

## **Global Trade News Alert**

### **New EU Conflict Minerals Regulation: Implications and lessons learned from the US Dodd-Frank Act**

#### **Introduction**

On 17 May 2017, the EU Parliament and EU Council adopted new import regulations on “conflict minerals” under [Regulation 2017/821](#). Companies importing the minerals covered under the regulation (i.e. tin, tantalum and tungsten (referred to as the “3TG”)) to manufacture mobile phones, automotive products or for technology, as well as jewellery and medical devices, will be impacted by the EU Conflict Minerals Regulation.

Building on the successful conflict minerals practice in the US, Deloitte’s EMEA practices in Global Trade Advisory (GTA) and Risk Advisory offer 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 their supply chains.

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

The EU Conflict Minerals regulation, which will apply throughout the EU as from 1 January 2021, will require certain EU importers of the covered minerals 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 was inspired in large part by the US Dodd-Frank Act (2010) that entered into force in 2014. Building on insights from Deloitte experts in the US, the following outline draws comparisons and provides insights on the implementation of the Dodd-Frank Act in the US.

The EU Conflict Minerals Regulation will target minerals originating from conflict-affected or high-risk areas without being limited to specific geographical locations. The European

Commission is expected to publish guidelines sometime in 2018 that will help enterprises identify these high-risk areas.

The EU regulation will apply to EU-established importers of the targeted minerals. Non-EU companies also will be impacted because EU companies will have to ensure that they source from responsible smelters and refiners. The Commission will publish white-lists of companies that fulfill requirements set out in Regulation 2017/821.

### 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 3TG. Due to the thresholds put in place, around 600 to 1,000 EU importers will be directly affected and 500 smelters and refiners indirectly affected by the EU Conflict Minerals Regulation.<sup>1</sup>
- In the EU, there are 40 dual-listed (EU/US) companies that are subject to the US Dodd-Frank Act. An additional 150,000-200,000 EU companies are estimated to be indirectly affected by the Dodd-Frank Act because they are in the supply chain of US-listed companies.<sup>2</sup>

Importers that do not reach the volume thresholds set out in Annex I of the regulation will be exempt from due diligence obligations. Transporters and other intermediaries, investors and end-users in the sector also fall outside the scope of the regulation.

A graphic representation of a typical conflict minerals supply chain, with the most relevant stakeholders, is as follows:



## Supply chain due diligence: Existing conflict minerals framework in the US

A number of EU-based companies already have developed conflict minerals due diligence processes, either on a voluntary basis due to obligations arising from activities in the US or through affiliations with US companies. (It should be noted that the OECD also has developed due diligence guidance to

help companies respect human rights and avoid contributing to conflict through their mineral purchasing decisions and practices.)

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which was passed by the US Congress in July 2010, was a major source of inspiration for the EU Conflict Minerals Regulation. 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 the minerals originated in the Democratic Republic of Congo (DRC) or an adjacent country ("Covered Countries"). If so, reporting obligations apply, including a requirement to describe measures the company has taken to exercise due diligence.

Section 1502 covers four minerals (tin, tantalum, tungsten and gold), but it limits the geographic area of sourced minerals to Covered Countries. On the other hand, the EU import restrictions will apply globally and to all areas affected by conflicts. However, the area of greatest concern is Central Africa, specifically the Great Lakes region, where the trade in minerals provides armed movements with funding. As mentioned above, the European Commission will publish an annual list of high-risk countries.

It has been four years since conflict mineral disclosures became mandatory by the US Securities and Exchange Commission (SEC). Since that time, it has become clear that expectations for transparency in supply chains continue 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 with section 1502 compliance, the report concludes that: "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 learned 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 awaiting approval by the US Senate and, therefore, current law remains in effect. Companies that file a Form SD with

the SEC should continue to work through their conflict minerals process since 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 Regulation?**

First, determine whether the regulation applies to your company (i.e., are you an importer of conflict minerals?). If so, 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 an 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, due to stakeholder interest and general leading practices. Although 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 that will involve consultation with functions such as finance, supply chain, procurement, public policy, technology, and investor relations.

## What to do?

Multinational companies established in the EU already comply with the above-mentioned US rules. EU importers and companies exporting to the EU that consider that their supply chain may be at risk or that their company processes may not be compliant should undertake due diligence checks on their supply chains, in line with OECD Guidelines.

Deloitte recommends a five-step process:

Step 0: Assess whether you import conflict minerals

If so:

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 procedures, tools and mechanisms for carrying out supply chain due diligence can be implemented under 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?

Deloitte professionals in the EU and US practices are available to assist and provide more information on conflict minerals issues.

Deloitte can assist with the following:

- In-depth understanding and transparency into the conflict minerals supply chain and risks in relation to the EU and US regulatory frameworks
- Developing and implementing in-house policies and procedures, as well as training and support programs to ensure compliance and proactive issue management
- Integrating a conflict minerals compliance program with other supply chain compliance activities and a sustainability agenda to leverage potential efficiencies

<sup>1</sup> Source: <http://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/>

<sup>2</sup> 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).

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