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*Committee on International Trade*

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**2014/0059(COD)**

3.2.2015

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## **DRAFT REPORT**

on the 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)0111 – C7-0092/2014 – 2014/0059(COD))

Committee on International Trade

Rapporteur: Iuliu Winkler

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the 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)0111 – C7-0092/2014 – 2014/0059(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2014)0111),
  - having regard to Article 294(2) and Article 207 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0092/2014),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on International Trade and the opinions of the Committee on Foreign Affairs and the Committee on Development (A8-0000/2015),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a regulation**

#### **Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

***(11a) Directive 2014/95/EU of the European Parliament and of the Council<sup>1a</sup> requires large companies with more than 500 employees to disclose information on a number of policies including human rights, anti-corruption***

*and supply chain due diligence. The Directive provides for the Commission to develop guidelines in order to facilitate the disclosure of this information. The Commission should consider including in those guidelines performance indicators with regard to conflict minerals.*

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*<sup>1a</sup> Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330, 15.11.2014, p. 1).*

Or. en

#### *Justification*

*The directive on disclosure of non-financial and diversity information by certain large groups and companies (Directive 2014/95/EU), which was adopted by Parliament and Council in 2014 and which will be applicable in 2017, enhances business transparency on social and environmental matters and also covered supply chain due diligence. The Commission will need to draft the guidelines on the methodology in 2016 and use of international standards and non-financial performance indicators in order to assist undertakings in their reporting. In this context the rapporteur wants the Commission also to include reporting on supply chain due diligence in relation to conflict minerals. This reporting requirement for large groups and companies needs to be coordinated with the decision making on the Regulation proposed by the Commission.*

#### **Amendment 2**

##### **Proposal for a regulation Recital 11 b (new)**

*Text proposed by the Commission*

*Amendment*

*(11b) Many existing supply chain due diligence systems could contribute to achieving the aims of the Regulation. However, the criteria and procedures for the recognition of such schemes need to be clarified to allow for respect for high*

***standards and the avoidance of double auditing.***

Or. en

*Justification*

*The rapporteur wants to avoid duplication of audits and put coherence amongst the existing supply chain due diligence systems. To that end, the rapporteur wants to create a procedure for recognition of equivalence after verification by the Commission.*

**Amendment 3**

**Proposal for a regulation  
Recital 13**

*Text proposed by the Commission*

(13) Smelters and refiners are an important point in global mineral supply chains as they are typically the last stage in which due diligence can effectively be assured by collecting, disclosing and verifying information on the mineral's origin and chain of custody. After this stage of transformation it is often considered unfeasible to trace back the origins of minerals. A Union list of responsible smelters and refiners could therefore provide transparency and certainty to downstream companies as regards supply chain due diligence practices.

*Amendment*

(13) Smelters and refiners are an important point in global mineral supply chains as they are typically the last stage in which due diligence can effectively be assured by collecting, disclosing and verifying information on the mineral's origin and chain of custody. After this stage of transformation it is often considered unfeasible to trace back the origins of minerals. ***The same applies to recycled metals, which have undergone even further steps in the transformation process.*** A Union list of responsible smelters and refiners could therefore provide transparency and certainty to downstream companies as regards supply chain due diligence practices.

Or. en

*Justification*

*Secondary raw materials, recycled minerals deserve a special treatment, since they have already completed a life-cycle and for which it is impossible to trace back the origins. In order to avoid mixing recycled minerals with conflict minerals due diligence remained*

*required and metals reasonably assumed to be recycled should be excluded from the scope of the regulation.*

#### **Amendment 4**

##### **Proposal for a regulation**

##### **Recital 15**

###### *Text proposed by the Commission*

(15) In order to ensure the proper implementation of this Regulation, implementing powers should be conferred on the Commission. The implementing powers relating to the list of responsible smelters and refiners and the list of Member State competent authorities should be exercised in accordance with Regulation (EU) No 182/2011.

###### *Amendment*

(15) In order to ensure the proper implementation of this Regulation, implementing powers should be conferred on the Commission. The implementing powers relating ***to the list of responsible importers, the*** list of responsible smelters and refiners and the list of Member State competent authorities should be exercised in accordance with Regulation (EU) No 182/2011.

Or. en

###### *Justification*

*The rapporteur wants to include a list of responsible importers as annex to the Regulation. Since the Commission drafts these lists with little margin of discretion, not going beyond simple implementation, implementing acts seem to be the right choice.*

#### **Amendment 5**

##### **Proposal for a regulation**

##### **Recital 15 a (new)**

###### *Text proposed by the Commission*

###### *Amendment*

***(15a) In order to guarantee the efficient implementation of this Regulation, provision should be made for a two-year transitional period to allow the European Commission to set up a third-party audit system and for responsible importers to become familiar with their obligations***

*under this Regulation.*

Or. en

*Justification*

*The rapporteur is aware of the complex challenges involved, but hopes that the Commission will be able to put in place the structures needed to operate the system in two years.*

**Amendment 6**

**Proposal for a regulation**

**Recital 16**

*Text proposed by the Commission*

(16) The Commission should report regularly to the ***Council and the European Parliament*** on the effects of the scheme. ***No later than three*** years after ***entering into force*** and every ***six*** years thereafter, the Commission should review the functioning and the effectiveness of this Regulation, including as regards the promotion of responsible sourcing of the minerals within its scope from conflict-affected and high-risk areas. The reports may be accompanied, if necessary, by appropriate legislative proposals, which may include mandatory measures,

*Amendment*

(16) The Commission should report regularly to the ***European Parliament and the Council*** on the effects of the scheme. ***Two*** years after ***the date of entry into application***, and every ***three*** years thereafter, the Commission should review the functioning and the effectiveness of this Regulation, including as regards the promotion of responsible sourcing of the minerals within its scope from conflict-affected and high-risk areas. The reports may be accompanied, if necessary, by appropriate legislative proposals, which may include mandatory measures,

Or. en

*Justification*

*The rapporteur is of the opinion that the Regulation should be operational for at least two years before there can be a proper review. Considering that the Commission will need two year to put in place the structures needed to operate the system, it would be appropriate that the review will take place two years after entry into application. A second review should not take place after six years (as proposed by the Commission), but after three years.*

## Amendment 7

### Proposal for a regulation Recital 16 a (new)

*Text proposed by the Commission*

*Amendment*

***(16a) In their Joint Communication of 5 March 2014<sup>1a</sup>, the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy committed to the implementation of accompanying measures leading to an integrated EU approach to Responsible Sourcing in parallel with this Regulation, with the aim of reaching a high level of participation of companies in the Union system provided for in this Regulation.***

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***<sup>1a</sup> Joint Communication to the European Parliament and the Council on "Responsible sourcing of minerals originating in conflict-affected and high-risk areas", of 5.3.2014 (JOIN(2014) 8 final)***

Or. en

### *Justification*

*The Rapporteur is of the opinion, that although this Regulation is a pure trade instrument, it is important to look at it in its broader context to assess its effectiveness. Therefore the accompanying measures proposed by the European Commission and the High Representative of the Union for Foreign Affairs & Security Policy should be taken into consideration and their implementation promoted.*

## Amendment 8

### Proposal for a regulation Article 1 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. This Regulation lays down the supply

2. This Regulation lays down the supply

chain due diligence obligations of Union importers who choose to be self-certified as responsible importers of minerals or metals containing or consisting of tin, tantalum, tungsten and gold, as set out in Annex I.

chain due diligence obligations of Union importers who choose to be self-certified as responsible importers of minerals or metals containing or consisting of tin, tantalum, tungsten and gold, as set out in Annex I. ***Metals reasonably assumed to be recycled are excluded from the scope of this Regulation.***

Or. en

#### *Justification*

*The text added is a definition contained in the OECD Guidance. Metals reasonably assumed to be recycled deserve a special treatment, since they have already completed a life-cycle and for which it is impossible to trace back the origins. In order to avoid mixing recycled metals with conflict metals due diligence remained required and metals reasonably assumed to be recycled should be excluded from the scope of the regulation.*

#### **Amendment 9**

##### **Proposal for a regulation Article 2 – point g**

###### *Text proposed by the Commission*

(g) 'importer' means 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 (EEC) No 2913/1992;***

###### *Amendment*

(g) 'Importer' means any natural or legal person ***established in the Union making a declaration for the release into free circulation of minerals and metals within the scope of this regulation in his own name or the person on whose behalf such declaration is made. A representative making the declaration while acting in the name of and on behalf of another person or a representative acting in his own name and on behalf of another person are equally considered to be an importer for the purpose of this regulation;***

Or. en

### *Justification*

*In order to close any loopholes, the rapporteur aims to include both the agent performing the import as well as the company in whose name the custom declaration is made in the definition of importer. Both the agent and the importing company in whose name the custom declaration is made are welcome to self-certify under this Regulation.*

#### **Amendment 10**

##### **Proposal for a regulation Article 2 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

***(ga) 'recycled metals' means reclaimed end-user or post-consumer products, or scrap processed metals created during product manufacturing. Recycled metals include excess, obsolete, defective, and scrap metal materials which contain refined or processed metals that are appropriate to recycle in the production of tin, tantalum, tungsten and/or gold; minerals partially processed, unprocessed or a bi-product from another ore are not recycled metals;***

Or. en

### *Justification*

*The rapporteur proposes to use the definition of recycled metals, which the OECD uses in the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas. Also the OECD guidance excludes metals reasonably assumed to be recycled.*

#### **Amendment 11**

##### **Proposal for a regulation Article 2 – point o a (new)**

*Text proposed by the Commission*

*Amendment*

***(oa) 'industry scheme' means a combination of supply chain due diligence***

*procedures, tools or mechanisms,  
developed and overseen by relevant  
industry associations, including third  
party audits;*

Or. en

*Justification*

*The rapporteur wants to avoid duplication of audits and ensure coherence with the existing industry schemes. To that end, the rapporteur wants to create a procedure for recognition of equivalence after verification by the Commission. First we need to define these industry schemes.*

**Amendment 12**

**Proposal for a regulation  
Article 7 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 7a.**

***List of responsible importers***

- 1. On the basis of the information provided by the Member States in their reports, as referred to in Article 15, the Commission shall adopt and make publicly available, a decision listing the names and addresses of responsible importers of minerals and metals within the scope of this Regulation.***
- 2. The Commission shall adopt the list using the template set out in Annex Ia and in accordance with the advisory procedure referred to in Article 13(2).***
- 3. The Commission shall update and publish, including on the internet, the information included in the list in a timely manner. The Commission shall remove from the list the names of the importers that, in case of inadequate remedial action by the responsible importers, are no longer recognised as responsible***

*importers by Member States in accordance with Article 14(3).*

Or. en

*Justification*

*The rapporteur wants to provide visibility to the efforts of companies taking on commitments in this domain. In order to achieve that, the Rapporteur wants the Commission to draw up a list of responsible importers on the basis of reports on the implementation of the regulation by the member states. This list can offer companies an additional incentive to participate in the system and following positive (media) attention a push for competitors to do the same.*

**Amendment 13**

**Proposal for a regulation  
Article 7 b (new)**

*Text proposed by the Commission*

*Amendment*

*Article 7b.*

***Industry schemes***

***1. During the transitional period, relevant industry associations may submit an application to the Commission to have an industry scheme recognised as equivalent to the requirements of this Regulation.***

***Such application shall be supported by evidence and information.***

***2. Applications referred to in paragraph 1 may only be made in respect of industry schemes existing at the time of entry into force of this Regulation.***

***3. Where, on the basis of the evidence and information provided pursuant to paragraph 1 of this Article, the Commission determines that the industry scheme, when effectively implemented by a responsible importer, enables that responsible importer to comply with its obligations under Articles 4, 5, 6 and 7, it shall grant a recognition of equivalence.***

***4. Interested parties shall inform the Commission of any changes or updates made to industry schemes for which a recognition of equivalence has been granted in accordance with paragraph 3.***

***5. The Commission shall withdraw the recognition of equivalence where it has determined that changes to an industry scheme compromise a responsible importer's ability to comply with its obligations under Articles 4, 5, 6 and 7, or where repeated or significant cases of non-compliance by responsible importers relate to deficiencies in the scheme.***

***6. The Commission shall establish and keep up-to-date an internet-based register of industry schemes to which a recognition of equivalence has been granted.***

***7. Responsible importers of minerals and metals that can be proven to have been sourced exclusively from parties that have been certified by an industry scheme for which a recognition of equivalence has been granted or that have themselves been certified by an industry scheme for which a recognition of equivalence has been granted shall be exempted from the independent third party audit. Such certification shall then be sent to the competent authorities.***

Or. en

#### *Justification*

*The rapporteur wants to avoid duplication of audits and ensure coherence with the existing industry schemes, recognizing the responsible efforts already done by industry associations. To that end, the rapporteur wants to create a procedure for recognition of equivalence after verification by the Commission. A procedure for withdrawal of the recognition is included as well. For the sake of efficiency for the responsible importers, the rapporteur wants to give publicity to this list on internet. Your rapporteur also wants responsible importers that sourced from an industry scheme for which a recognition of equivalence has been granted to be exempted from the independent third party audit.*

## Amendment 14

### Proposal for a regulation Article 8 – paragraph 3

*Text proposed by the Commission*

3. The Commission shall adopt the list ***in accordance with*** the template in Annex II and the ***regulatory*** procedure referred to in Article 13(2). The OECD Secretariat shall be consulted.

*Amendment*

3. The Commission shall adopt the list ***using*** the template in Annex II and ***in accordance with*** the ***advisory*** procedure referred to in Article 13(2). The OECD Secretariat shall be consulted.

Or. en

*Justification*

*The rapporteur changes the comitology language, using the right templates and bring Article 9, paragraph 2 in line with Article 13, paragraph 2, where the advisory procedure is being proposed.*

## Amendment 15

### Proposal for a regulation Article 8 – paragraph 4

*Text proposed by the Commission*

4. The Commission shall update the information included in the list in a timely manner. The Commission shall remove from the list the names of the smelters and refiners that are no longer recognised as responsible importers by Member States in accordance with Article 14(3), or the names of the smelters and refiners in the supply chain of the no longer recognised responsible importers.

*Amendment*

4. The Commission shall update ***and publish, including on the internet,*** the information included in the list in a timely manner. The Commission shall remove from the list the names of the smelters and refiners that are no longer recognised as responsible importers by Member States in accordance with Article 14(3), or the names of the smelters and refiners in the supply chain of the no longer recognised responsible importers.

Or. en

### *Justification*

*The rapporteur changes the comitology language, using the right templates and bring Article 9, paragraph 2 in line with Article 13, paragraph 2, where the advisory procedure is being proposed.*

#### **Amendment 16**

##### **Proposal for a regulation Article 9 – paragraph 2**

###### *Text proposed by the Commission*

2. The Commission shall make a decision to publish, including on the internet, a list of competent authorities ***in accordance with*** the template in Annex III and the ***regulatory*** procedure referred to in ***paragraph 2 of*** Article 13. The Commission shall update the list regularly.

###### *Amendment*

2. The Commission shall make a decision to publish, including on the internet, a list of competent authorities ***using*** the template in Annex III and ***in accordance with*** the ***advisory*** procedure referred to in Article 13**(2)**. The Commission shall update the list regularly.

Or. en

### *Justification*

*The rapporteur changes the comitology language, using the right templates and bring Article 9, paragraph 2 in line with Article 13, paragraph 2, where the advisory procedure is being proposed.*

#### **Amendment 17**

##### **Proposal for a regulation Article 10 – paragraph 2**

###### *Text proposed by the Commission*

2. The checks referred to in paragraph 1 shall be conducted by taking a risk-based approach. In addition, checks ***may*** be conducted when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning the compliance by a

###### *Amendment*

2. The checks referred to in paragraph 1 shall be conducted by taking a risk-based approach. In addition, checks ***shall*** be conducted when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning the compliance by a

responsible importer with this Regulation.

responsible importer with this Regulation.

Or. en

*Justification*

*The Rapporteur wants to ensure that a member state competent authority doesn't abuse its discretionary power and will conduct checks when it is in the possession of relevant substantiated claims. The Rapporteur therefore wants to replace 'may' by 'shall'.*

**Amendment 18**

**Proposal for a regulation**

**Article 13 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.***

***deleted***

Or. en

*Justification*

*The rapporteur is of the opinion that there is no justification for including the non-opinion clause in this report and therefore proposes to delete the second part of Article 13, paragraph 2.*

**Amendment 19**

**Proposal for a regulation**

**Article 15 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall submit to the Commission by 30 June of each year at the

1. Member States shall submit to the Commission by 30 June of each year at the

latest, a report on the implementation of this Regulation during the previous calendar year, including any information on responsible importers as set out in Article 7(1) (a), 7.2 **and** 7.3 (a) and (c).

latest, a report on the implementation of this Regulation during the previous calendar year, including any information on responsible importers as set out in point (a) of Article 7(1), Article 7(2), points (a) and (c) of Article 7(3) **and Article 7a(1)**.

Or. en

#### *Justification*

*Since Member States have to provide information on the names and addresses of responsible importers (see Article 7a (1)), this should also be included in Article 15, paragraph 1.*

### **Amendment 20**

#### **Proposal for a regulation Article 15 – paragraph 3**

##### *Text proposed by the Commission*

3. **Three** years after the entry into **force** of this Regulation and every **six** years thereafter, the Commission shall review the functioning and effectiveness of this Regulation, including on the promotion and cost of responsible sourcing of the minerals within its scope from conflict-affected and high-risk areas. The Commission shall submit a review report to the European Parliament and to the Council.

##### *Amendment*

3. **Two** years after the **date of** entry into **application** of this Regulation and every **three** years thereafter, the Commission shall review the functioning and effectiveness of this Regulation, including on the promotion and cost of responsible sourcing of the minerals within its scope from conflict-affected and high-risk areas. The Commission shall submit a review report to the European Parliament and to the Council.

Or. en

#### *Justification*

*The rapporteur is of the opinion that the Regulation should be operational for at least two years before there can be a proper review. Considering that the Commission will need two years to put in place the structures needed to operate the system, it would be appropriate that the review will take place two years after entry into application. A second review should not take place after six years (as proposed by the Commission), but after three years.*

## **Amendment 21**

### **Proposal for a regulation Article 16 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***It shall apply from ...\****

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***\*OJ: Please insert the date: two years  
after the date of entry into force of this  
Regulation***

Or. en

*Justification*

*The rapporteur understands that two years will be required to put in place the structures needed to operate the system and therefore proposes entering into application two years after the entry into force of the Regulation.*

## **Amendment 22**

### **Proposal for a regulation Annex I a (new)**

*Text proposed by the Commission*

*Amendment*

***Annex I a***

***List of responsible importers template  
referred to in Article 3***

***Column A: Name of importers in  
alphabetical order***

***Column B: Address of importer***

Or. en

*Justification*

*The rapporteur supports the suggestion in the Communication to provide visibility to the efforts of companies taking on commitments in this domain. In order to achieve that, the*

*Rapporteur wants the Commission to draw up a list of responsible importers on the basis of reports on the implementation of the regulation by the member states. This list can offer companies an additional incentive to participate in the system and following positive (media) attention a push for competitors to do the same.*

## **Amendment 23**

### **Proposal for a regulation**

#### **Annex II – List of responsible smelters and refiners' template referred to in Article 8 – Column C a (new)**

*Text proposed by the Commission*

*Amendment*

***Column Ca: Type of mineral***

Or. en

#### *Justification*

*The rapporteur wants to achieve the maximum level of transparency and accessibility of the list of smelters and refiners. It would be good if the list would have an additional column indicating the type of mineral (tin, tungsten, tantalum or gold). With a proper search function this tool could be very accessible, promoting the market pressures for all smelters and refiners to aspire to qualify for the list of responsible smelters and refiners.*

## **EXPLANATORY STATEMENT**

On 5 March 2014 the European Commission presented a legislative proposal aimed at making it more difficult for armed groups in conflict-affected and high-risk areas to finance their activities through the mining of and trade in minerals. The focus of the approach is to make it easier for companies to source tin, tantalum, tungsten and gold responsibly and to encourage legitimate trading channels.

### **Historical context**

This proposal is an EU contribution to international efforts to address the problems in countries rich with resources but vulnerable to armed conflict, such as the Great Lakes Region and learns from these efforts. The two best-known were adopted in 2011 and 2010 respectively: the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Due Diligence Guidance) and Section 1502 of the United States Dodd-Frank Wall Street Reform and Consumer Protection Act.

### **Content**

The Commission proposes a draft Regulation, also as a reply to Parliament resolutions, setting up an EU system of self-certification for importers of tin, tantalum, tungsten and gold that choose to import responsibly into the Union. Self-certification requires EU importers of these metals and their ores to exercise 'due diligence' – i.e. to avoid causing harm on the ground – by monitoring and administering their purchases and sales in line with the five steps of the Organisation for Economic Cooperation and Development (OECD) Due Diligence Guidance. The Regulation gives EU importers an opportunity to deepen ongoing efforts to ensure clean supply chains when trading legitimately with operators in conflict-affected countries. To increase public accountability of smelters and refiners, enhance supply chain transparency and facilitate responsible mineral sourcing, the EU aims to publish an annual list of EU and global 'responsible smelters and refiners'. With more than 400 importers of such ores and metals, the EU is among the largest markets for tin, tantalum, tungsten and gold.

### **Support for the Commission proposal**

Your rapporteur generally supports the proposal for Regulation of the Commission. The proposal focuses on the most effective level of the EU supply chain for these minerals, the smelters and refiners of minerals in order to facilitate the flow of due diligence information down to end users. Smelters and refiners are the last point at which the origin of minerals can be traced. Any information that can be obtained from smelters and refiners about their suppliers is important for due diligence. The Commission proposal enables EU companies to better comply with Dodd Frank requirements.

Your rapporteur also agrees to that this EU system (like the OECD Guidance) should cover all Conflict-Affected and High Risk Areas. Different from the US Dodd Frank Act which so far only focuses on the Great Lakes Area, the EU wants companies all around the world to avoid doing harm. Your rapporteur is of the views that the EU should not draw up a list of Conflict-Affected and High Risk Areas, but rather providing companies with the tools they need to do due diligence in a handbook.

Your rapporteur also supports the voluntary approach, which is reflected in the Commission proposal. Your rapporteur believes that market pressures in the small transparent market of importers and smelters and refiners should lead to high levels of participation. Your rapporteur welcomes the accompanying measures foreseen in the accompanying communication<sup>1</sup> to promote high levels of participation and hopes that not only these measures can be implemented in parallel with the Regulation, but that Parliament will also be kept informed of their implementation.

Moreover, your rapporteur is of the opinion that the choice for the voluntary approach enables the EU to work more effectively with supply chain due diligence schemes developed by business associations, which in line the OECD guidance have set global standards on their domains.

Responsible importers can only source from smelters/refiners with a third-party audit. Via those audits, the EU system will therefore give a good inside in the suppliers and mines. Gradual increase in the number of audited smelters will allow adaptation of the sector to the rules without supply shocks.

The voluntary approach will interest the avant-garde of responsible companies to participate. This group will gradually enlarge due to market competition pressures. Companies can choose to join at their own speed. A decision to join can be well-prepared and the costs and impacts limited.

Your rapporteur wants to work with responsible business to avoid temporary supply shortages, avoid reducing economic activity in conflict affected areas and to promote legitimate trade.

### **Non-Financial Reporting Directive**

Your rapporteur favours the use of existing tools to promote reporting on supply chain due diligence of trade in minerals. The Directive on disclosure of non-financial and diversity information by large companies and groups requires large companies with more than 500 employees to disclose information on policies on human rights, anti-corruption and supply-chain due diligence. The Directive provides for the Commission to develop guidelines in 2016 in order to facilitate the disclosure of this information from the entry into force in 2017. Your rapporteur will contribute to convincing the Commission to including in those guidelines performance indicators with regard to disclosure obligation with respect to trade in minerals covered by this Regulation. Problems in relation to company's involvement in trade in conflict minerals, with as possible side effect the fuelling of conflict, is too important to ignore in this context. Once the Commission has committed to this, reporting requirements such as foreseen in the OECD Guidance will then also be operational for large EU companies.

### **Small and Medium Size Enterprises**

Your rapporteur is of the opinion that SMEs should be put in the position to participate in the EU system if they want to be part of the avant-garde, but does not want to force them. Your rapporteur is of the view that also in this respect the Commission is right to choose for the

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<sup>1</sup> Joint Communication on Responsible sourcing of minerals originating in conflict affected and high risk areas: Towards an integrated approach of 5 March 2014, (JOIN (2014) 8)

voluntary approach. With the right incentives and assistance, as foreseen in the accompanying measures, SMEs can be convinced to participate out of their free will and in line with their business logic.

### **Making the Regulation more efficient**

Your rapporteur proposes more amendments with the aim to make the Regulation more efficient. In order not to punish the environmentally friendly operators, according to your rapporteur it is correct to follow the OECD and exclude metals that are reasonably assumed to be recycled. It does reflect both the practical wisdom of the OECD guidance as well as the due diligence that continuously will be needed to stop abuse.

Many other supply chain due diligence systems have been developed. Your rapporteur wants to avoid double auditing. A voluntary system should be as efficient and effective as possible. The Commission should develop the right tools to evaluate the work of the other supply chain due diligence systems. Clear criteria should be developed to decide which of those systems should be recognized.

Your rapporteur favours the three year review as an important moment to building the most efficient system. The timing of the review will however depend on when the system will be operational. Two yearly cycles need to have gone through before a review can be conducted seriously.

### **Increasing participation in the scheme with the right incentives**

Your rapporteur wants to give maximum visibility to those companies that do the right thing. The smelters list should include a column with the mineral and group the smelters/refiners by mineral so that importers and others can easily consult the document.

In the same vein your rapporteur wants to establish a list of responsible importers. Those importers that decide to go the extra mile should get credit for that and have an opportunity to win in terms of public image because of that. A list of responsible importers could achieve that goal.

Your rapporteur is of the opinion that participation by importers and smelters/refiners is key for the success of this Regulation. Through accompanying measures, such as incentives for SMEs, many more importers will participate, what will improve the system.

Your rapporteur also wants the definition of importers to be widened to also enable traders to self-certify and participate in the new system.

### **Involvement of Parliament and comitology**

Your rapporteur is aware that many practical issues will be dealt with in the context of handbooks and guidance documents. Your rapporteur wants to discuss in parliament amongst colleagues how to find the right balance regarding operational flexibility with regard to implementation and on the other correct involvement of the legislator on important practical issues, such as rhythm of required audits.

On top of that your rapporteur wants to propose some amendments regarding comitology. When the Regulation will indeed not let there be any discretionary power for the Commission,

only requiring it to implement, then implementing acts are appropriate. If however during the legislative procedure the nature of that relationship changes and Commission gets more discretionary power due to amendments, then delegated acts might become more appropriate.

Your rapporteur already now wants to reject the obsolete regulatory procedure and replace it by the advisory procedure as envisaged by the Commission in Article 13, paragraph 2. Moreover, the inclusion of the non-opinion clause is not acceptable for your rapporteur.