

JBCE & JEITA Joint Position on

THE EU INTEGRATED APPROACH ON RESPONSIBLE SOURCING OF MINERALS ORIGINATING IN CONFLICT-AFFECTED AND HIGH-RISK AREAS

JBCE* and JEITA** jointly welcome the European Commission's proposal of a regulation and the joint communication on "conflict minerals". JEITA and JBCE strongly support the EU's efforts to establish a market for responsibly traded minerals that originate in conflict regions and to reduce market distortions in the mineral sector from DRC and the Great Lakes Region where firms currently avoid sourcing. As actors in the global market, we would like to actively contribute to the realization of the Commission's objectives by sharing our views and proposals.

*** ABOUT JBCE** – *Created in 1999, the Japan Business Council in Europe (JBCE) is a leading European organization representing the interests of multinational companies of Japanese parentage active in Europe. JBCE membership covers a wide range of sectors, including information and communication technology, electronics, chemicals, automotive, machinery, wholesale trade, precision instruments, pharmaceutical, railway, textiles and glass products. Together, the JBCE membership of around 70 major multinational companies represented global sales of 1.4 trillion euros in 2013. JBCE takes an active role in enhancing the understanding and promoting the business of Japanese companies in Europe, and in putting forward the views of its members on legislative issues currently under debate and on public policy issues which will shape the years to come (www.jbce.org). EU Transparency Register: 68368571120-55*

**** ABOUT JEITA** – *The Japan Electronics and Information Technology Industries Association (JEITA), ranging from materials to electronic components and semiconductors, from consumer electronics to industrial system devices, from IT products to solution services. JEITA represents a large number of companies in these sectors, many of which are active on the European market, both through local manufacturing plants and research centers and through trade with the European Union. Since 2011, the JEITA Responsible Minerals Trade Working Group has been working on. (<http://www.jeita.or.jp/english/>). EU Transparency Register : 519590015267-92*

JBCE and JEITA appreciate the European Commission's recognition of the issues around "conflict minerals" and welcome the proposal of a draft regulation, aiming to deal effectively with the problem. In particular, we strongly value that the Commission's approach:

- (1) Follows the principles and processes set out in the OECD Due Diligence Guidance, while focusing on smelters and refineries;
- (2) Aims to establish a market for responsibly traded minerals that originate in conflict regions; and

(3) Recognizes the cost of responsible sourcing and its potential impact on SMEs.

Here, we, as industrial associations conscious of the realities of businesses, would like to deliver the following comments to increase the effectiveness of the EU approach.

On the proposed REGULATION

(1) Recycled or scrap materials should be excluded from the scope

It is unrealistic to trace the source of recycled minerals produced through the scrapping process. On the other hand, the use of recycled materials should be encouraged for the EU's complementary objective of resource efficiency. Thus, the EU regulation should clarify that 100-percent recycled materials do not need to specify the origin of source. At the same time, smelters and refineries which process only 100-percent recycled materials should be accredited and listed separately to avoid their unfair exclusion from the market.

(2) Clear guidance on identification of “conflict-affected and high-risk areas” should be developed with transparent process

We understand the rationale of avoiding the identification of “conflict-affected and high-risk areas” in the regulation. Meanwhile, business needs clear guidance to identify the “conflict-affected and high-risk” areas to make the system predictable. Thus, we urge the development of clear guidelines to identify “conflict-affected and high-risk areas” through a transparent process in collaboration with relevant stakeholders.

Moreover, without a well-established traceability scheme such as the iTCSi, it would be extremely difficult to implement the conflict-free accreditation for smelters. Hasty expansion of the geographical scope without reliable implementation of the existing traceability scheme should be avoided.

(3) Focus on importers and set clear criteria for the certification of Responsible Importers, Smelters and Refiners

We welcome the Commission's focus on importers - the most appropriate point in the supply chain. The impact beyond importers should be avoided by maintaining the scope of the current proposal and clarifying the definition of “importers”. The definition should refer to companies that import using one of the custom codes set out in the Annex to the draft Regulation.

Concentrating on upstream operators and on facilitating transmission of quality information in the supply chain addresses the appropriate point in the supply chain. It is also consistent with the OECD Guidance and various industry initiatives, as well as complementary to Dodd-Frank.

The above notwithstanding, clear criteria for the certification of Responsible Importers, Smelters and Refiners should be set under a reliable, well-governed and functioning certification system. In order to avoid confusion in certifying importers, we call for the EU to set clear criteria for importers to become ‘responsible’. Such criteria should make use of the existing criteria such as CFSI’s Conflict Free Smelter Program and LBMA. At the same time, the extent of the burden for SME smelters should be carefully considered.

(4) Enhance incentive mechanisms for responsible sourcing from conflict affected areas

The proposed incentives are rather on downstream producers and not for companies which source directly from conflict affected areas. In order to effectively stimulate responsible sourcing, incentives focusing on upstream operations need to be further considered.

On PUBLIC PROCUREMENT (EU Joint Communication)

(1) The subject of due diligence should be companies, not products

The Joint Communication states that “products purchased through public procurement containing tin, tantalum, tungsten and/or gold will need to respect the OECD Due Diligence Guidance or equivalent due diligence schemes in order to satisfy contractual obligations.” The OECD provides a framework for a due diligence process for all suppliers and other stakeholders in the mineral supply chain. Therefore, it is not products, but companies that should follow the OECD Guidance.

(2) EU Guidelines for due diligence should be developed

It is an extremely difficult task for downstream companies to ascertain the credibility of all information received from upstream companies in the supply chain. An excessive and unreasonable requirement on suppliers risks reversing the shift toward responsible procurement. It would be widely welcomed if the Commission were to lay down some guidelines on appropriate due diligence methods to avoid such a “de facto ban” and to encourage the proper information transfer throughout the supply chain.

The attached Annex outlines examples of harmful results of inappropriate due diligence which we experienced through compliance with the US Dodd Frank Act.

In Conclusion

Responsible sourcing from conflict affected and high-risk areas is deeply related to human lives and the economic development in developing countries. The effort of industry alone cannot ensure responsible sourcing from such regions. It is crucial to have the efforts of all national governments, including those of the US and Japan. In light of promoting worldwide collaboration, the role of EU diplomacy is extremely important.

As the legislative procedure progresses, we request that the proposal of the regulation be deliberated with care, so as not to undermine the existing systems, programs and initiatives such as CFSI and to avoid unnecessary burdens to companies.

We, as constructive industrial associations, are ready to support your challenges for improvement.

Annex: Examples of harmful results of inappropriate due diligence

| Example of inappropriate due diligence | Harmful results | CFSI FAQs |
|--|--|-----------------------|
| Requirement of conflict-free guarantees. Claims of damages when it is found that minerals were not conflict-free. | Currently, without CFSs, downstream companies cannot trace back past smelters and refineries. When there are not enough CFSs, requiring conflict-free guarantees invites a de facto ban. | Q2, second half of Q3 |
| Hard deadlines for companies to switch entirely to CFSs; ending commercial activities if a company is unable. | When there are not enough CFSs, most companies will find this impossible to satisfy and could lead to supplier bullying, as well as hamper surveys. | - |
| Conflict-free declarations/certifications. Requirements that suppliers do not source from conflict regions. | Invites a de facto ban on minerals from conflict regions. | Q3, Q7 |
| Hard deadlines for identifying all smelters or refineries; ending commercial activities if a company is unable. | This requirement is nearly impossible to satisfy, and could lead to supplier bullying, as well as hamper surveys. | Q8 |
| Audits on downstream suppliers. | The OECD Guidance only calls for third-party audits of smelters and refineries. Audits on downstream suppliers lead to additional burden on companies. | Q4 |
| Surveys using different formats. | These increase the burden on suppliers and reduce survey accuracy. | Q5 |
| Requirements for rapid responses. | In most cases, companies are unable to produce adequate results from surveys in a short period due to the multiple layers of the supply chain | Q6 |
| Enforcement of accountability for downstream companies for all the information gathered in the supply chain. | Downstream companies are accused of disclosing uncertain information. | |

Please also see the comments on similar due diligence methods in FAQs issued by CFSI http://www.conflictreesourcing.org/media/docs/CFSI_DueDiligenceandCompanyAssurance_FAQ.pdf