

EU Conflict Minerals & Metals Regime FAQs

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These FAQs answer some basic questions about the EU Conflict Minerals and Metals regime. If you would like detailed advice on this we would of course be very happy to assist – our contact details are at the end of these FAQs.

What is this all about?

In mid-May 2017 the EU issued a set of rules concerning conflict minerals and metals compliance obligations called “Regulation (EU) 2017/821 of the European Parliament and of the Council laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas” (“the Regulation”) which can be found [here](#), along with an accompanying set of official EU statements relating to the new rules which can be found [here](#). The regime also has to be applied in conjunction with the “OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas”, which can be found [here](#).

The purpose of these rules is to advance responsible resourcing from conflict areas and eliminate the financing of armed groups in these areas and also combat local corruption by means of upstream supply-chain due diligence.

What format do the new rules take?

The conflict minerals and metals rules are in the form of a Regulation meaning that the conflicts minerals and metals regime is automatically national law in the EU Member States and will be uniformly applied (see below as regards sanctions).

When do the new rules apply?

The applicability of the rules is split into two periods:

- Some of the rules fully apply from 9 July 2017; and,
- The rest and most significant part of the rules fully apply from 1 January 2021.

Whilst the substantial aspects of the Regulation will apply from the 1 January 2021 date those affected by the Regulation must undertake a number of steps prior to that.

What’s the scope?

The Regulation applies globally to certain minerals and metals (see below) sourced from any “conflict-affected and high-risk areas” which 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 systematic violations of international law, including human rights abuses.” The European Commission will later develop a list of these areas.

What are the products in question?

The products in question concern a short list of the following minerals and metals in various forms including in ores and concentrates, as set out in Annex I of the Regulation along with their official EU customs classifications:

- Tin;
- Tungsten;
- Tantalum; and,
- Gold.

These are commonly used in a variety of industries including construction, electronics, packaging, automotive and aerospace.

Are there any thresholds?

Yes – certain thresholds apply, which are set out in Annex I of the Regulation, i.e small-volume importers, e.g jewellers or dentists, are in effect exempt. The thresholds are subject to review for certain specific minerals in 2020 with the other thresholds subject to review after 2021 and every three years thereafter.

Are there any exemptions?

Yes – recycled metals are exempt, which are as follows: “reclaimed end-user or post-consumer products, or scrap processed metals created during product manufacturing, including excess, obsolete, defective, and scrap metal materials which contain refined or processed metals that are appropriate for recycling in the production of tin, tantalum, tungsten or gold. [...] minerals partially processed, unprocessed or a by-product from another ore are not considered to be recycled metals.”

But, minerals *and* metals that are obtained as by-products do fall within the scope of the Regulation, which are as follows: “a mineral or metal falling within the scope of this Regulation that has been obtained from the processing of a mineral or metal falling outside the scope of this Regulation, and which would not have been obtained without the processing of the primary mineral or metal falling outside the scope of this Regulation.”

Stocks of existing minerals held before 1 February 2013 do not fall under the Regulation.

Who does this apply to?

The EU conflicts minerals and metals regime applies to:

- Direct importers of the minerals, who are the main focus of the regime; and,
- Smelters and refiners that process the minerals.

The Regulation also distinguishes between “upstream”, meaning the “mineral supply chain from the extraction sites to the smelters and refiners, inclusive” (often the mining companies), and, “downstream”, meaning the “mineral supply chain from the stage following the smelters and refiners to the final product”. Obligations under the regime differ according to whether a business is “upstream” or “downstream”. EU importers are considered as “downstream” and they bear the bulk of the obligations of the regime.

What are the obligations on importers?

Four types of broad and significantly detailed categories of obligations fall on EU importers as follows, which are applicable from 1 January 2021:

- Management System Obligations – the lengthy list of obligations includes policies, communications, contractual incorporation, standards, grievance mechanism, traceability systems etc, including with regard to Annex II of the above-mentioned OECD Due Diligence Guidance;
- Risk Management Obligations – the lengthy list of obligations includes identification and assessment of risks of adverse impacts on supply chains and the implementation of strategies to respond to risks, etc including with regard to Annex II of the above-mentioned OECD Due Diligence Guidance;
- Third-Party Audit Obligations – independent third-party audits must be undertaken whose scope must include all activities, processes and systems used to implement due diligence including management systems, risk management and information disclosure; and,
- Disclosure Obligations – a certain number of disclosure obligations to EU Member State regulators are set out including the results of third-party audits, and due diligence information to immediate downstream purchasers.

What about sanctions?

Sanctions for infringements of the Regulation are governed by national law, which EU Member States will have to adopt (if they haven't done so already). Sanctions are expected to be in the form of fines.

Whatever the sanctions may be, infringement of the conflict minerals regime can be expected to cause reputational damage.

Who will enforce the proposed new rules?

EU Member State regulators will enforce the conflict minerals regime, including carrying out "appropriate ex-post checks in order to ensure that [EU] importers of minerals or metals, which EU importers must co-operate with.

What about the UK and Brexit?

In the context of Brexit, because the Regulation is now applicable it can be assumed that it will remain part of UK law, and, although a good part of the legislation only applies from 1 January 2021 (by which time full Brexit may well have occurred) it would seem strange for this part of the legislation to not apply as it is so inextricably linked to the rest of the legislation.

What should I be doing?

Businesses affected should set up the changes that they are likely to need to make, in particular:

- Pro-actively engage with supply chains;
- Adopt a compliance policy;
- Put due diligence processes and procedures in place;
- Train the appropriate staff, such as procurement and purchasing; and,
- Introduce third party compliance audits.

We write regularly and produce films about data compliance issues in a range of areas which can be found [here](#).

For more information please contact André Bywater or Jonathan Armstrong who are commercial lawyers with Cordery in London where their focus is on compliance issues.

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