

European Parliament Proposes Tough Measures on Conflict Minerals

May 28, 2015

On May 20, 2015, by a narrow margin the left wing of the European Parliament successfully pushed through amendments to a proposed conflict minerals law that would, if enacted, be much more onerous and involve hundreds of thousands more European businesses in the process of tracking conflict minerals than the regulation proposed by the European Commission and supported by the Parliament's International Trade Committee and industry. The Parliament seeks to establish legally binding certification requirements for both importers and downstream users to ensure traceability of tin, tantalum, tungsten and gold ("3TG"). The aim of the scheme is to ensure that their purchases do not fund militias or foster human rights violations in "conflict-affected high risk areas" anywhere in the world. The Parliament's expanded approach would, by its own estimate, involve 880,000 downstream users of 3TGs in addition to the estimated 400 importers that would have been affected by the EC's proposal.

On April 2, 2014, we published an advisory that outlined the features of the EC proposal. Here is how the Parliament's approach differs from the original proposed regime and contrasts with U.S. law:

1. **What Minerals and Products are Covered?** Both the original proposal and the Parliament's amendments restrict the scope of the proposed legislation to tin, tantalum, tungsten and gold. These are the same four minerals covered by the U.S. Security & Exchange Commission's (SEC) Conflict Minerals Rule promulgated under the Dodd-Frank Act, Section 1502. However, the EC proposal is limited to ores and concentrates imported for smelting and refining and a limited list of specific metal products such as bars, rods, profiles, wire, powders, sheets, strip and foil imported into the EU. Other base metals containing the four minerals as alloying elements and downstream products containing the metals are not covered. By contrast, if the Parliament's proposal to include 880,000 downstream users in the reporting regulation is agreed, it is difficult to see how this could be effected without including metals utilizing 3TGs as alloying elements because that is the form in which the vast majority of downstream products would contain the conflict minerals. It is not clear how the EU would set this up, but it is possible or even likely that the Parliament's approach would result in regulations similar to the SEC's Conflict Minerals Rule that covers products containing 3TGs necessary to the functioning or production of the product.

2. **Who is Covered?** The original EC proposal applied only to importers of the 3TG minerals and ores. The program was voluntary, covering an estimated 400 smelters and refiners. The Parliament rejected the voluntary approach and broadened the legislative proposal to include 880,000 downstream users in a mandatory tracking scheme. Parliamentarians implicitly acknowledge the difficulty of downstream supply chain tracking by imposing a third-party audit requirement only on smelter and refiners.

3. **What Geographical Areas are Considered to be in Conflict?** The Parliament has retained

the EC's broad definition of conflict areas to include "all conflict-affected high risk areas in the world." This is consistent with the approach of the OECD but in sharp contrast to the SEC rule and Section 1502 of Dodd-Frank, which specifically defines the conflict areas to be the Democratic Republic of the Congo and the surrounding countries. Under the Parliament's approach, and contrary to industry recommendations, companies must determine what constitutes a high-risk or conflict area.

4. **What is the Treatment of Recycled Materials:** The EC proposal was silent on the treatment of recycled materials. An amendment by the Parliament would exclude from the regulation "metals reasonably assumed to be recycled." A detailed definition of recycled materials includes both post-consumer scrap and new industrial scrap.

It is not clear how the Parliament's proposal would impact U.S. exporters of product to the EU.

Next Steps

The 28 Member States of the EU have not yet reached a common position on the Commission's proposal. Difficult negotiations between the Parliament and Member States, with input from the EC, are anticipated in the coming weeks as politicians seek to reach consensus allowing for the adoption of legislation.

Kelley Drye & Warren will continue to monitor developments as the legislative process reaches its conclusion.