

EU CONFLICT MINERALS REGULATION

In politically unstable areas, armed groups often use forced labour to mine minerals. They then sell those minerals to fund their activities, for example to buy weapons. These so-called 'conflict minerals', such as tin, tantalum, tungsten and gold, can find their way into our mobile phones, cars and jewellery.

A NEW EU LAW TO STEM THE TRADE IN CONFLICT MINERALS

Therefore, the EU passed a new regulation in May 2017 to stop:

- conflict minerals and metals from being exported to the EU;
- global and EU smelters and refiners from using conflict minerals, and;
- mine workers from being abused.

The law also supports the development of local communities. It requires EU companies to ensure they import these minerals and metals from responsible sources only. The requirements start to apply on 1 January 2021.

WHAT ARE CONFLICT MINERALS?

In politically unstable areas, the minerals trade can be used to finance armed groups, fuel forced labour and other human rights abuses, and support corruption and money laundering. These so-called 'conflict minerals' such as tin, tungsten, tantalum and gold, also referred to as 3TG, can be used in everyday products such as mobile phones and cars or in jewellery. It is difficult for consumers to know if a product they have bought is funding violence, human rights abuses or other crimes overseas.

WHICH COUNTRIES DO CONFLICT MINERALS COME FROM?

The countries or areas considered to be conflict-affected or high-risk are those:

- Whose natural resources include minerals which are in high demand, either locally, regionally or globally.
- and
- Are either suffering from armed-conflict, such as civil war, a state of fragile post-conflict, or witnessing weak or non-existing governance and systematic violations of international law, including human rights abuses.

WHY DOES THE EU PROMOTE THE RESPONSIBLE SOURCING OF MINERALS AMONG ITS COMPANIES?

There are several points in the 3TG minerals and metals supply chain (e.g.: extraction, refining, transportation) where money from the sale may go to armed groups or criminals. This source of income can help perpetuate armed conflict, violence and human rights abuses, often in weak or unstable countries.

Making sure that these armed groups and criminals can no longer rely on the purchase of 3TG as a source of income is a way of:

- making it more difficult for them to continue their activities; and
- tackling human rights abuses.

WHAT DOES THE NEW EU REGULATION DO?

The EU Regulation aims 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; and
- help put an end to the exploitation and abuse of local communities, including mine workers, and support local development.

The regulation covers minerals and metals of:

- gold;
- tin;
- tungsten; and
- tantalum.

The regulation requires EU companies in the supply chain to ensure they import these minerals and metals from responsible and conflict-free sources only.

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WHEN WILL THE EU'S NEW REGULATION COME INTO FORCE?

The regulation was signed into law in June 2017.

The requirements for EU importers apply from 1 January 2021.

This gave companies plenty of time to adapt to the new rules.

WHY DOES THE EU REGULATION ONLY COVER FOUR MINERALS?

The EU regulation covers tin, tantalum, tungsten and gold because these are the four minerals that are most often linked to armed-conflicts and related human rights abuses, so it makes sense to focus on them.

The regulation also draws on well-established rules to help stem the trade in conflict minerals. These have been drawn up by experts at the Organisation for Economic Co-operation and Development (OECD), a group of 35 developed countries, in collaboration with industry, civil society and other governments.

They are set out in a document called 'Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas'. The guidance has two sections dealing specifically with tin, tantalum and tungsten, and with gold.

The US also has legislation on conflict minerals: Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Act of 2010. It covers the same four products.

DOES THE EU'S REGULATION SOLVE THE PROBLEM OF CONFLICT MINERALS?

As the world's largest trading bloc, the EU is a major market, so the regulation marks a big step in tackling trade in conflict minerals. Countries around the world buy products containing these minerals, though, so it is important to encourage others to put in place similar measures as well. Once laws are in place, they also need to be properly implemented.

The EU is working:

- in international fora such as the Organisation for Economic Co-operation and Development (OECD) to promote the international guidelines on conflict minerals; and
- to get countries that are the main suppliers and buyers of the minerals in question to take measures to combat conflict minerals.

WHICH COUNTRIES ARE CONCERNED BY THE EU REGULATION?

The EU regulation will directly apply to companies that import tin, tungsten, tantalum and gold minerals and metals into the EU, no matter where they originate. The European Commission will task a group of external experts to provide a list of conflict-affected and high-risk areas, which it will regularly update.

The list will be:

- indicative – it will give an indication of areas that are currently or could be affected by conflict and other related illegal activities; and
- non-exhaustive – it won't necessarily include every area in the world affected by conflict, which means that companies will have to comply with the regulation when operating in conflict-affected areas that aren't listed.

HOW MANY COMPANIES DOES THE REGULATION AFFECT?

The regulation applies directly to between 600 and 1,000 EU importers.

It will indirectly affect about 500 smelters and refiners of tin, tantalum, tungsten and gold, whether they are based inside the EU or not.

Will the regulation only apply to companies based in the EU?

Directly, yes. The regulation will only apply directly to EU-based importers of tin, tantalum, tungsten and gold, whether these are in the form of mineral ores, concentrates or processed metals.

Indirectly, the regulation will also promote the responsible sourcing of smelters and refiners of tin, tantalum, tungsten and gold, whether they are based inside the EU or not. This is because EU importers will be required to identify the smelters and refiners in their supply chains and check whether they have the correct due diligence practices in place. Whenever EU importers find smelters and refiners' practices to be insufficient or associated with risks, they will have to manage and report on this. To help companies, the European Commission will create a so-called 'white list' of global smelters and refiners which source responsibly.

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WHAT DOES 'DUE DILIGENCE' MEAN?

The term 'due diligence' means acting with reasonable care and investigating an issue before making a decision. In other words, it is an on-going, proactive and reactive process through which companies put in place systems and processes to make sure they are able to identify, manage and report on risks in their supply chain.

For the minerals which the regulation covers, this means companies must check that what they buy is sourced responsibly and does not contribute to conflict or other related illegal activities.

Companies that practise due diligence first check how risky it is to source raw materials from a fragile or conflict-affected area. They assess the likelihood that those raw materials could be financing conflict, forced labour or other risks set out in the regulation. By checking their supply chains, they can then make sure that they manage those risks responsibly.

HOW DOES THE NEW EU SYSTEM OF DUE DILIGENCE WORK?

EU importers of tin, tantalum, tungsten and gold must check what they are buying, to ensure it has not been produced in a way that funds conflict or other related illegal practices.

The regulation requires importers to follow a five-step framework, which the Organisation for Economic Co-operation and Development (OECD) has laid out in a document called 'Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas' (OECD Guidance).

These steps require an importer to:

- establish strong company management systems;
- identify and assess risk in the supply chain;
- design and implement a strategy to respond to identified risks;
- carry out an independent third-party audit of supply chain due diligence; and
- report annually on supply chain due diligence.

WHY ARE THERE DIFFERENT REQUIREMENTS FOR DIFFERENT COMPANIES?

Production of goods often involves many different companies engaged in various types of activity along the supply chain. Firms that extract, process and refine raw materials are called 'upstream' companies. The EU regulation identifies as upstream companies:

- mining companies;
- raw material traders;
- smelters; and
- refiners.

Other firms, which we call 'downstream' companies, further process metals produced during the upstream stage into a finished product. The **downstream** stage includes the sale of the product to other businesses, governments or private individuals.

The EU regulation sets out different rules for upstream and for downstream companies:

Upstream companies have to comply with mandatory rules on due diligence when they import, as this is the most risky part of the supply chain.

Downstream companies fall into two categories:

- those importing metal-stage products also have to meet mandatory due diligence rules; and
- those operating beyond the metal stage do not have obligations under the regulation, but they are expected to use reporting and other tools to make their due diligence more transparent, including, for many large companies, those in the non-financial reporting directive.

DO ALL COMPANIES IN THE EU CARRY OUT DUE DILIGENCE?

At the moment not all companies in the EU carry out due diligence – but we expect more companies to do so in the coming years, thanks to this new regulation.

WHO CHECKS WHETHER COMPANIES COMPLY WITH THE REGULATION? AND HOW?

Each EU Member State must check whether EU importers comply with the regulation. Member States' authorities will examine documents and audit reports. If needed, they can carry out on-the-spot inspections of an importer's premises.

HOW IS IT POSSIBLE TO KNOW WHETHER OR NOT A MINERAL HAS BEEN RESPONSIBLY SOURCED?

EU importers must put in place internal systems and processes that provide the following information.

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For example, importers of minerals should:

- indicate which country the minerals come from; and
- indicate the quantities imported and when they were mined.

And both importers of minerals and metals should:

- list the minerals they're importing by trade name and type; and
- provide the names and addresses of their suppliers.

They must do so as part of their internal management system, and provide supporting documents.

When minerals come from conflict-affected and high-risk areas, importers must provide extra information on:

- the mine the minerals came from;
- where the minerals were consolidated, traded and processed; and
- the taxes, fees and royalties paid.

WHAT HAPPENS IF A COMPANY DOESN'T COMPLY WITH THE REGULATION?

If a Member State finds an EU importer has not complied with the regulation, it will:

- order the firm to address the problem within a given deadline and
- follow up to make sure it does so.

WHO WAS INVOLVED IN DRAFTING AND PASSING THE NEW EU REGULATION?

As the EU's executive body, the European Commission was in charge of drafting the regulation.

In doing so, it worked closely with the Council of the EU, where representatives of the governments of the EU's Member States sit, and the European Parliament.

The Council and the European Parliament had the final say on approving the regulation.

The European Commission also consulted:

- civil society, including non-governmental organisations and groups campaigning for action to tackle the trade in conflict minerals;
- mining companies;
- traders, i.e. exporters and importers;
- smelters, refiners and manufacturers;
- countries in which mining and smelting takes place;
- companies operating downstream; and
- the Organisation for Economic Cooperation and Development (OECD).

WHAT ARE OTHERS DOING TO PROMOTE RESPONSIBLE SOURCING?

In 2011 **United Nations members** unanimously endorsed "Guiding principles for Business and Human Rights". The Guiding Principles state that companies have a responsibility to make sure their activities do not contribute to harm and abuses. The Guiding Principles recommend risk-based due diligence as a practical and effective way for companies to meet this responsibility.

Since 2011 the **Organisation of Economic Co-operation and Development (OECD)** – an intergovernmental economic body of 35 developed countries – has issued guidance on responsible sourcing for companies operating in its member countries. The OECD Due Diligence Guidance is referenced as the international standard to help companies carry out their obligations.

In 2010 the US passed legislation, known as the Dodd Frank Act Section 1502. It requires US-listed companies to carry out due diligence on minerals sourced from the Democratic Republic of Congo, and neighbouring countries.

Several **African countries**, including the Democratic Republic of Congo and Rwanda, have passed laws requiring companies to check their supply chains.

In **China**, the CCCMC (China Chamber of Commerce of Metals Minerals & Chemicals Importers & Exporters), which is a subordinate unit of the Ministry of Commerce of China, has embarked on developing Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains.

For more information:

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