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EU DUE DILIGENCE IN SUPPLY CHAINS

Eurometaux's Position Paper

Introduction

As a global player, the European Non-Ferrous Metals industry acts according to the principles of responsible trading and Corporate Social Responsibility (CSR). Our sector worked closely with the Organisation for Economic Cooperation and Development (OECD) supporting its work on the **Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas** (released in 2010). Throughout this process, the non-ferrous metals industry has been working with a range of stakeholders on due diligence initiatives to develop auditable standards that support responsible business practices.

European metals companies are increasingly involved in **responsible supply chain initiatives and auditing program schemes**, which aim at improving supply chain transparency, such as the Responsible Jewellery Council, Cobalt Industry's Responsible Assessment Framework (CIRAF), LBMA, Responsible Gold Mining Principles, Responsible Minerals Initiative, ITA Code of Conduct and ITSCI, Metal Alliance for Responsible Sourcing (Mars), Aluminium Stewardship Initiative and Responsible Steel, The Copper Mark, the Joint Due Diligence Standards for Copper, Lead, Nickel and Zinc, the IRBC Agreement for the Metals Sector, the ICMM Mining Principles, as well as various others. Existing schemes, programmes and standards allow for the implementation of risk-based due diligence in a dynamic way and the process can be more easily adapted to real risk profiles on the ground.

Nevertheless, we are aware that at this time not all global supply chains are diversified, sustainable and responsible. Therefore, **Eurometaux strongly believes that responsible and ethical sourcing of metals and minerals should be an essential part of EU policy**. In particular, we take into account the lack of respect of labour and human rights in certain areas of global metals and minerals supply, including due to weak governance in emerging economies, and recognise the need to ensure the responsible sourcing of all materials, be they raw or processed in finished products. We also support EU actions ensuring resilient and ethical supply chains for the primary raw materials that Europe's green recovery will increasingly require from deposit-rich third countries.

For all these reasons, our sector recommends that - in case of a political will to introduce a binding law on due diligence in the EU - **an effective and practical system should be created, helping the EU make a real impact on the ground, while avoiding excessive burdens on companies and ensuring a level playing field**. This will require EU policy action to be aligned with existing responsible mining initiatives, internationally recognised standards, and existing national legislation; overall encouraging the use of sustainably produced and responsibly sourced metals and minerals in key value chains and to fostering stronger and fair-trade relations with our international partners.

Our ten key recommendations

Should a mandatory legislation on due diligence be developed at EU level, **our sector suggests the following 10 key recommendations**. *Our first four recommendations stem from our experience in establishing due-diligence schemes specific to the metals sector, which we believe should be taken into account when establishing overall EU due diligence requirements, while our other six recommendations cover overall principles for EU due diligence requirements.*



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- 1) **Incorporate a “smart mix” of minimum requirements plus industry initiatives and incentives:** proportionate minimum requirements should be in place in the areas of health and safety, human rights, good governance and environment, and incentives should be granted to frontrunners to opt to go beyond those minimum requirements. In addition, the EU should ensure the enforcement mechanism of mining legislation in resource-rich states, to verify whether legal standards are implemented in practice. Efforts should include support to on-the-ground mining projects with a focus on labour and human rights, environment, health and governance standards, avoiding creation of duplication of standards.

A “smart mix” definition should:

- Provide legal certainty, while also including flexibility of soft law to allow companies to judge and respond to often rapidly changing situations on the ground.
 - Provide adequate recognition to voluntary due diligence schemes based on the OECD Due Diligence Guiding principles.
 - Cover the anti-trust and business secrecy concerns.
 - Avoid additional and repetitive reporting obligations avoiding inefficiencies and double work by companies.
 - Provide clear definitions that encompass environmental, human rights and responsible business conduct obligations based on the existing standards such as the OECD Guidelines for Multinational Enterprises and the United Nations Guiding Principles on Business and Human Rights (UNGP).
- 2) **Recognise industry’s efforts:** existing due diligence approaches, schemes and programs in the metals sector should remain the basis of any effort towards increased transparency in the area of responsible sourcing. As such we are in favour of building on existing voluntary due diligence schemes to: i) promote alignment and cross-recognition of existing (multi-stakeholder) initiatives, schemes and programs in the metals sector; ii) aim for a wider adoption by international actors; iii) include a methodology reducing double work by companies; iv) cover material risks and avoid fragmentation; and v) foster increased transparency in the area of responsible sourcing.
- 3) **Leverage internationally recognised standards** and instruments (such as the UNGPs, OECD Guidance and the 3Ts Supplement for base metals) on how businesses can identify, prevent and mitigate their risks. Achieving the recognition of existing international standards will be an important step towards a credible and effective due diligence legislation. This should be done in a coherent way, avoiding inefficiencies and duplication of work. For this reason, we believe that: i) clear and well-defined international standards should be embraced as common goals by civil society and businesses; ii) stronger harmonization of existing and future EU regulations is needed for the EU regulatory framework on due diligence to be as coherent and horizontal as possible; iii) caution should be taken and collaboration is needed with respect to defining “Environmental Due Diligence”, as there is still no consensus or case law at the international level on this concept and, therefore, input from international bodies (e.g. the UN) is needed; and iv) in addition, a possible due diligence legislation should be aligned with Sustainable Finance and Taxonomy, Conflict Minerals Regulation, Batteries Regulation, Non-Financial Reporting Directive, Environmental Liability Directive, Shareholder Rights Directive II, and upcoming sector-specific regulations.
- 4) **Consider secondary raw materials separately** as they are extremely difficult to trace: Secondary raw materials can only be traced until the collection of waste. Due diligence obligations cannot go beyond that point.
- 5) **Avoid loopholes by applying value chain thinking:** our sector believes that a responsible sourcing approach in terms of value chain can be promoted through the adoption of a homogeneous and inclusive legislation affecting the entire value chain. However, the entire value chain concept needs to be critically examined with regard to the



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approach to and scope of due diligence.

Value chain thinking does not mean that upstream economic operators should have endless responsibilities vis-à-vis their downstream partners (especially when the downstream sector are not where they would be expected to be in terms of contributing to the costs of due diligence).

- 6) **Implement thresholds for due diligence obligations:** In the event that the EU institutions propose to limit companies' obligations with respect to due diligence, we suggest looking for thresholds that limit the due diligence obligations to companies with a real impact on the field.
- 7) **Avoid the risk of disengagement:** due diligence should aim for continuous improvement, engagement and empowerment. For this reason, when enterprises detect issues along their value chain, they should set up improvement mechanisms to avoid recurrence. Withdrawal is a solution only if red lines are crossed and no improvement is deemed possible. However, there is still no industry agreement on the definition of "red lines". Withdrawal/disengagement should be a decision taken by a company on a case-by-case basis depending on their risk management strategy and business model.
- 8) **Ensure transparency and business confidentiality:** transparency, trust and stakeholder-involvement should be ensured across the value chain, to avoid: i) the risk of disclosure of commercially sensitive information to third parties; and ii) a potential conflict between data protection laws, employee confidentiality, works councils, competitive concerns and the effective functioning on the company-level grievance mechanism. To this end, our sector calls for caution on these issues and collaboration specifically on some concepts and definitions linked to transparency issues, such as "business confidentiality and other competitive concerns". Also, existing tools and efforts provided by voluntary initiatives should be applied uniformly by all European companies, and best practices examples should be shared via communication tools and initiatives, to integrate the work conducted by the EU Commission.
- 9) **Ensure enforcement mechanisms are efficient, impartial and transparent,** in line with policy objectives and goals. The EU should particularly aim to avoid creating an administrative burden on EU companies which might lead to their withdrawal from the market and replacement by companies from other regions that are not bound by similar regulations. Our sector reaffirms the principles of the **burden of proof and the presumption of innocence**, which is a norm of international customary law, to avoid: 1) media sensationalism, public statements or leaks which create damage to business (an effective and credible redress should be provided in such case); and 2) infringement of the rights to a fair trial. As such, it is crucial that there is no reversal of the burden of proof and that business is considered innocent until proven otherwise.
- 10) **Strengthen international relations and responsible cooperation to create a level playing field:** Strengthening of economic relations with third country partners are of key importance and a level-playing field principle with third country partners should be well respected. Therefore, we suggest that i) environmental, sustainability and regulatory chapters of future Free Trade Agreements (FTAs) should contain powerful enforcement mechanisms to ensure that regulatory and environmental standards are followed by the EU's FTA partners; ii) a more proactive approach that embraces the UN Sustainable Development Goals as the general framework in the long term should be favoured; iii) EU action on due diligence should be placed in the broader context of relations with third country partners and EU foreign policy, supported by concrete and effective foreign policy and development cooperation activities; and iv) finally, the developmental goal – to improve the situation on the ground – should not be forgotten and should serve as a key driver of further due diligence requirements and actions.

