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Global Trade News Alert
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New EU Conflict minerals regulation: implications and lessons learnt from the Dodd-Frank Act in the US

Introduction

On 17 May 2017, the EU Parliament and EU Council adopted new import regulation on 'Conflict Minerals' under Regulation 2017/821. Through the raw materials covered under the EU 'Conflict Minerals' Regulation, (tin, tantalum and tungsten, their ores, and gold), companies importing the minerals used in producing mobile phones, technology, automotive products, as well as jewellery or medical devices, will especially be impacted.

Building on the successful Conflict Minerals practice in the US, Deloitte's EMEA practices in Global Trade Advisory (GTA) and Risk Advisory offer their expertise and advisory services to support EU-based clients wishing to assess conflict minerals related risks, and work towards (voluntary) improved and/or (obligatory) fully compliant processes across the supply chain.

What does the new EU Conflict Minerals Regulation mean for you?

The EU Conflict Minerals regulation means that selected EU importers of the respective minerals (also referred to as '3TG') need to comply with, and report on, supply chain due diligence obligations if the minerals originate (even potentially) from conflict-affected and high-risk areas.

The EU Conflict Minerals Regulation, which will apply across the EU on 1 January 2021, has been largely inspired by the US Dodd-Frank Act (2010), which itself entered into force in 2014. Building on insights from Deloitte experts in the US, the below outline draws comparisons and provides valuable insights regarding the 2010 Dodd-Frank Act's implementation in the U.S.

The new EU 'Conflict Minerals' Regulation (2017/821) will target minerals originating from conflict-affected or high risk areas without being limited to specific geographical locations. Expected in the first half of 2018, the EU Commission will publish guidelines to help enterprises identify these 'high risk areas'.

The EU-rules apply to EU-established importers of the targeted minerals. Companies from outside the EU will also be impacted as EU-companies will need to make sure they source from responsible smelters and refiners. The EU Commission will publish white-lists of companies that fulfill requirements set out by Regulation 2017/821. Importers that do not reach the volume-thresholds set out in Annex I of the Regulation will be exempt from due-diligence obligations.

Did you know?

- The European Commission (DG Trade) estimates that there are approximately 880,000 EU-based companies operating in manufacturing sectors and potentially working with tin, tantalum, tungsten and gold. Due to the thresholds put in place, around 600 to 1000 EU importers will be directly affected and 500 smelters and refiners indirectly affected by the EU Conflict Minerals Regulation[1].
- In the EU, there are 40 dual-listed (EU/US) companies subject to the US Dodd-Frank Act. An additional 150,000-200,000 EU companies are estimated to be indirectly affected by the US DFA as they are in the supply chain of US listed companies[2].

Transporters or other intermediaries, investors and end-users in the sector are out-of-scope.

A graphic representation of a typical conflict minerals supply chain, with the most relevant stakeholders, is provided below.

Supply chain due diligence: existing conflict minerals framework in the US

A number of EU-based companies have already developed conflict minerals due diligence schemes, either as a result of voluntary efforts (in line with OECD guidelines), or due to obligations arising from activities in the US, or through affiliations with US companies.

In the United States, Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which was passed by the US Congress in July 2010, proved a major source of inspiration for the Conflict Minerals Regulation in the European Union. Specifically, Section 1502 requires US stock exchange listed companies that manufacture, or contract to manufacture, products containing conflict minerals in their supply chain to disclose annually whether any of said minerals originated in the Democratic Republic of Congo (DRC) or an adjacent country ("Covered Countries"). If so, reporting obligations apply, including a description of measures taken to exercise due diligence.

While Section 1502 covers the same four minerals (tin, tantalum, tungsten and gold), it limits sourced minerals' geographic area to Covered Countries. On the other hand, the EU proposed import restrictions will apply globally and all areas affected by conflicts. However, the issue is of greatest concern in Central Africa, more specifically in the Great Lakes region where the trade in minerals provides armed movements with funding. The European Commission will publish annually a list of 'high risk' countries under its guidelines.

It has been four years since conflict mineral disclosures became required by the US Securities and Exchange Commission (SEC). During that time, it became clear that expectations for transparency in supply chains continued to mount. For example, the Deloitte US report "Addressing human trafficking risk in supply chains – lessons from conflict minerals" outlines how conflict mineral efforts can help assist companies in addressing human trafficking risks within their supply chain. Based on Deloitte US experiences in advising companies towards compliance with Section 1502, the report mentions: 'Challenges remain, yet companies are making progress, as evidenced by increased disclosure of smelter, refiner, and country-of-origin information, and more labeling of products as conflict free. Additionally, companies are sourcing more minerals from certified conflict free smelters and refiners.'

Lessons learnt from Deloitte advisory practice on conflict minerals in the US

Q&A with Deloitte US Sustainability Partner, Kristen Sullivan

What is the current situation regarding Conflict Minerals legislation in the US?

On 15 November 2017 the US House of Representatives Financial Services Committee approved a bill that would repeal Section 1502 of the Dodd-Frank Act. The bill is still awaiting approval by the US Senate and therefore the current law is still in effect. Companies that file a Form SD with the SEC should continue to work through their conflict minerals process as there is no guarantee that the law will be repealed come the 31 May 2018 filing deadline.

What advice would you give to companies in the EU viewing their supply chain as being at risk because of the new EU Conflict Minerals Legislation?

First, determine whether the legislation applies to your company (i.e., are you an importer of conflict minerals). If your company determines this to be the case, it will be important to map your 3TG supply chain to understand the origins of the minerals.

Gain an understanding of the OECD Framework that guides the expectations of sourcing minerals from conflict-affected areas.

Engage with industry initiatives. Many US companies found they had a greater impact on their upstream supply chain when working as industry rather than as an individual company.

Non-importers may find they are expected to report, even though they are not required to do so, on account of stakeholder interest and general leading practice. As much as the regulation attempts to narrow the number of affected companies, the reality is that supply chains are multi-tiered, global, and complex. Stakeholders demand transparency as a result.

Who should be involved in developing a conflict minerals compliance program?

This will be a cross functional effort which will involve consultation from functions including, but not limited to finance, supply chain, procurement, public policy, technology, and investor relations.

What to do?

Multinational companies established in the EU already and often comply with the above-mentioned US-rules. EU-importers and companies exporting to the EU who feel that their supply-chain may be at risk, or who deem their company processes as not yet compliant, are advised to perform due diligence checks on their supply chain, in line with OECD Guidelines.

Deloitte recommends a five-step process:

Step 0: Assess whether you import conflict minerals
If yes:
Step 1: Develop policies and program governance

Step 2: Establish training and support
Step 3: Set clear expectations for suppliers
Step 4: Gather information and manage risks
Step 5: Develop a reporting process.

The total set of procedures, tools and mechanisms for carrying out supply chain due diligence can be implemented in a conflict minerals 'due diligence' scheme. Schemes from both EU-importers and third-country exporters can be recognised by the EU Commission.

How can Deloitte support companies in dealing with conflict minerals?

The below listed Deloitte contacts in the EU and US practices are readily available to assist and provide more information regarding the above.

Deloitte has the required expertise to assist with the following:

- Gain in-depth understanding and transparency into the conflict minerals supply chain and risks in relation to EU and US regulatory frameworks
- Develop and implement in-house policies and procedures, as well as training and support programs to ensure compliance and pro-active issue management
- Integrate the conflict minerals compliance program with other supply chain compliance activities and sustainability agenda to leverage potential efficiencies

[1] Source: http://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/

[2] Source: European Commission, Impact Assessment accompanying the 'Proposal for a Regulation setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict affected and high-risk areas (2014).

Contacts

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