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A look at the EU Conflict Minerals Regulation

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On April 3, 2017, the European Commission adopted a new regulation on mineral imports from conflict-affected areas, the [EU Conflict Minerals Regulation](#).^[1] The regulation will go into effect in January 2021. It is very similar to the conflict minerals regulation found within Section 1502 of the [Dodd-Frank Wall Street Reform and Consumer Protection Act](#),^[2] but certain important aspects are different.

Both regulations target minerals known as 3TG (tantalum, tin, tungsten and gold), and both regulations require companies to undertake due diligence to ensure their supply chains are not contributing to conflict, as well as to disclose those efforts publicly. The regulation also states that due diligence efforts must be in line with the Organisation for Economic Co-Operation and Development (OECD)'s [Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#).^[3]

The biggest difference is in scope. Section 1502 applies strictly to minerals mined and refined in the Democratic Republic of the Congo, whereas the EU Conflict Minerals Regulation expands that scope to cover minerals mined from conflict-affected and high-risk areas, which could include any country that produces minerals, as long as the political and social structure of the country is compromised in some way.

Both the U.S. law and the EU law have the same intentions in mind. According to a [fact sheet](#) on the new EU regulation,^[4] the goal of the law is to:

- “Ensure that EU importers of 3TG (tin, tungsten, tantalum and gold) meet international responsible sourcing standards, set by the Organisation for Economic Co-operation and Development (OECD)
- “Ensure that global and EU smelters and refiners of 3TG source responsibly
- “Help break the link between conflict and the illegal exploitation of minerals
- “Help put an end to the exploitation and abuse of local communities, including mine workers, and support local development”

Important definitions

There are several important terms to note in the EU Conflict Minerals Regulation, including “conflict-affected and high-risk areas” and “Union importer.” How the EU defines conflict-affected and high-risk areas (CAHRAs) will determine the scope and direction of companies’ due diligence efforts. As per the text of the regulation, “‘conflict-affected and high-risk areas’ means 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, and widespread and systematic violations of international law, including human rights abuses[.]”

The European Commission has promised to create an “indicative” and “non-exhaustive” list of CAHRAs as well as a whitelist of smelters and refiners. If the past is any indicator of the future, then these lists will indeed be

non-exhaustive, and private industry will have to collaborate to create and refine whatever lists the public authorities come up with. As RSCC has reported before, the public sector often creates regulations that have unintended consequences and difficult requirements that private industry must then solve for itself in order to be compliant.^[5]

Another important definition regards the companies covered by the law, importers:

“‘Union importer’ means any natural or legal person declaring minerals or metals for release for free circulation within the meaning of Article 201 of Regulation (EU) No 952/2013 of the European Parliament and of the Council (7) or any natural or legal person on whose behalf such declaration is made, as indicated in data elements 3/15 and 3/16 in accordance with Annex B to Commission Delegated Regulation (EU) 2015/2446 (8)[.]”

Annex I of the regulation also contains thresholds for the covered minerals; importers that do not meet these thresholds are not required by law to comply with the regulation, but are nevertheless strongly encouraged to establish a due diligence strategy that takes into account the impact mining can have on communities. Organizations that are upstream and downstream from importers are also encouraged to voluntarily establish due diligence procedures and policies in accordance with OECD standards.

Things to keep in mind

Organizations and associations that have established due diligence policies and procedures may apply for equivalence with the EU. Several well-known associations, such as the LBMA, the International Tin Association and the Responsible Business Alliance, have due diligence policies developed to comply with Section 1502 of Dodd-Frank. Companies that use these policies may benefit from equivalency with EU standards for due diligence.

Enforcement of the new regulation will be carried out by “competent authorities” within the EU member states. In the annexes of the full text of the law, there is space for a list of those authorities, as well as the whitelist of smelters and refiners. As of the time of writing, however, those spaces are blank.

Takeaways

- The EU Conflict Minerals Regulation is very similar to existing regulations in the U.S., but has some very important differences, most notably the expanded scope—from solely the Democratic Republic of the Congo to any country deemed a CAHRA.
- Although the EU has promised whitelists of smelters, lists of competent enforcement authorities and a list of CAHRAs, those lists are currently incomplete or not available.

¹ EUR-Lex, Regulation (EU) 2017/821 of the European Parliament, <http://bit.ly/3872t2y>.

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1502, 124 Stat. 1376, <http://bit.ly/2Zrb6AY>.

³ Organisation for Economic Co-operation and Development, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition* (Paris: OECD Publishing, 2013), <http://bit.ly/3abUYJo>.

⁴ “The Regulation Explained,” European Commission, last updated December 13, 2017, <http://bit.ly/3bu6PDP>.

⁵ Sascha Matuszak, “The role of private industry in creating effective compliance procedures,” *Report on Supply Chain Compliance* 3, no. 3 (February 6, 2020), <http://bit.ly/2SEJFSz>.

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