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**Brussels, 4 November 2013**

## **Orgalime's position on a possible EU initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas**

### **1. INTRODUCTION**

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. The results of this consultation will be used to decide whether and how it would be possible to complement the existing initiatives for good governance in minerals mining with an EU initiative.

Raw materials like minerals form the basis for all industrial production processes, and are therefore vital for the European engineering industry. Mineral resources, such as gold, tin, tantalum and tungsten, are key elements of some consumer products such as cell phones, personal computers, televisions and MP3 players. Further to this fact, Orgalime recognises a responsibility to ensure that products of our industry are responsibly manufactured by our suppliers.

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. Greater awareness of the conflicts in these regions on the part of the public and end-use industries has already prompted some companies of the engineering industry, especially in the electronics sector, to investigate their supply chains and determine steps to promote socially responsible sourcing of specific minerals.

Some companies, for instance, require that their suppliers take measures to comply with all applicable conflict minerals laws and regulations, and take measures to eliminate minerals originating from conflict-affected and high-risk areas from their products and components. In this respect, companies demand the use of conflict-free minerals through requirements under contractual law. For companies, this approach is enforceable, as they have direct control over the

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*Orgalime, the European Engineering Industries Association, speaks for 38 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 2012 accounted for some €1,840 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.*

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configuration of their contractual conditions. At the same time, a major contribution is therefore made towards being able to prevent the absorption of conflict minerals into the supply chain.

The engineering industry unreservedly supports the aim to sever the connection between the mining of minerals and the funding of armed conflict. However, with regard to implementation, there are numerous concerns about the already existing and possible future initiatives. For the above reasons we would like to comment on possible EU initiatives and solutions to the issue of responsible sourcing of minerals originating from conflict-affected and high-risk areas.

## 2. POINTS OF CONCERN

### ➤ Existing instruments

Until now, in an attempt to sever the connection between raw material extraction and the funding of conflicts, a series of initiatives has been introduced, i.e. the Section 1502 of the US Dodd-Frank Act implemented in the United States. While Orgalime supports the motivation behind such initiatives, that is the prevention of armed conflicts, a product-based approach and continuous certification is not considered as a beneficial and balanced initiative by our industry. In our view, the issue of sourcing minerals in a responsible way cannot be effectively tackled via measures such as the Dodd-Frank Act's Conflict Mineral provisions, which is a mandatory measure impacting just on a single market.

Orgalime would like to encourage the Commission to support the existing, non-legislative initiatives devoted to promote responsible supply chains of minerals from high-risk/conflict-affected areas at world-wide level, such as the OECD Due Diligence Guidance. The security of not misusing the profits generated by industrial activities such as mining and trading minerals is of world-wide relevance and for this reason deserves global actions and frameworks, to which all involved actors should give their contribution, rather than having legislative initiatives applied only in certain regions. Some emerging economies are out of the EU sphere of influence (e.g. China, India, and Brazil) and the schemes in place should be applicable not only at EU level, but extend the commitment to other resource hungry, emerging economies.

Any possible EU initiative should be therefore designed in a way to motivate other major economies, such as China, and to engage them in similar initiatives. The countries that would not be signatories of a possible EU legislative action would have no problems in buying, melting and

then selling the minerals from the conflict zones. For this reason, we consider the OECD Due Diligence Guidance as a promising starting point.

### ➤ **Difficulties of Product-Based Certification**

Influenced by the discussions on the Dodd-Frank Act, various approaches to dealing with conflict minerals in the supply chain are currently being discussed at European level. The European engineering industry considers the option of product-based certification from mine to end product to be questionable, as a number of serious consequences are not taken into account.

For example, foreign suppliers, particularly of raw material and base material, can be neither compelled nor bound by EU legislation. The truth of the statements made is therefore very difficult to ascertain. An additional complication with continuous certification from raw material to end product is that the start of the certification chain applies precisely to those companies that develop corrupt activities.

It would be necessary to manage an impractically high number of certificates. According to Boeing, around 1 million certificates would be needed to build a single 747 jumbo jet. Such certificate management is bureaucratically very expensive and would be associated with high costs on all levels of production.

One obvious consequence would therefore be that companies would avoid such a product-based duty of certification by boycotting the raw materials of the countries concerned. In turn, a boycott would primarily affect the local population, which would be cut off from legal and inoffensive sources of income provided by the extraction of raw materials.

In Orgalime's view, the demand for continuous certification from raw material to end product creates high costs. It increases costs throughout the supply chain right up to the end product without ensuring "correct" certification and is moreover harmful to the people in mining areas, as it is likely to lead to a boycott of the concerned regions. Such compulsory regulation would moreover result in a considerable competitive disadvantage for European companies and would also restrict their raw material security.

We therefore believe that the objective of "preventing armed conflicts" cannot be achieved by continuous certification from mineral extraction to end product.

### ➤ **Enforcement of laws**

In practice, a law on sourcing conflict minerals is very difficult to enforce since the origin of minerals that have been melted cannot be easily identified. This makes it almost impossible for companies to ensure they do not use minerals from conflict-affected areas. Likewise, it will be very difficult to enforce such a law. Moreover, prohibition of minerals sourcing from conflict-affected areas is in practice an embargo on the country, and it is unsure whether it constitutes an effective way of solving conflicts in the areas in question.

## **3. POSSIBLE SOLUTIONS**

### ➤ **Certification of the Smelters through voluntary public-private partnerships**

Due to the complexity of supply chains, in which many production stages must be passed through until a product is processed by the original manufacturer (OEM), it is impossible for the final manufacturer to trace the individual components of a finished product back to the mine.

Given that the traceability from the end product all the way back to the point of origin of the mineral cannot be guaranteed by the final manufacturer, certification initiatives and traceability systems should concentrate on specific areas within the supply chain.

In Orgalime's view, it is important to create an effective control point at the start of the supply chain. The smelter level represents the possible bottleneck within the supply chain. Existing initiatives such as the EICC-GeSI co-operation for the certification of smelters show that this approach is feasible. Also, chemical and geological proof of origin (fingerprinting) is possible only before smelting. After smelting, the original ores can no longer be assigned, so the smelters seem to be the last possible control point.

Furthermore, this control point could be optimal for reasons of feasibility and efficiency. The large number of artisanal and smaller mines in the African Great Lakes region alone can be estimated only with difficulty and is therefore virtually impossible to control. By contrast, the number of smelters is limited. The EICC-GeSI initiative estimates the number of smelters worldwide at 151 (OECD estimates around 200).

In our view an effective control mechanism at the level of the smelters could provide a substantial simplification for the provision of proof by companies in the downstream production chain. The number of smelters already certified and controlled through the EICC-GeSI co-operation with the aid of a multi-stakeholder process has already grown from 11 smelters to 29 smelters. This

demonstrates the feasibility of such an approach, which is based on co-operation between industry and civil society.

➤ **Supporting Role of Governments and the European Union**

The European engineering industry also acknowledges an important supporting role played by governments and the European Union in the process of responsible sourcing of minerals. In order to expand the existing approaches, governments should act as facilitators and enter into dialogue with the state authorities. The approval and support of the governments concerned is required due to the principle of state sovereignty and the basic rules of international co-operation. The industry plays here a supporting role.

#### **4. CONCLUSION**

A possible EU initiative should be above all designed with the aim to coordinate the already existing measures and not to jeopardize the competitiveness of the European manufacturing industry. We would like to encourage the Commission to primarily support the existing, non-legislative initiatives devoted to promote responsible supply chains of minerals from conflict-affected areas at world-wide level.

In Orgalime's view, the demand for continuous mandatory certification from raw material to end product creates high costs, which increase costs throughout the supply chain and therefore of the end product. It is moreover harmful to the people in the mining areas, as it is likely to lead to a boycott of the concerned regions. Additional regulatory demands will only put further pressure on European enterprises without contributing much to solving the actual problem.

A solution approach to the problem should concentrate on what is practicable and verifiable. The engineering industry therefore suggests a systemic approach. Certification should be limited to the level of the smelters: this is because a geological proof of origin (fingerprint) is possible only until smelting.

To conclude, the aim should be a synergy of government support and industry approaches, through which transparency is increased throughout the entire supply chain, effective control options are established, and it can therefore be guaranteed that the end products contain no conflict minerals.