

EU Conflict Minerals Regulation: due diligence requirements for importers

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As from 1 January 2021, the EU starts applying [Regulation \(EU\) 2017/821 of the European Parliament and of the Council of 17 May 2017 \(hereinafter – the Regulation\) 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](#) (hereinafter – conflict minerals).

This Regulation shall apply to EU importers of conflict minerals where their annual import volume of each of the minerals or metals concerned is equal to or above the volume thresholds set out in Annex I to the regulation. The volume thresholds for the minerals covered by the regulation are, for instance, from 100 kg for unwrought gold to 4 000 000 kg for gold ores and concentrates. The volume thresholds for metals vary between 30 kg for tantalates to 100 000 kg for tungsten oxides, tungstates and unwrought tin. [Commission Delegated Regulation \(EU\) 2020/1588 amending Annex I to Regulation \(EU\) 2017/821 of the European Parliament and of the Council by establishing volume thresholds for tantalum or niobium ores and concentrates, gold ores and concentrates, tin oxides and hydroxides, tantalates and carbides of tantalum.](#)

What is the purpose of the Regulation?

In politically unstable areas, it is trade in tin, tantalum, tungsten and gold that is most often used to finance armed groups and fuels human rights abuses.

Consequently, the Regulation aims to:

- ensure that EU importers of conflict metals 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 the conflict minerals source responsibly;
- help break the link between conflict and the illegal exploitation of minerals; and
- put an end to the exploitation and abuse of local communities in conflict-affected and high-risk areas.

The regulation covers minerals and metals of:

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

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

What obligations does the Regulation impose on importers of conflict minerals?

EU importers of tin, tantalum, tungsten, and gold must check that what they buy is sourced responsibly and does not finance/contribute to conflict or other related illegal activities.

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” (hereinafter – OECD Due Diligence Guidance).

These steps require an importer to:

in accordance with Annex II to OECD Due Diligence Guidance, establish company management systems to support supply chain due diligence, identifying and assessing risks in the supply chain (Article 4 of the Regulation);

design and implement a strategy to respond to the identified risks, consistent with Annex III to the OECD Due Diligence Guidance (Article 5 of the Regulation);

carry out an independent third-party audit of supply chain due diligence (Article 6 of the Regulation). Where an EU importer provides substantial evidence that all smelters and refiners in its supply chain comply with the Regulation (so-called responsible smelters and refiners), the importer is exempt from the obligation to ensure a third-party audit (Article 9 of the Regulation). The Commission shall make publicly available the list of smelters and refiners whose due diligence systems have been recognised as compliant with the Regulation;

report annually to the competent authority (the Ministry of Foreign Affairs) on their supply chain due diligence (Article 7 of the Regulation);

keep documentation demonstrating the importers' compliance with those obligations, including the results of the independent third-party audits (Article 3 of the Regulation).

What does 'due diligence' mean?

The term 'due diligence' means acting with reasonable care and investigating an issue before making a decision. 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 covered by the Regulation 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, importers can make sure that they manage those risks responsibly.

How is it possible to know whether minerals have been responsibly sourced?

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

For example, *importers of minerals* should

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

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.

Importers must do so as part of their internal management system.

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.

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 has compiled a list of conflict-affected and high-risk areas, which is being regularly updated. See the list of the areas [here](#).

The current indicative, non-exhaustive list of conflict-affected and high-risk areas contains: Afghanistan, Burkina Faso, Burundi, Cameroon, the Central African Republic, Chad, Colombia, the Democratic Republic of the Congo, Egypt, Eritrea, India, Libya, Mali, Mexico, Mozambique, Myanmar, Niger, Nigeria, Pakistan, Philippines, Somalia, South Sudan, Sudan, Ukraine, Venezuela, Yemen and Zimbabwe.

For the purpose of this Regulation, conflict-affected and high-risk areas are as follows:

- areas in a state of armed conflict;
- fragile post-conflict areas;
- areas witnessing weak or non-existent governance; and
- areas witnessing widespread and systematic violations of international law, including human rights abuses.

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

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.

Who checks compliance with the Regulation, and how?

The Ministry of Foreign Affairs supervises the implementation of the regulation in Latvia. The Ministry of Foreign Affairs is responsible for carrying out ex post checks to ensure that importers comply with their obligations. Importers shall offer all the assistance necessary to facilitate the performance by the Ministry of Foreign Affairs of the said checks.

Importers who are required under the Regulation to seek an independent third-party audit on supply chain due diligence schemes shall forward the audit reports to the Ministry of Foreign Affairs.

The Ministry of Foreign Affairs provides the necessary advisory support in the implementation of measures required under the Regulation in order to prevent any infringements. In the case of an infringement of this Regulation, the Ministry of Foreign

Affairs shall issue a notice of remedial action to be taken by the importer.

In the event of failure to voluntarily take remedial action, the Ministry of Foreign Affairs enforces execution thereof on a compulsory basis in accordance with procedures laid down in the Administrative Procedure Law.

Compulsory enforcement of remedial measures can be ensured by means of substitute execution or pecuniary penalty. The minimum pecuniary penalty shall be EUR 50, the maximum pecuniary penalty for a natural person shall be EUR 5000 but for a legal person – EUR 10 000. A pecuniary penalty may be imposed repeatedly until the addressee takes remedial action.

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<https://www.mfa.gov.lv/en/eu-conflict-minerals-regulation-due-diligence-requirements-importers>