

Position on the subject of Conflict Minerals

In July 2010 US-President Obama has signed the „Dodd-Frank Wall Street Reform and Consumer Protection Act“ (DFA). DFA became operative on August 22nd, 2012 when the United States Securities and Exchange Commission (SEC) published the implementing directives. Section 1502 of the DFA refers to the production and trade of so-called conflict minerals. According to these rules companies which are listed on the US-Stock exchange, have to declare if their products contain tin, tantalum, tungsten and gold, which originate from the Democratic Republic of Congo (DRC) or its neighbouring states and they have to prove that the products are “conflict free”. SEC listed companies have to report about the calendar year 2013 for the first time to SEC on March 31st, 2014. German companies of the non-ferrous metal industry as sub-suppliers of such companies are affected indirectly by these DFA-regulations, as the requirement of the proof of origin is handed on within the value-added chain.

The situation in the Democratic Republic of Congo requires action

According to an UN report of 2003 mining, transport and trade of resources in the east of the DRC as well as in adjacent territories is often controlled by armed groups and thereby contributes to the financing of military conflicts.¹ These conflicts destabilize the region by armed conflicts and attacks on the civilian population. The non-ferrous metal industry therefore supports the efforts to prevent financing of rebel groups by small-scale mining in the DRC or its neighbouring states.

The main responsibility rests with politics

The support of democratic development and good governance is however primarily task of foreign, security and development politics. The economy can and will support this process but will not replace it. An interference of commercial enterprises in the political development of raw material countries can neither be the goal nor the result of respective initiatives.

The non-ferrous metal industry exercises its responsibility

There is already a number of partly intersecting approaches in how to handle conflict minerals. Mentioned in particular should be the OECD Due Diligence Guidelines in which the German non-ferrous metal industry participates actively. At present the OECD Due Diligence Guideline is implemented in the context of voluntary initiatives as the Conflict-Free Smelter Program of EICC or the ITRI Tin Supply Chain initiative. The non-ferrous metal industry is aware of its responsible position within the value-added chain and relies on the voluntary initiatives since many years.

¹ Final Report of the Panel of Experts on the illegal Exploitation of Natural Resources and other Forms of Wealth of the Democratic Republic of the Congo, UN-Sicherheitsrat Dokument S/2003/1027, New York, 2003.

The Dodd-Frank-Act faces different difficulties

The implementation of a mandatory proof of origin as scheduled in the DFA faces various difficulties. This becomes particularly clear as the publishing of the implementing directive by SEC was made only after two years and by the granted transitional period of two resp. four years for KMU.

- **De facto embargo:** The Dodd-Frank-Act already acts as a de facto embargo. Currently companies concerned withdraw out of the Great Lake area because they worry about loss of image and they look for other supplying regions for their raw materials. People and families in the DRC depend on small-scale mining as it is their most important source of income. These developments which are not intended act as inhibiting development. This shows that well-meaning regulation finally can miss the target as well.
- **Impracticability:** The product-related approach in the DFA is characterized by a great complexity. Final products e.g. mobile phones, consists out of thousands different materials and parts with as much as many suppliers. The cascading collection of information means an unreasonable bureaucratic effort. It is almost impossible to get a declaration of no-objection from all involved parties within the value-added chain.
- **Distortion of competition:** Additional bureaucratic expenditure means higher costs for the companies who follow the conditions of DFA. Distortions of competition arise if no international level playing field is ensured. Due to the declining market presence of European and American companies, an increasing engagement of such often Chinese companies in DRC is already observed today in DRC and these companies ignore the recommendations of OECD regarding social standards and mining of raw materials. Furthermore new, illegal sales markets have established. DFA forces a further development in this direction and achieves the opposite effect which is intended.
- **Identifiability of conflict resources:** The definition of criteria which are used in DFA to identify conflict minerals and areas is unclear. Though the OECD Guidelines describe clearly when a mine is free of conflict, the actual conditions on site change permanently. Therefore a monitoring of mines is continuously necessary and this is the aim within the scope of the initiatives iTSCI and ICGLR. The German Federal Institute for Geosciences and Natural Resources (BGR) early supports the efforts of ICGLR with projects for national and local certification of mines and transport routes. The approach of independent audits which are based on locally inspections and plausibility checks of documentations is helpful and worth supporting but this can not be the task of the manufacturing industry in the value-added chain.
- **Secondary raw materials:** According to the implementing directives of SEC, secondary raw materials are correctly exempted from the field of application. On the one hand there are no conflicts financed by secondary raw materials. On the other hand the issue of a declaration of no-objection is nearly impossible for industries who are characterized by high recycling quota. Recycling quota of more than 50% are reached by the non-ferrous metal industry. The metal is not only reused once but unlimited, as metals are not used up but needed. That is why it is almost impossible to prove where the waste fractions originate from and also the minerals within, which have been returned already several times into the substance cycle.

No “European Dodd-Frank-Act”

As long as no positive experiences have been made with the implementation of the regulation and while the practicability resp. achievement of objectives is not ensured in the conflict area by use of evaluation, a transition of DFA regulation into European right should be disregarded. This is even more true against the background that the validity of Section 1502 DFA is currently called in doubt by USA Chamber of Commerce and America’s National Association of Manufacturers with a legal action before the U.S. Court of Appeals.

WVM welcomes the intention to increase transparency in the resource sector. The different European and international initiatives however have to be subject to a thorough impact assessment which especially replies to the question of distortion of competition for the German and European Industry. Voluntary approaches which have been drafted on the level of OECD for the responsible management of supply chains should be preferred.