

Supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas

2014/0059(COD) - 05/03/2014 - Legislative proposal

PURPOSE: to establish an EU system of self-certification for importers of tin, tantalum, tungsten and gold.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the proposal notes that international measures exist to promote responsible sourcing of minerals in areas at risk or affected by armed conflict. 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, which focuses on the Democratic Republic of Congo (DRC) and nine adjoining countries.

Whilst the trade of conflict minerals is very well documented in the case of the DRC, other cases abound elsewhere in Africa, Asia and Latin America. Against this background, the Commission and the High Representative have been working to develop a comprehensive EU responsible mineral sourcing framework. This work follows up a 2010 European Parliament resolution calling for the EU to legislate along the lines of US legislation as well as two Communications in [2011](#) and [2012](#) that announced the Commission's intention to explore ways of improving supply chain transparency.

It should be noted that this legislative proposal is accompanied by [a Communication](#) detailing other policy measures that can be deployed to tackle the problem as broadly as possible.

IMPACT ASSESSMENT: the Commission examined six options. The preferred option comprises the adoption of a Regulation establishing obligations under a 'EU Responsible Importer' certification based on the OECD Due Diligence Guidance – voluntary.

CONTENT: the main objective of this proposal is to help reduce the financing of armed groups and security forces through mineral proceeds in conflict-affected and high-risk areas by supporting and further promoting responsible sourcing practices of EU companies in relation to tin, tantalum, tungsten and gold originating from such areas.

The draft 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.

Self-certification as a responsible importer : any importer of minerals or metals within the scope of the Regulation may self-certify as responsible importer by declaring to a Member State competent authority

that it adheres to the supply chain due diligence obligations set out in the Regulation. The declaration shall contain documentation in which the importer confirms its adherence to the obligations including results of the independent third-party audits carried out.

Member State competent authorities shall carry out appropriate ex-post checks in order to ensure that self-certified responsible importers of the minerals or metals within the scope of this Regulation comply with their obligations.

OECD Due Diligence Guidance: the Regulation relies on the OECD Due Diligence Guidance to define obligations for EU importers that opt to be self-certified as responsible importers of tin, tantalum and tungsten ores and metals, and gold, on the basis of a self-declaration of compliance.

EU importers opting for self-certification are obliged to integrate all elements of the OECD Due Diligence Guidance **in their management system** by: (i) maintaining a system of controls and transparency over the mineral supply chain, which includes inter alia the country of mineral origin and the smelters/refiners; (ii) identifying and assessing risks in the supply chain against the OECD model supply chain policy; (iii) designing and implementing a strategy to respond to identified risks; (iv) obtaining independent third-party audit assurances of supply chain due diligence; and (v) reporting publicly on supply chain due diligence.

Disclosure: the EU self-certified importer is required to disclose annually to the Member State competent authority the identity and geographical location of the smelters/refiners in its supply chain.

The importer is also required to provide independent third-party audit assurances and pass them on to Member States' competent authorities and to downstream purchasers, with due regard to business confidentiality and other competitive concerns.

On the basis of the information disclosed to the competent authorities, the EU will publish annually, after consultation with the OECD, a list of responsible smelters and refiners that source according to the Regulation.

Infringement: in the case of infringement, competent authorities will issue a notice of remedial action to be taken by the EU importer. If such action is inadequate, the authority will then issue a non-recognition notice for the responsible importer certificate for the minerals and metals covered by the draft Regulation.

Budgetary implications: the present proposal entails limited financial implications for the Union budget for administrative purposes: **EUR 2.72 million** for the period 2014-2018.