

## E-ALERT | Conflict Minerals

June 6, 2014

### U.S. AND EU INITIATIVES DISCUSSED AT 7TH OECD FORUM

On May 26-28, on the eve of the deadline for the first reports under the Dodd-Frank Act's conflict minerals rule, the 7th Organisation for Economic Cooperation and Development (OECD) "Forum on Responsible Mineral Supply Chains" gave some leading companies and organizations an opportunity to present their views on the implementation of the U.S. Securities and Exchange Commission's (SEC) rule. The Forum was also an opportunity to hear reactions to the EU Commission proposals presented in February this year, which NGOs want to make mandatory. There was also a useful presentation of a new initiative for responsible sourcing of precious metals aimed at giving new impetus to the Kimberley process.

#### Dodd-Frank Act

Public companies subject to the SEC's conflict minerals rule had to file their initial reports under the rule by June 2, 2014. The Paris meeting gave the opportunity to several "leaders" in this process, including Intel, Hewlett Packard, and Motorola Solutions, to comment on the efforts they had made during the past four years to prepare reports which are "comprehensive, transparent and practical." The representatives of these companies noted that this process had not been easy but was not impossible. They also noted that the exercise helped them to better understand who their suppliers were but rarely forced them to terminate their relations with them as representatives of the OECD participating in the Forum insisted that when a supplier is not safe, the first reaction should not be to disengage but to help the supplier improve the traceability of the minerals provided.

Representatives of these leading companies stressed that their purpose was not only to respect U.S. law but to conform with the OECD guidelines and more generally to act "responsibly." It was also noted that these companies are the exception rather than the rule and that many companies will probably adopt a less comprehensive approach. Many companies - especially those who are less in the limelight for this purpose - do not have the capabilities to file a comprehensive report. In this regard, one panelist presented the "Auditing Roundtable," through which auditing firms offer to help companies fulfill their diligence and reporting duties. To conclude the discussion on this theme, a State Department representative commented that: "It's not easy but it can be done!"

#### EU Initiative

In their presentation, Signe Rasto, from DG Trade and Elena Peresso from Commissioner De Gucht's private office, insisted on an "integrated approach" to the EU proposal, including efforts to restore peace in the region and help local economic development. They justified the voluntary character of the proposal by the preoccupation of not discouraging the industry to source their minerals from the Great Lakes region; they noted that the initiative is rooted in the OECD guidelines and should "facilitate compliance with Dodd Frank" for the numerous EU companies affected by the U.S. legislation.

Most representatives of the industry praised the nature of the EU initiative, which does not impose obligations on end users, and were not very concerned by the extension of the geographical scope. Some, however, expressed perplexity with regard to the incentive given to end users related to public procurement which, indeed, requires further clarification.

At this stage, the initiative is only a proposal by the EU Commission submitted to the Member States and to the European Parliament. Several NGO's expressed the hope that the negotiation in Parliament will make the initiative mandatory. Their views are well expressed in an opinion presented recently by "[Global Witness](#)," urging the new Parliament, [elected at the end of May](#), to make the Commission proposal a Dodd Frank type legislation, imposing reporting obligations on end users.

### Multi-Stakeholder Working Group on Precious Stones (Diamonds and Colored Stones)

This initiative was presented by Mark Taylor from the FAFO institute in Oslo. This group was created during last year's OECD meeting by jewelers and academics such as Signet and the FAFO institute, as well as Partnership Africa - Canada and a few NGO's critical of the Kimberley process. The group is informal and is supposed to be "open and transparent." After the presentation, however, they were blamed by some NGO's and African governments for their lack of transparency. Their objective is to see how current due diligence could be applied to responsible sourcing of precious stones. They consider their initiative to be "complementary" and could "reinforce the Kimberley process" which they implicitly criticize for its lack of efficiency.

### Implementation of the OECD Due Diligence

A principal criticism of the implementation of the OECD guidance expressed at the Forum is the delay in implementation of the ICGLR regional certification mechanism (RCM). The protocol exists but, in order to have the system work, all states in the region should cooperate on its implementation - which does not seem to be the case.

The representatives of the countries in the region continued to blame each other for not efficiently fighting the smuggling of minerals and gold across the borders. The DRC representative stressed that the main armed groups have disappeared and that only small local groups continue to benefit from the illicit exploitation of mines in Eastern Congo.

A [communiqué](#) was agreed at the end of the meeting.

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Covington & Burling LLP continues to advise U.S. public companies in their efforts to comply with reporting duties under Dodd Frank Section 1502. We also closely follow the EU initiative and are prepared to help companies get involved in the negotiation which will start in the fall in both the Council of Ministers and the European Parliament.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our conflict minerals practice group:

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