

**TABC position on the  
Proposal for an EU regulation setting a supply chain due diligence self-certification  
of responsible importers**

**And**

**EU Joint Communication on responsible sourcing of minerals originating in  
conflict-affected and high-risk areas**

The Trans-Atlantic Business Council (TABC) welcomes the European Commission's package of policy measures on responsible minerals sourcing, including a proposal for a Regulation that was issued on 5 March 2014.

TABC recognizes that sourcing of minerals may be used to finance armed groups and conflicts, and the need to break this link. Improving transparency and due diligence throughout the supply chain could be a way to address this issue, along with balanced foreign and local policy efforts to support good governance, security and sustainable development in the concerned areas.

Many TABC members are already individually conducting due diligence with their own suppliers, or have experience complying with a similar piece of legislation on the US side; Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. TABC has therefore been calling on the EU Commission to develop a proposal that would be consistent with existing schemes such as the OECD Guidelines for Multinational Enterprises, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict Affected and High-Risk Areas (OECD Guidance) and Section 1502 of the Dodd-Frank Act.

TABC also would like to reiterate its key objectives for this draft Regulation: (1) building on the existing regulatory framework and avoiding duplication, divergent regulatory requirements or undermining current voluntary initiatives<sup>1</sup>; (2) clarifying as much as possible the provisions of the proposal to give legal certainty to companies, especially for the implementation phase.

**TABC supports the following elements contained in the Regulation proposed by the European Commission:**

- **Setting a self-certification system.**
- **Targeting tin, tantalum and tungsten, their ores and gold:** the proposed scope is consistent with the minerals concerned by the OECD Due Diligence Guidance and Dodd-Frank Act.
- **Using existing systems such as OECD Due Diligence Guidance for management system and risk management obligations.**
- **Focusing on upstream actors (smelters and refiners):** they are key junctures in the minerals supply chain to verify the source of minerals and where efforts will have the most impact. Outreach actions to countries with smelters should also be supported, including an EU-hosted international conference on responsible sourcing of minerals.
- **Publishing an annual EU list of responsible smelters.**

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<sup>1</sup> These include: OECD Guidance, Conflict Free Sourcing Initiative, and its Conflict-Free Smelter Program; iTSCi, Solutions for Hope, Conflict-Free Tin Initiative; Public Private Alliance for Responsible Minerals Trade etc.

## **TABC would like to raise concerns related to certain provisions in the draft Regulation and Joint Communication:**

- **Coherence:** Wherever possible the proposal for a draft Regulation and Joint Communication should be considered as a package, as they deal with trade and policy aspects – respectively - of the same topic and are intrinsically linked.
- **Definition of conflict-affected and high risk areas:** Currently, responsible minerals sourcing due diligence initiatives are largely focused on the DRC and Great Lakes Region. This is consistent with the UN Security Council Resolution on the DRC 1952 (2010) and the U.S. Dodd-Frank Act. The term “conflict-affected and high-risk areas” used in the proposals is ambiguous and is likely to lead to uncertainty for EU companies and their global supply chains. A clear process and criteria for identifying areas should be defined.
- **Public procurement incentives:** The need for coherence particularly concerns public procurement incentives as proposed in the Joint Communication: the link between these incentives and the draft Regulation should be clarified, and fragmented initiatives at the level of Member States should be avoided. TABC recommends that incentives focus on companies rather than on products, respecting OECD Due Diligence Guidance. We also recommend that a company may use the Specialized Disclosure reports filed with the US SEC as one way to demonstrate that it has a due diligence program in place in conformity with international guidelines.
- **Guidelines:** TABC supports the intention of the European Commission to draw up guidelines that are a useful tool to facilitate implementation. Guidelines should, however, be in line with the final Regulation and, therefore, not be finalized before the end of the legislative procedure. The process should also be transparent and allow for stakeholder consultation.
- **Responsible sourcing systems in concerned areas:** an important piece of the EU action should be in working with local governments and stakeholders in a conflict-affected area to establish the systems needed to demonstrate responsible sources and to avoid unintended impacts to those areas.
- **Keeping the focus on smelters and importers:** The scope of the draft proposal should be maintained and the impact beyond importers avoided. We recommend clarifying explicitly the definition of the “importers” as referring to companies that import themselves (i.e., directly) under one of the custom codes set out in the Annex to the draft Regulation.
- **Implementation in Member States:** The proposal doesn’t currently provide for a harmonized EU approach to the implementation of the Regulation: A host of different Member State authorities will be in charge of the implementation from Ex-Posts checks to rules applicable to infringement. This could lead to a fragmentation of the EU internal market and greater complexity for multi-national economic operators and their supply chains in the EU marketplace.
- **Review clause:** This is an important provision that should take place after implementation has been completed and assessed, and stakeholder experience can be properly evaluated. Given the substantial impact of this Regulation and its future amendments on supply chains in EU and global markets, as much legal certainty as possible should be built into the review. Specifically, any modification to the voluntary nature of the initiative should be thoroughly reviewed prior to implementation.
- **Recognize Existing Initiatives:** It is important that existing voluntary efforts, such as the Conflict-Free Sourcing Initiative (CSFI), the LBMA Responsible Gold Programme, and the RJC Chain-of-Custody Program are recognized and supported under the EU Regulation and in the implementation of accompanying policy measures. This also concerns the future EU list of responsible smelters. Alignment will promote the further uptake of due diligence measures amongst EU businesses and their international suppliers and avoid the increased burdens of complying with multiple systems.
- **International cooperation:** any sustainable solution to enable responsible minerals sourcing requires not only the involvement of the EU and the US, but all key trading partners such as - but not limited to - Brazil, Russia, China, Indonesia. Emerging countries with significant economies must become active participants in responsible sourcing initiatives to address this issue worldwide.