commission published its proposal on creating a responsible trading strategy for minerals from conflict zones. ORGALIME welcomed² the European Commission's approach to set 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).

On 20 May 2015, the European Parliament overturned the European Commission's proposal as well as the report adopted by the International Trade Committee and requested mandatory compliance for "all Union importers" sourcing in conflict areas. On top of this, "downstream" companies - that is, the 880.000 potentially affected EU firms that use tin, tungsten, tantalum and gold (3TG) in manufacturing products – will be obliged to carry out due diligence measures.

ORGALIME believes that the mandatory obligations for the downstream sector introduced via amendment 155 would make the regulation inapplicable in practice and would therefore not improve the situation in crisis and conflict areas.

3. KEY CONCERN: Amendment 155

Under this amendment, downstream companies shall – in accordance with the OECD requirements – “take all reasonable steps to identify and address any risks arising in their supply chains for minerals and metals coming within the scope of this proposal for a Regulation”. In addition, downstream companies shall be required to provide information on the due diligence practices they employ.

Due diligence schemes are risk management systems that companies apply in order to help them control their supply chains and allow them to operate even in challenging environments. These

¹ Orgalime's position on a possible EU initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas <http://www.orgalime.org/position/orgalime%E2%80%99s-position-possible-eu-initiative-responsible-sourcing-minerals-originating>

² Orgalime statement on the proposed EU conflict minerals scheme <http://www.orgalime.org/position/orgalime-statement-proposed-eu-conflict-minerals-scheme>

systems do not offer guarantees, but provide for a process-oriented approach. However, the OECD guidance is mostly geared towards the smelter and refinery level and its advice to downstream companies is generally limited to the recommendation to take measures to establish the smelter in the supply chain.

Although the wording of amendment 155 remains vague, it is understood as introducing mandatory due diligence requirements for all companies of the downstream industry.

However, for companies in the middle or at the end of the supply chain – with multiple levels between them and the smelter level - it is almost impossible to trace their products to the smelter level, let alone the mine. This is particularly true for the engineering industry which products are characterized by the complexity of their supply chains where the number may often reach as much as 500,000 for a single product.

It has been established that the DFA has led to tedious and costly (and mostly unverifiable) reporting obligations for companies in the downstream segment of the supply chain. This is, first of all, due to the fact that the DFA did not create a bottleneck within the supply chain from which information on the origin of products can reliably flow. This is the benefit of a systemic approach focused on the smelter level. It creates the essential bottleneck through which information can be introduced into the supply chain.

Ideally, a comprehensive and global smelter certification system would cover the entire supply of 3TG and would thereby make it impossible for companies at the end of the supply chain to accidentally source minerals that have contributed to conflict.

4. CHALLENGES OF DOWNSTREAM IMPLEMENTATION

Downstream companies are already undertaking steps to create more transparency in their supply chains. However, in their efforts they experience a number of difficulties that are hard to overcome.

Firstly, companies need to set-up a communication system for the supply-chain which necessitates the mapping of all relevant suppliers and products. Depending on the complexity of the product a company will have dozens, or even hundreds of suppliers and many thousands of sub-suppliers for any given product.

In order to find out the smelter(s) in the supply chain, companies then have to contact all identified first-tier suppliers. This generally requires the setting up of special databases and IT-based assistance.

For smaller companies this first step is already very difficult to implement as it requires time and administrative resources.

Secondly, once companies have set-up such a communication system, they very often do not receive the required information concerning the origin of products from their suppliers - given that the supplier needs to contact the sub-supplier and supply chains are international. The response

rate is therefore often below 50%, which makes it impossible to draw reliable conclusions. This can be particularly difficult for smaller companies as they do not have much “bargaining power” in the supply chain; therefore the information is more difficult to obtain for them.

Overall, downstream implementation – particularly without the prior creation of a bottleneck in the supply chain – has proven very burdensome and largely ineffective for the companies that have engaged in it.

This is why Orgalime favours a voluntary upstream approach that can develop gradually and is able to respond to the identified challenges and possible negative side effects that could materialise.

5. NO IMPROVEMENT OF THE CONDITIONS IN CONFLICT AND CRISIS REGIONS

A mandatory downstream system is likely to deflect from the objective of improving the situation in crisis- and conflict-regions.

One of the key criticisms with regard to the DFA has been its “embargo-effect” on parts of the Democratic Republic of Congo (DRC) that heavily depend on raw material extraction.

Given that companies have felt themselves unable to fulfil extensive mandatory verification and reporting requirements, they have often chosen to avoid the problem by not sourcing from the DRC and pulling out of the region altogether. Consequently the socio-economic situation deteriorated in the affected parts of the DRC.

While the European approach tries to circumvent these negative side-effects by proposing an open scope of application covering all “crisis- and conflict-regions”, this could in fact aggravate the situation further. This is the case as there are currently hardly any in-region sourcing schemes outside the DRC (and only very few within the DRC itself) and retracing minerals to remote artisanal mines is often impossible.

Requiring extensive mandatory due diligence requirements from all operators in the supply chain without having the necessary in-region structures in place that enable the retracing of raw materials, would make compliance impossible.

As a consequence economic operators may choose to stop sourcing from many regions, not only fuelling embargo reactions but also cutting supply.

What is needed instead is a gradual approach that takes into account the difficulties of creating supply chain transparency and addresses these.

6. ENCOMPASSING STRATEGY

Creating transparency over the supply chain and exercising due diligence can only be one component of an encompassing strategy.

The most effective measures to break the link between raw material extraction and the fuelling of conflicts will likely come from foreign policy tools that are directly rooted in the affected third countries. These can consist in the creation of more local clean sourcing initiatives in affected regions. Without these on-the-ground-initiatives responsible sourcing will not be possible in crisis- and conflict regions.

Industry can do its share, but the European Commission and Member States also have to take up their responsibility as foreign policy actors.

In this context, ORGALIME welcomes the plans of the European Commission to provide 20 Million Euros to the efforts of promoting clean sourcing in third countries and encourages the European Commission to continue along this path.

7. CONCLUSION

The European manufacturing industry supports legislation that addresses the problem of conflict minerals and promotes cleaner sourcing. However, only legislation that can actually be implemented in practice can be an effective regulation. What should therefore be avoided is the creation of extensive, mandatory requirements for the entire supply chain that are impossible to comply with.

ORGALIME advocates for a holistic solution combining in-region-support structures with supply chain measures focused on the upstream level.

We therefore express serious concerns about the changes introduced by the recent plenary vote and reiterate our support for the original European Commission's proposal.



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