

EU Conflict Minerals Regulation

A Brief Guide

From January 2021



Contents

Part 1: Background

- Definition of Conflict Minerals
- Minerals legislation: A brief history
- EU legislation: Why now?
- Primary Aims
- Companies and regions impacted
- Thresholds
- How it differs from the Dodd-Frank Act

Part 2: Requirements

- Due Dilligence: 5 step management system obligations
- Risk Management obligations
- Third Party audit obligations
- Disclosure obligations

Part 3: Implications

- EU-level implementation
- For Smelters and refineries
- For Supply Chain Scheme Due Diligence Owners (SCSDD)
- Sourcing Companies Upstream
- Resources

Authors:

Josh Johnson

Sylvi Simonnet

Angela Lake

On behalf of:



Fifty Eight

Fifty Eight partners with organisations and individuals throughout the value chain to achieve work that enhances quality of life, free from exploitation.

www.50eight.com



PACE

The Partnership Against Child Exploitation (PACE) is a ground-breaking partnership of private sector, academic, media development and civil society organisations working together to combat the exploitation of children in the worst forms of child labour.

www.pace-consortium.org



UK aid

This material has been funded by UK aid from the UK government. However, the views expressed do not necessarily reflect the UK government's official policies.

www.ukaidirect.org



Part 1:

Background

-
- Definition of Conflict Minerals
 - Conflict Minerals legislation: Brief history
 - EU regulation: Why now?
 - Primary Aims
 - Companies/ Regions impacted
 - Thresholds
 - How it differs from the Dodd-Frank Act

Definition of Conflict Minerals

The Regulation itself doesn't define the term 'conflict minerals' but has produced an extensive list of definitions of the key terminology used within it.

Article 2 lists the regulation's definitions of 'minerals', 'metals', 'recycled metals' and 'by-products'.

Article 2 defines the term 'conflict-affected and high risk areas' (CAHRAs) as areas in a state of armed conflict or fragile post-conflict as well as areas witnessing weak or non-existent governance and security, such as failed states, widespread and systematic violations of international law, including human rights abuses'.

This closely aligns with the definition of 'conflict-affected and high-risk areas' within OECD due diligence guidance.

OECD Definition

Conflict affected and high risk areas are identified by the presence of armed conflict, widespread violence or other risks of harm to people. Armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, civil wars, etc.

High risk areas may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence. Such areas are often characterised by widespread human rights abuses and violations of national or international law

Conflict Minerals Legislation: Brief History

The term **conflict mineral** was originally legislated within US law. Known as the 'conflict minerals' provision – Section 1502 of the **Dodd-Frank Act requires U.S publicly listed companies to prevent the financing of armed conflict by:**

- Checking their supply chains for tin, tungsten, tantalum and gold (3TGs)
- Determining whether they originate in DRC or neighbouring areas and taking steps to address any risks they find
- Reporting on their efforts every year to US Securities and Exchange commission (SEC)

Similar legislation was passed with **The Kimberley Process: aiming to eliminate the trade in conflict diamonds.**

Defined by the relevant United Nations Security Council resolution as 'rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments.'

“

This Regulation establishes a Union system for supply chain due diligence in order to curtail opportunities for armed groups and security forces to trade in tin, tantalum and tungsten, their ores, and gold.

Designed to provide transparency and certainty as regards the supply practices of Union importers, and of smelters and refiners sourcing from conflict-affected and high-risk areas

Article 1.1

”

EU legislation: Why now?

In October 2010, the **European Parliament called for the EU to legislate** along the lines of the US 'conflict minerals' Dodd- Frank law; and subsequently the European Commission announced its intention to explore ways of improving due diligence throughout supply chains through data acquired from multi-stakeholder initiatives and consultations.

Now in force from 1st of January 2021:

EU Importers of tin, tantalum, tungsten, and gold (3TG) and of metals containing 3TG should be taking actions to supplement their compliance programs to address the new legal requirements of the conflict minerals regulation. The resolution gives the EU a stronger legal position to build upon in its fight for conflict free minerals, affecting thousands of companies.

Primary Aims

1

Help reduce the financing of armed groups and security forces through mineral proceeds in conflict affected and high risk areas, by supporting and further promoting responsible sourcing practices of EU companies in relation to minerals and metals originating from such areas.

2

Build upon existing international due diligence frameworks (i.e. Dodd-Frank Act & OECD guidance) aiming to encourage EU companies importing minerals and metals within the scope of the regulation to do so responsibly and facilitate due diligence efforts of downstream purchasers.

3

Defining the conditions for companies to be self-certified as responsible importers of the minerals and metals within the regulation's scope.

Companies & Regions Impacted

The EU Regulation will directly apply to companies that import 3TGs (tin, tungsten, tantalum and gold) minerals and metals into the EU, no matter where these originate from.

The Regulation is expected to cover between 600 and 1,000 EU importers.
500 smelters and refiners of 3TGs will be indirectly impacted, whether based inside the EU or elsewhere.

The Regulation is only applicable if the annual import volume is above certain thresholds (see below).

The European Commission will call upon external expertise that will provide an indicative, non-exhaustive, regularly updated list of conflict affected and high risk areas.

Thresholds

Part A: Minerals

Description	CN Code	TARIC subdivision	Volume threshold (kg)
Tin ores and concentrates	2609 00 00		5 000
Tungsten Ores and concentrates	2611 00 00		250 000
Tantalum	ex 2616 90 00	10	Article 1 (4) and Article 18 apply
Gold ores and concentrates	ex 2616 90 00	10	Article 1(4) and Article 18 apply
Gold unwrought or in semi-manufactured forms or in powder with a gold concentration lower than 99.5% that has not passed the refining stage	ex 7108 (*)		100
* For the purpose of amending this threshold, the imported volume obtained by applying the methodology and criteria of Article 18 shall be set as the threshold for both ex 7108 tariff lines included in Annex 1			

Thresholds

Part B: Metals

Description	CN Code	TARIC subdivision	Volume threshold (kg)
Tungsten oxides and hydroxides	2825 90 40		100 000
Tin oxides and hydroxides	ex 2825 90 85	10	Article 1 (4) and article 18 apply
Tin chlorides	2827 39 10		10 000
Tungstates	2841 80 00		100 000
Tantalates	ex 2841 90 85	30	Article 1 (4) and article 18 apply
Carbides of tungsten	2849 90 30		10 000
Carbides of tantalum	ex 28499050	10	Article 1 (4) and article 18 apply
Gold, unwrought or in semi-manufactured forms or in powder form with a gold concentration of 99.5% or higher that has passed the refining stage	ex 7108 (*)		100
Ferrotungsten and ferro-silico-tungsten	7202 80 00		25 000

Description	CN Code	TARIC subdivision	Volume threshold (kg)
Tin, unwrought	8001		100 000
Tin bars, rods, profiles and wires	8003 00 00		1 400
Tin, other articles	8007 00		2 100
Tungsten, powders	8101 10 00		2 500
Tungsten, unwrought, including bars and rods obtained simply by sintering	8101 94 00		500
Tungsten wire	8101 96 00		250
Tungsten bars and rods, other than those obtained simply by sintering, profiles, plates, plates, sheets, strip and foil, and other	8101 99		350
Tantalum, unwrought including bars and rods, obtained simply by sintering; powders	8103 20 00		2 500
Tantalum bars and rods, other than those obtained simply by sintering, profiles, wire, plates, sheets, strip and foil, and other	8103 90		150

How it differs from the Dodd-Frank Act

1 Geographical Scope

The regulation has a broader scope by targeting 'conflict affected, high risk areas' (CAHRAs) and 'resource rich developing countries'. Dodd-Frank refers only to the DRC and areas adjoining.

2 Risk-Based Approach

Unlike Dodd-Frank, the EU Regulation does not require companies to claim that their products are 'conflict free'. Instead it requires them to show that they have a due diligence system in place which is in line with OECD Due Diligence Guidance.

3 Self -Certification

Regulation is voluntary, Dodd-Frank is mandatory. However, importers opting for self-certification are obliged to integrate all elements of OECD Due Diligence Guidance in their management system.

Part 2:

Requirements

-
- Due diligence: 5 steps
 - Management System obligations
 - Risk Management obligations
 - Third Party Audit obligations
 - Disclosure obligations

Due Diligence Requirements

The EU Regulation implements risk-based due diligence as recommended by the **OECD Due Diligence guidance** which is structured around the following five steps:

- 1** Establish strong company management systems
- 2** Identify and assess risk in the supply chain
- 3** Design and implement a strategy to respond to identified risks
- 4** Carry out an independent third-party audit of supply chain due diligence
- 5** Report annually on supply chain due diligence

All legislative requirements will be reviewed for the functioning and effectiveness of the Union system, and its impact on the ground as regards the promotion of responsible sourcing of minerals by 1st January 2023 and thereafter on a 3 yearly basis

Management System Obligations

Maintaining a system of controls and transparency over the mineral supply chain, which includes the country of mineral origin and the smelters/refiners

Key obligations:

1

.....
Give union importers guidelines on how to operate a chain of custody or supply chain traceability system

2

.....
Adopt, and clearly communicate to suppliers and the public up-to-date information on supply chain policies

3

.....
Strengthen engagement with suppliers by incorporating supply chain policies into contracts and agreements with suppliers

Risk Management Obligations

Identifying and assessing risks in the supply chain against the OECD model supply chain policy. Designing and implementing a strategy to respond to identified risks

Key obligations:

1

Implement a risk management plan, monitoring and tracking performance of risk mitigation efforts

2

Pursue risk mitigation efforts through extensive consultation with suppliers and all stakeholders, including local and central government, CSOs and others

3

Cognisant of union importers influence; take necessary steps to exert pressure on suppliers who can most effectively prevent or mitigate the identified risks

Third Party Audit Obligations

Key obligations: Union importers must obtain independent third-party audit assurances of their own supply chain due diligence, providing an independent review of their conformance to OECD due diligence guidance

1

Must include within its scope; all the Union importer's activities, processes and systems used to implement supply chain due diligence regarding minerals or metals, including management systems, risk management and disclosure of information

2

The third-party audit must have the objective of determining union importer's conformity to supply chain due diligence practices

Disclosure Obligations

Key obligations: Union importers publicly reporting on supply chain due diligence

1

Union importers of minerals or metals have to make available to their member state competent authorities the reports of any third-party audit carried out or evidence of conformity with a supply chain due diligence scheme, recognised by the European Commission

2

The report should contain the steps taken by the union importer to implement the obligations in regard to their management system and their risk management, as well as a summary report of the third-party audit.

Part 3:

Implications

-
- EU-level implementation
 - Smelters & refineries
 - Supply Chain Scheme
 - Due Diligence Owners (SCSDD)
 - Companies Sourcing Upstream
 - Resources

EU-Level Implementation

- Existing systems and procedures will enable those already engaged in voluntary initiatives or subject to section 1502 of the Frank Dodd Act to implement the requirements of EU regulation more seamlessly
- **Member states are responsible** for ensuring the effective and uniform implementation of the regulation throughout the European Union
- **Enforcement is to be designated** to one or more competent national authorities
- **The European Commission are to be informed** names and addresses of the competent authorities, with the aim to make them publicly available
- Sanctions for non-compliant companies remains unclear at this stage

Smelters and Refineries

The process by which Smelters and Refiners are recognised and listed:

- Within the regulation, smelters and refiners covered by supply chain due diligence schemes will have to be **recognised by the commission and drawn up into a global list**
- The **onus is placed on union importers** to identify and document the smelters and refiners they are using, through use of a supply chain due diligence scheme
- **Indirect relationships with non-conformant smelters and refiners** may result in a union importer failing to conform to OECD Guidance
- **The list of global smelters and refiners will be made publicly available**

Supply Chain Scheme Due Diligence Owners (SCSDD)

Those union importers who have due diligence schemes in place may apply to get them recognised by the commission

- Union importers retain individual responsibility to comply with the due diligence obligations set out in the regulation
- The regulation includes provisions to ensure existing and new SCSDD's aimed at breaking the link between conflict and the sourcing of tin, tantalum, tungsten and gold are recognised
- Methodology and criteria that both existing and new SCDDS's must satisfy, together with criteria for the commission to assess effectiveness, as set out in Regulation 2019/429

Companies Sourcing Upstream

- Upstream companies must comply with mandatory rules on due diligence when they source from, what are commonly perceived, as the riskiest parts of the supply chain
- The Dodd-Frank Act has demonstrated the increasing difficulty of influencing actors at the grass roots level who are involved in the direct sourcing and distribution of 3TG, making it difficult to obtain accurate data regarding the effectiveness of reforms
- Due diligence efforts therefore must incorporate strategic, holistic approaches to ensuring effective upstream implementation

EU Regulation Explained

https://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/index_en.htm

List of Member States competent authorities

https://trade.ec.europa.eu/doclib/docs/2019/april/tradoc_157843.pdf

CAHRA list accompanying EU legislation

<https://europeanpartnership-responsibleminerals.eu/news/view/53244026/the-cahra-list-accompanying-the-eu-conflict-minerals-regulation>

Accompanying Measures

http://www.eurac-network.org/sites/default/files/position_paper_-_eng_accompanying_measures_to_the_eu_regulation_on_responsible_mineral_sourcing_-_march_2017.pdf

OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

<https://www.oecd.org/corporate/mne/mining.htm>

Dodd-Frank Act Factsheet

<https://www.sec.gov/opa/Article/2012-2012-163htm---related-materials.html>

Opinion

The Battle for Stronger EU Conflict Minerals Legislation

Fieldfisher (2020) <https://www.fieldfisher.com/en/insights/the-battle-for-stronger-eu-conflict-minerals-legis>

CONFLICT MINERALS: Actions Needed to Assess Progress Addressing Armed Groups' Exploitation of Minerals'

GAO (2020) <https://www.gao.gov/assets/710/709359.pdf>

Unintended Consequences or Ambivalent Policy Objectives? Conflict minerals and mining reform in the Democratic Republic of Congo

J.A. Diemel and D.J.M Hilhorst, (2018) <https://onlinelibrary.wiley.com/doi/full/10.1111/dpr.12372>

More legislation, More Violence? The impact of Dodd-Frank in the DRC

Nikk Stoop (2018) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6084930/>



Partnership Against
Child Exploitation

www.pace-consortium.org

FIFTY EIGHT
Just good business.

www.50eight.com