



Legal Insight: How will an EU Conflict Minerals Regulation potentially affect SMEs and larger companies?

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A regulation on conflict minerals has been on the EU agenda for some time. In June 2013, a public consultation on a possible initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas came to a close.

In March 2015, a draft regulation was proposed by the EU Commission. Business personnel may have been relieved to discover that the initial proposal was weak only introducing a voluntary system of self-certification for importers of four minerals – tin, tantalum, tungsten, and gold (3TG). There are only approximately 400 importers in the EU.

However, the opt-in nature of the proposed regulation is set to change, as is the scope of application. The European Parliament has rejected the Commission's proposal and backed a much more onerous regulation which would subject a broader range of businesses to mandatory requirements.

What are 'Conflict Minerals'?

Conflict minerals are minerals containing tin, tantalum, tungsten, and gold originating from unstable regions/ high risk conflict zones. Proceeds from the extraction and trade of such minerals in these regions, such as the Democratic Republic of Congo and the adjoining countries, are used to fund conflict and fuel gross human rights abuses.

Companies further down the supply chain are in danger of supporting such widespread violence as a result of poor supply chain management and lack of adequate due diligence processes.

Many rights groups have criticised that conflict minerals are too narrowly defined by the OECD – jade, diamond, and chromite are also known to be contributing to conflict and breaches of human rights in other regions.

What mandatory requirements is the EP proposing?

In May 2015 the EP voted in favour of tougher rules requiring mandatory disclosure by those companies whose products contain so-called conflict materials.

The proposed requirements are as follows:

1. all importers established in the EU that bring conflict minerals into the EU would be required to conduct due diligence on the origin of those conflict minerals to determine whether they are from legitimate sources.
2. EU smelters and refiners would have to take up an independent third-party audit of their due diligence practices, to verify whether conflict minerals were sourced responsibly. However, the proposed regulation establishes that certified responsible importers of smelted and refined

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metals would not have to submit to such audits if they are able to provide substantive evidence that all smelters and refiners in their supply chain comply with the requirements of the regulation.

3. downstream companies whose products contain 3TG would also be required to take reasonable steps to identify and address any risks that those minerals do not finance conflict or human rights abuses. They would be required to disclose information about the due diligence measures they have in place to promote responsible sourcing of 3TG in their products.

Who will be caught by such a regulation?

The scope of such measures is potentially very broad. 3TG is used in the production of a range of goods by a number of industries, including the automotive, electronics, industrial and medical machinery, packaging, aerospace, construction, lighting, and tooling industries, as well as in jewelry.

If the updated draft regulation is passed as it is this could potentially affect 880,000 EU businesses, including SMEs. Non EU based suppliers to these businesses would also be affected.

Is it law yet?

No, not yet. The draft regulation is a work in progress and discussions with Member States are due to take place. The nature of the requirements can therefore continue to change as the legislative process is ongoing.

Where else are companies potentially caught by regulations on conflict minerals?

This EU initiative comes long after a change to US law on this matter. Enacted on July 21 2010 and finalised in September 2012, Section 1502 of the Dodd-Frank Act requires US Securities and Exchange Commission (i.e. SEC) “issuers” (including foreign issuers) that manufacture or contract to manufacture products where “conflict minerals are necessary to the functionality or production” of the product to disclose about the use of specified conflict minerals originating from the DRC and nine neighbouring Central African countries (“Covered Countries”). Companies should follow a three step process:

- determine the applicability of the rule;
- conduct a reasonable country of origin inquiry (RCOI) and file Form SD with the SEC (if required); and
- complete, audit, and append a Conflict Minerals Report (CMR) to Form SD (if required).

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As from May 2015, larger companies reporting on conflict minerals to the SEC can no longer file “DRC conflict undeterminable” and be compliant for the reporting period of January 1 - December 31 2014, as the transition period will be over.

Companies with less than \$75million in public shares will have up to another two years grace period to transition.

What should your company be doing?

Global developments in the area of conflict minerals, including the development of OECD Due Diligence Guidance for Responsible Supply Chains of Minerals¹, means all companies whose products depend on the trade in 3TG should start thinking about how to address the inherent supply chain challenges.

Potentially affected business within the EU should consider:

- what they will need to do to ensure legal compliance
- whether to try and achieve embedding ‘best practice’ principles to address the issue, for example, linking the compliance requirements to broader CSR/ Sustainability framework
- who will need to be consulted internally to help develop transparency on the issue
- what stakeholders will need to be consulted to ensure they meet any legal requirements or best practice
- how to address reporting on the issue
- what external expertise may be required to support the business

Similarly, businesses outside the EU who supply 3TG containing minerals or products should also be considering what steps to take in order to differentiate their offering to companies operating within the EU.

¹ <http://www.oecd.org/corporate/mne/mining.htm>

