The EU Conflict Minerals Regulation

Implementation at the EU Member State level

Review paper

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European
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Contents

Background to this policy note

The European Conflict Minerals Regulation entered into full force on January 1, 2021, following its approval in 2017. By now, each European Union (EU) Member State should have completed the implementation of the Regulation at national level. This policy note offers a comparison of the implementation processes across EU Member States so far, allowing us to identify who the frontrunners are. Their best practices serve as examples for other Member States and their competent authorities to enhance their compliance with the spirit of the Regulation. The final section of the paper proposes a series of preliminary recommendations ahead of the official review process that the European Commission will conduct on January 1, 2023, and every three years thereafter.

This document is part of a series of policy notes published by the European NGO Coalition on Conflict Minerals that deal with the EU Regulation on the responsible supply of tin, tungsten, tantalum and gold (3TG) from conflict-affected and high-risk areas (also known as the Conflict Minerals Regulation, or 3TG Regulation, hereafter the Regulation).[1] Input for this research was gathered by members of the Coalition and other national NGOs either through personal interviews with the competent authorities in their respective countries or through the submission of a common questionnaire.

The analysis encompasses the following countries: Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Poland, Spain, and Sweden. The selection of these countries was mainly based on the estimated significance of the countries' import volumes.[2] The UK competent authority was also interviewed because it will implement the Regulation in Northern Ireland, but not in Great Britain - as a result of Brexit. Competent authorities in each country were given an opportunity to review a draft version of this document and correct any factual errors. Furthermore, meetings were held with members of the European Commission and the European External Action Service (EEAS) to discuss a selection of preliminary findings. Input was also gathered from non-EU countries, namely Switzerland and Norway, regarding their national due diligence legislation.

[1] See publications from 2016; 2018; 2019; 2020.

[2] There are several exceptions to this (see Appendix). For example, Denmark does not have a single importer that exceeds the threshold, according to the latest customs data.

Introduction

Can the EU Conflict Mineral Regulation achieve its fundamental objectives?

The Regulation was adopted in 2017.[3] Its main objective is to disrupt the nexus between minerals extraction and trading on the one hand, and violent conflicts, corruption, and structural fragility on the other. As recent publications have abundantly shown,[4] the upstream exploitation and trade of minerals have been drivers of human rights violations and large-scale corruption and have undermined the rule of law and democratic development in producing countries.

The Regulation aims to achieve its objectives by improving the compliance of downstream importers from the EU (Union importers) and their upstream suppliers with the existing five-step due diligence framework as laid out in the Organisation for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals. Due diligence is meant to be an ongoing, proactive and reactive process by which companies identify, assess, prevent, mitigate and report on risks in their supply chain.[5] According to the European Commission, due diligence obligations under the Regulation are estimated to apply


Picture © Frederic Triest

[3] Official Journal of the European Union, Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017.

[4] For example, the 2018 Human Rights Watch report "The Hidden cost of jewellery".

[5] OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

to 600 to 1,000 Union importers.[6] Based on the EU's high volume and value of tin, tungsten, tantalum and gold (3TG) imports, it has enough leverage to effectively influence the process of responsible sourcing throughout the supply chain. In 2019, for example, the EU imported 1,675,000 kg of gold with an estimated value of 68 billion EUR.[7] The total value of global gold imports during the same year amounted to almost 300 billion EUR.

The Regulation was the outcome of complex and lengthy negotiations. This has resulted in two fundamental shortcomings of the Regulation itself, and a series of political compromises that pose a number of risks to the effectiveness of the implementation of the Regulation. Four main risks are discussed below.

Fundamental shortcomings of the Regulation

This policy brief focusses exclusively on the implementation of the Regulation. Previous publications by the European NGO Coalition on Conflict Minerals discussed a number of fundamental shortcomings of the Regulation itself. The 2023 review process should serve as an opportunity to address these shortcomings:

- **There are other minerals besides 3TG that tend to support conflict financing but are not included in the Regulation.** These include cobalt, natural graphite, lithium, and nickel.
- **The Regulation does not apply to the import of manufactured goods** (e.g., electronics, cars, machinery) into the EU despite high-risk sourcing practices in these supply chains.

Risk 1: Thresholds

The European Commission has decided to apply thresholds to import volumes to avoid an excessive compliance burden on small and medium-sized enterprises (SMEs). Union importers that import less than the threshold value will not be subject to the requirements of the Regulation. Thresholds are set at a level that ensures that the imports covered by the Regulation do not fall below 95% of the total volumes of 3TG imported into the EU.

However, the establishment of thresholds restricts the effectiveness of the Regulation. First of all, the thresholds risks allowing high-risk material worth millions of euros, including material

[6] European Commission, The Regulation explained, consulted in April 2021.

[7] DG Trade, Market Access Database.

imported directly from conflict zones and the CAHRA list,[8] to enter the EU without being subject to the requirements of the Regulation. For example, the threshold for gold ore and concentrates is set at 4,000,000 kg, and at 100 kg for pure gold, which is the equivalent of 5 million EUR at the current market price for gold. A trader could therefore import gold worth as much as 5 million EUR annually into the EU, directly from a country on the EU's CAHRA list, without completing any due diligence. Moreover, the implicit assumption behind the thresholds and method for setting them is that the risks associated with an importer do not vary with that company's size. There may, however, be good reason to suspect higher risk imports are more prevalent among smaller importers.[9] Firstly, by excluding smaller importers, the EU may also exclude much of the highest risk material that enters the EU from the requirements of the Regulations, substantially undermining its effectiveness. Secondly, there is a risk that networks of independent trading companies could be created, each to import quantities below threshold, so as to avoid due diligence obligations, before aggregating these imports through onward trading within the EU.

In conclusion, there is an obvious tension between the binary thresholds and the risk-based approach to mineral sourcing advanced by the rest of the Regulation and the OECD Guidance upon which it is based. The thresholds will undoubtedly allow millions of euros worth of materials to enter the EU without being subject to any due diligence, including from conflict affected and high-risk areas.

Risk 2: The CAHRA list

According to Article 4 of the Regulation, Union importers of minerals and metals should provide "records of the third-party audit reports of the smelters and refiners, or evidence of conformity with a supply chain due diligence scheme recognised by the Commission [see below]." But the European Commission also commissioned an external contractor[10] to draw up the "indicative and non-exhaustive" list of conflict-affected and high-risk countries (the CAHRA list).[11] At the same time article 14(2) states that "Union importers sourcing from areas which are not mentioned on the [CAHRA] list shall also maintain their responsibility to comply with the due diligence obligation under this Regulation." This means that *all* high-risk imports, irrespective of their inclusion on the CAHRA list, should be assessed according to the most

[8] The CAHRA list is a list of "conflict-affected and high-risk countries." See risk 2.

[9] See for example UN Security Council, 2020; OECD, 2018; Global Witness, 2016; The Sentry, 2018.

[10] The contractor applied the EU guidelines, which in turn take into account the OECD guidelines.

[11] Indicative, non-exhaustive list of conflict-affected and high-risk areas under Regulation (EU) 2017/821.

stringent requirements of the Regulation. The question that arises is what purpose the CAHRA list then serves.

What does this ambivalence mean in practice for the Member States competent authorities (MSCAs)? Interviews with MSCAs show that the distinction between CAHRA-listed and non-CAHRA-listed countries is confusing. The most important EU trading partners for gold (i.e., Switzerland, USA, Canada, Australia and Russia) are not included on the CAHRA list even though they have a refinery or smelter sector with significant imports from high-risk countries. The CAHRA list could therefore give Union importers the false impression that if the minerals are sourced from, for example, a Swiss smelter or refiner, it will suffice to comply with the due diligence obligations up to this Swiss link in the supply chain. Moreover, indirect imports via trading centres linked to illicit trade and conflict financing, such as Dubai, are not included in the CAHRA list either. Hence, the confusion that results from the existence of the CAHRA-list risks undermining the main objective of the Regulation.

Risk 3: Industry schemes and the white list of smelters and refiners

Union importers can apply for membership of industry-led due diligence schemes (hereafter industry schemes) that use third party audits to certify the due diligence practices of their members. A list of industry schemes that the European Commission officially recognises to be in line with the OECD Due Diligence Guidance is expected to be published later this year. Smelters and refiners, both inside and outside the EU, that participate in a recognised industry scheme are more likely to be placed on the upcoming EU "list of global responsible smelters" (also known as the white list).[12] According to the Regulation, participation of Union importers in industry schemes exempts those companies from individual third-party audit requirements to be submitted to MSCAs.[13] The same holds for Union importers that purchase their minerals from white-listed non-EU smelters and refiners: the submission of the due diligence report of this white-listed smelter could be considered as sufficient by MSCAs.

Both these provisions actually risk undermining the main goals of the Regulation. According to the Regulation, Union importers retain individual responsibility to comply with their due diligence obligations, regardless of whether they are part of an industry scheme or placed on

[12] There is a distinction between EU smelters and refiners that import into the EU and fall under the Regulation, and non-EU smelters and refiners that export to the EU and do *not* fall under the Regulation. The EU has eleven 3T smelters and nine gold refiners within its borders. Outside the EU, there are 280 3T smelters and 140 gold refiners.
[13] According to Article 7(1), "Union importers of minerals or metals shall make available to Member State competent authorities the reports of any third-party audit carried out in accordance with Article 6 *or* [emphasis added] evidence of conformity with a supply chain due diligence scheme recognised by the Commission pursuant to Article 8."

the white list. It cannot be assumed that they automatically meet the full requirements of the Regulation, especially since these schemes are a form of self-regulation by the private sector that cannot replace independent scrutiny by authorities. As a recent OECD assessment shows, industry schemes often fail to comply with the OECD Guidance.[14] Similar results were found in a recent study by GermanWatch on mineral supply chains.[15] It would help if the European Commission would be completely transparent on the assessment of the industry schemes and the establishment of the white list. However, even if the assessment is done in a robust way, it provides no guarantee for companies´ continued observation of their due diligence obligations.

Risk 4: Lack of transparency

The Commission will not make public the list of Union 3TG importers, although the authorities of the Member States are free to do so at a national level. The Regulation requires MSCAs to carry out checks and scrutiny processes when they receive "concerns provided by third parties, concerning the compliance by a Union importer with this Regulation" (Article 11(2)). This provision calls upon the watchdog function of third parties like NGOs, civil society and the media, and requires them to be aware of which importers fall under the Regulation in order to be able to raise such concerns.


Picture © Frederic Triest

[14] OECD, Alignment Assessment of Industry Programmes with the OECD Minerals Guidance, 2018.

[15] GermanWatch, Governance of Mineral Supply Chains of Electronic Devices: Discussion of Mandatory and Voluntary Approaches in Regard to Coverage, Transparency and Credibility, 2018.

The implementation of the Regulation at the level of EU Member States

Status of the implementation

Preparations for Member State implementation of the Regulation began after its adoption in 2017. Some Member States, like Austria, Belgium, Italy and the Netherlands, have had to generate new national legislation (or amendments to existing laws) in order to provide their competent authorities with the capacity to carry out their tasks. In other Member States, like Bulgaria, France, Spain and Sweden, the EU Regulation is implemented directly by the MSCAs with no national legislative procedure.[16] Several of the Member States that have had to generate additional legislation have still not finalised this process. In Belgium and Poland, the legal text has not been brought before Parliament yet and there is no clarity on the timeline. In the Czech Republic and Luxembourg, the draft law is still awaiting discussions by the Senate and Parliament, respectively. According to the European Commission, delays can be explained by the differences in urgency per Member State depending on the size of their import volumes.

Transparency

The European Commission has left it up to Member States to decide on matters of transparency. So far, it seems that most Member States will *not* publish the names of importers that fall under the Regulation. They generally cite arguments of corporate confidentiality and data protection. However, Article 12(1) of the Union Customs Code explicitly mentions the possibility of exceptions to confidentiality rules with regards to information held by Customs. The mere publication of the names of importers would not reveal any sensitive financial information that could harm companies´ competitiveness. Lack of transparency poses a grave limitation to the effectiveness of the Regulation, in particular to the ability of third parties to raise substantiated concerns.[17] Effective third-party checks require insight into the names of the companies that fall under the Regulation, including transparency of their supply chains down to the mining site itself. This information needs to be made public in a timely way to enable third parties to raise substantiated concerns ahead of the supervisory process.

[16] Even though the law has already been implemented in France, it will still be submitted to Parliament to decide on enforcement measures.

[17] Official Journal of the European Union, Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017. Article 11(2).

Austria is the only country to provide immediate disclosure of the names of importers. The guiding note to the relevant law clearly states that the MSCA needs to publish the names and web addresses of all importers that fall under the Regulation on its website. The amended law further authorises the MSCA to do so. This is a strong demonstration of the possible extent of transparency measures that other Member States should follow.

The Czech Republic will publish the names of importers on its website at the end of the year for companies that were selected for ex-post checks during that period.[18] If a company has not fulfilled its reporting obligations this will be indicated.

Other countries appear to be willing to provide a degree of transparency but have not specified which measures they will take. Finland has instructed its MSCA to "ensure the widest possible public access […] within the limits of the provisions on public access to information and examine the possibility of publishing the information in register format on its website",[19] but has not provided further explanation. Sweden is considering publishing annually the reports of the ex-post checks conducted that year and mentioning the names of noncompliant importers but has not made a final decision.

The Netherlands will not immediately publish the names of companies that fall under the Regulation but aim to collect companies' due diligence reports at the end of the reporting year and make them easily accessible by bundling links to the reports on a government website. The publication of reports is limited to compliant companies. The names of noncompliant companies subject to a conditional fine will also be made public. The German, Spanish and Czech MSCAs have expressed their interest in following the Dutch model of bundling companies' due diligence reports. While a step in the right direction, this is the least that MSCAs can do because companies that fall under the Regulation are obligated to make their reports publicly available in any case.

Some countries, such as Italy, Poland and Bulgaria, have decided for now not to publish the list of importers subject to the Regulation. They usually refer to with the Regulation's provisions on public reporting (see Article 7(3)) and with privacy legislation on data protection to sustain this decision.

[18] According to the Regulation (Article 11) MSCAs are required to carry out "ex-post checks" that examine the compliance of a selection of Union importers with their obligations. These checks are carried out on the basis of documentation and records demonstrating proper compliance, the examination of audit obligations, the investigation of substantiated concerns raised by third parties, as well as on-the-spot inspections.

[19] Ministry of Economic Affairs and Employment, Act on conflict minerals to promote transparency of supply chains and responsible procurement, 31 December 2020.

Supervisory policy: competences and procedures

Risk-based approach

As prescribed by Article 11(2) of the Regulation, MSCAs should follow a risk-based approach in monitoring the compliance of importers. Importers deemed "high-risk" will be subject to more stringent ex-post checks than those assessed as "low-risk". This entails a reliance on the instruments of the CAHRA list and the white list of smelters and refiners. Given the risks inherent to these instruments, however, MSCAs should not use them to treat their supervisory responsibility as a check-in-the-box exercise. The European Commission considers that there is no reason to believe [the MSCAs] will not do [these checks] thoroughly.[20] Interviews with different MSCAs demonstrate important differences in the degree of thoroughness per Member State.

The distinction between countries that are on the CAHRA list and those that are not (see first chapter), is confusing. The Swedish, German and Dutch MSCAs stated that, on its own, the list is not a helpful risk assessment instrument. The Austrian MSCA has already publicly informed importers that their due diligence obligations will be the same, regardless of whether they import from countries on the list.

Similarly, the Regulation does not clearly spell out how thoroughly to investigate smelters and refiners outside the EU that are not white-listed and supply to EU importers. As for the companies that are on the list, the MSCAs of Bulgaria and Poland define their responsibility based on a narrow textual interpretation of the Regulation. The Bulgarian MSCA stated that companies "do not need to prove anything else" if they source from a non-EU whitelisted smelter. Other MSCAs, however, show an awareness of the limitations of the white list and plan additional measures. The Swedish MSCA stated that the thoroughness of its investigations will not depend on whether a company sources from a white-listed smelter. The Dutch, German and French MSCAs indicated that they will inform the Commission if there are indications that a smelter may be wrongly whitelisted.

Loopholes

As indicated in the Introduction, the annual volume thresholds create several risks of circumventing practices. The Dutch, German, Belgian and Austrian MSCAs have indicated that they will actively compare annual import data from previous years to monitor sudden changes in import patterns by individual companies.

[20] Interview with European Commission, February 2021

Since MSCAs lack access to EU-wide import data, it is difficult for them to determine whether companies are spreading their imports across multiple states. The Finnish MSCA suggested that importers must use EORI (Economic Operators Registration and Identification) numbers, but this needs to be worked out in practice between the Commission and MSCAs. The Dutch MSCA has created an informal consultation structure to facilitate an efficient exchange of information between MSCAs on import patterns across Member States. According to the latest information, the MSCAs of 22 Member States take part in this structure. There is no mechanism set in place for civil society to provide input to these exchanges.

Policy regarding noncompliance

Effective implementation of the Regulation requires robust enforcement measures. According to Article 16 of the Regulation, Member States should set out the rules applicable to infringements. The Regulation currently does not allow for punitive sanctions but only corrective measures. This is a severe limitation to the effective enforcement of the Regulation.

All MSCAs will issue a notice of corrective action in case of noncompliance. With the exception of Bulgaria, Spain and Sweden, MSCAs will proceed to issuing a procedural or conditional fine if a company fails to take corrective action. The fine is for many MSCAs the last step in a serial of escalating corrective actions. The Finnish and French MSCAs go a step further and can also impose import bans. In Finland, the ban can last up to three months (or one year in case the importer's operations are seasonal). The MSCAs of the Netherlands, Sweden and the Czech Republic will publish the notices of corrective action. Moreover, by publicising a "black list" of non-compliant companies and sharing it via social media, the Czech MSCA includes explicit "naming-and-shaming" tactics within its non-compliance policy.

Not all Member States have determined the amount of the conditional fines, but it is already clear there will be wide variations that create an uneven playing field for importers. In Luxembourg the maximum fine is 100,000 EUR. In Germany the maximum fine is 50,000 EUR, which can be issued repeatedly, without limits, until corrective action is undertaken by the importer. In Italy, the maximum fine is 20,000 EUR. In Austria, the maximum amount is set at a mere 726 EUR. There is no need to limit conditional fines to a maximum, since this is not a requirement of the Regulation. The Finnish MSCA can impose conditional fines with no upper limit. But it should be noted that in Finland, the conditional fine is issued to compel compliance as a last step after the notice of corrective action, the order of corrective action and a possible prohibition of placing products on the market.

A minimum amount, harmonised across Member States, would guarantee a better deterrent against noncompliance. The amount should be in proportion to the cost of doing an audit. For an average audit, this would mean two times 25,000 EUR, amounting to approximately 50,000 EUR. The amount would be higher for larger companies. This would ensure that the cost of not complying with the Regulation exceeds the cost of complying.

The question is which options are available to MSCAs in case a company either repeatedly fails to fulfil its obligations, or does not pay a conditional fine, or pays without taking appropriate corrective action. It seems plausible that MSCAs could consider taking legal steps in case of persistent noncompliance. However, such a procedure would be lengthy and costly and does not make up for the lack of punitive measures in the Regulation.

Involvement of civil society

As stated in Article 11(2) of the Regulation, third parties have an important role to play in the implementation of the Regulation, through their ability to raise substantiated concerns. Their role is also crucial with respect to contributing to the development of assessment procedures that guide the work of the MSCAs. To ensure that the MSCAs have sufficient information at their disposal, the active involvement of civil society is of key importance.

The legal texts developed by Member States do not provide explicit directives on the way third parties are to be consulted or how MSCAs are supposed to respond to the concerns they raise. Therefore, it mostly comes down to the MSCAs themselves to facilitate active civil society involvement. In only a few cases, formal mechanisms have been installed to adequately deal with third party concerns. The Netherlands intends to integrate civil society consultations into its risk assessment strategy that is currently under development. The Finnish MSCA plans to improve its website to enable third parties to easily communicate observations and submit questions.

Picture © Giuseppe Cioffo

New national and European due diligence initiatives

Additional steps are taken at both the EU and Member States level towards the adoption of national horizontal due diligence legislation, which will be discussed below.

European Union

An important legislative initiative is underway at the EU level that could potentially reinforce the 3TG Regulation. In April 2020, EU Commissioner for Justice Didier Reynders pledged to propose a directive on horizontal corporate due diligence along global supply chains. The actual proposal is expected in June 2021. The European Parliament Legal Affairs Committee (JURI) recently submitted a legislative initiative draft report (INL) outlining its recommendations for the proposal. On March 10, 2021, the report was adopted by the European Parliament with a large majority. It contains an important clause on civil liability to ensure companies provide remediation for harm caused by their failure to observe the directive. The report furthermore states that the directive should prevail over other sector-specific due diligence legislation, in particular the 3TG Regulation, unless the due diligence requirements in the directive are more thorough.[21] According to the European Commission, the question whether the directive will take precedence over the 3TG Regulation will need to be considered, possibly during the 2023 review.[22]

National horizontal due diligence legislation in EU Member States

A series of national due diligence laws are being considered by individual Member States.

In France, a national due diligence law has already been in place since 2017. The Duty of Vigilance law imposes due diligence obligations on large French companies and establishes civil liability for harm resulting from a company's failure to observe these obligations. Several positive legislative initiatives have followed in other EU States in the wake of the French law.

In Germany, the government was on its way to commit to a due diligence law that could lead noncompliant German companies to being taken to court, having to pay penalties, and being barred from public procurements. However, in the course of the legislative process, the clause

[21] European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)).

[22] Interview with the European Commission, February 2021.

on civil liability has been omitted. Furthermore, unlike the earlier version, due diligence obligations in the current draft bill do not apply to the whole supply chain.[23]

In the Netherlands, on March 11, 2021, four political parties proposed a promising due diligence law targeting Dutch companies with over 250 employees, as well as foreign companies of the same size importing goods into the Netherlands. The legislative proposal establishes civil liability for companies for harm resulting of noncompliance. A criminal liability clause is also foreseen if a company repeatedly fails over a period of five years to halt activities shown to cause a negative impact or to provide remedy.

Finland has also taken steps towards national responsible business conduct regulations based on due diligence obligations. The government commissioned a judicial analysis report that explored different regulatory options and received input during a public consultation organised in the third quarter of 2020. The Ministry of Economic Affairs and Employment is responsible for the drafting of the law and is supported by a working group made up of representatives from different ministries, business, trade unions, academia and NGOs, that will run until February 1, 2022.[24]

National due diligence legislation in Norway and Switzerland

Switzerland's Responsible Business Initiative was rejected in a referendum despite winning the popular vote. The initial version of the law contained a civil liability clause, but this has been omitted in the government´s counterproposal. Companies' obligations under the revised bill, which will enter into force in the course of 2021, will apply from 2023 following a one-year transition period. Due diligence obligations for companies importing 3TG will cover the entire supply chain. The Swiss law has the potential to complement the EU Regulation, as Switzerland hosts a high concentration of smelters and refiners that export to the EU. Switzerland is known to import significant volumes of 3TG from high-risk countries. This bottleneck could be addressed if under the new Swiss law these smelters and refiners would be obligated to perform due diligence requirements in a thorough fashion, covering the entire supply chain.

Norway is currently considering a far-reaching supply chain transparency and due diligence draft act. The law would force larger Norwegian companies (an estimated 11,600) in different sectors to disclose information on due diligence, covering their own and their full supply chain's activities. Downstream companies (selling goods to consumers) would be required to

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[23] Draft bill of the Federal Ministry of Labour and Social Affairs Law on Corporate Due Diligence in Supply Chains, 28 February 2021.

[24] Ministry of Economic Affairs and Employment of Finland, Business expected to respect human rights – regulation considered both in Finland and at EU level (blog post), 12 March 2021.

publish information about production sites. Companies that fail to meet these requirements risk a fine or, in case of repeated wilful negligence, a penalty. Especially remarkable is the fact that the draft act contains far-reaching disclosure requirements in case of questions and concerns raised by third parties under the right to information.

Recommendations

Recommendations to the European Commission

- Assess whether the implementation of the Regulation has actually fulfilled its main objective, namely, to stem the import of conflict minerals into the EU.
- Create a special mixed commission (with representatives of the European Commission, customs authorities and MSCAs) to actively investigate substantiated concerns of third parties or authorities and to determine whether these minerals are actually imported into the EU.
- Allow civil society organisations to attend the periodic expert meetings between the European Commission and Member States to present second opinions on the characteristics of mining sites and economic operators (Union importers and non-EU smelters and refiners).
- Evaluate the impact of the use of thresholds for 3TG imports and ensure that all high-risk imports are covered by the Regulation after the 2023 review.
- Abolish the CAHRA list. Until then, make sure to include notorious trading hubs, such as Dubai and Russia, in the CAHRA list.
- Make public the assessment criteria on which the recognition of the industry schemes and the EU list of global responsible smelters is based and make these lists publicly available when they are finalised.
- Evaluate whether the Regulation provides for effective deterrents against noncompliance and, in case they turn out to be ineffective, include punitive measures after the 2023 review.
- Align the Regulation with upcoming horizontal EU due diligence legislation, for example regarding scope and the possible adoption of civil liability.
- Include the downstream sector into the scope of Regulation to ensure that the EU import of manufactured goods (e.g., electronics, cars, machinery) is free from conflict minerals.

Recommendations to the MSCAs

- Actively involve civil society organisations in the development of the assessment protocols.
- For large importing countries, assess every 3TG importer that falls under the Regulation at least once every three years.
- Ensure that the annual due diligence reports of all importers that are subject to the due diligence obligations of the Regulation are publicly available and easily accessible (see measures in the Netherlands).

- Investigate 3TG importers thoroughly and proactively, without exempting them from scrutiny because they are part of an industry scheme or source from white-listed smelters or refiners.
- Pay special attention to imports from all countries that are known to be transit hubs for minerals from conflict-affected and high-risk areas and other red flag locations.
- Harmonise the rules applicable to infringements across the EU to avoid authority shopping.
- Ensure conditional fines are effective by fixing significant minimum fines (e.g. 50,000 EUR).
- Make public the imposition of conditional fines (see measures in the Netherlands).
- Exchange information and data with the European Commission and other MSCAs on a regular basis to prevent possible loopholes for circumvention, and to ensure uniform, harmonised implementation of the Regulation.

Recommendations to EU Member States

- Make it mandatory for MSCAs to disclose the names of importers (see measures in Austria), regardless of whether they are below or above the threshold.
- For Member States that have not observed their obligation to implement the Regulation by January 1, 2021, take action to conclude the legislative process.
- Authorise MSCAs to impose a temporary import ban on minerals for which an importer has failed to comply with an order to undertake corrective action (see measures in Finland).

Appendix

STATUS OF IMPLEMENTATION			
Member State	**Form of implementation**	**Status**	**Competent authority / Supervisory authority**
Austria	Amendment to existing law	Entered into full force on January 8, 2021	Ministry of Agriculture, Regions and Tourism Mining Authority
Belgium	National implementation law	Not brought before Parliament yet	FPS Economy, SMEs, Middle Classes, and Energy
Bulgaria	Regulation applies directly	Entered into force January 1, 2021	Ministry of Economy
Czech Republic	National law	Entered into force on April 15, 2021	Ministry of Industry and Trade Department of Trade Policy and International Economic Organisations
Finland	National implementation law	Entered into force on January 1, 2021	Finnish Safety and Chemicals Agency (TUKES)
France	Regulation applies directly	Entered into force on January 1, 2021 The law will be brought before Parliament to determine enforcement measures	Ministère de la Transition Écologique et Solidaire Direction générale de l'aménagement, du logement et de la nature (DGALN)
Germany	National implementation law	Entered into force on May 7, 2020	Federal Institute for Geosciences and Natural Resources (BGR) Deutsche Kontrollstelle EU-Sorgfaltspflichten in Rohstofflieferketten (DEKSOR)
Italy	Legislative decree	Entered into force on January 1, 2021	Ministry of Economic Development

			Directorate General for Industrial Policy, Innovation and Small and Medium Enterprises
Ireland	National law	Entered into force on January 21, 2021	Ministry for Environment, Climate and Communications Geoscience Regulation Office (GSRO)
Luxembourg	National law	Brought before Parliament on March 11, 2021	Ministry of Foreign and European Affairs Administration des douanes et accises
Northern Ireland (UK)	National law	Entered into force on January 1, 2021	UK Foreign, Commonwealth & Development Office Responsible Business Team
The Netherlands	National implementation law	Entered into force on January 1, 2021	Ministry of Foreign Affairs Human Environment and Transport Inspectorate (ILT)
Poland	National law	Not brought before Parliament yet	Ministry of Finance Head of the National Revenue Administration
Spain	Regulation applies directly	Entered into force on January 1, 2021	Ministry of Industry, Trade and Tourism State Secretary for Trade; Deputy Directorate General for international trade of Goods / Deputy Directorate General of Customs Management; Department of Customs and Special Taxes
Sweden	National ordinance	Entered into force January 1, 2021	Geological Survey of Sweden (SGU)
Non-EU (legislation pending)			
Norway	National law	Proposed draft act under review by inter-ministerial working group. Follow-up TBD.	Consumer Authority & Market Council

Switzerland	National law	Adoption expected in first half of 2021. Entry into force will be in 2023, following a one-year transition period.	Reports will be reviewed at companies' general assemblies and by an external specialist.

TRANSPARENCY			
Member State	**Estimated number of companies above the threshold**	**Level of disclosure of names of companies**	
Austria	15-20	HIGH	Immediate public disclosure of the names of all importers.
Belgium	15+	-	TBD
Bulgaria	2	LOW	No public disclosure on the names of importers.
Czech Republic	20-30	MEDIUM	Names of importers and results (positive/negative) of ex-post checks published on MSCA website at the end of the year (only importers selected for ex-post checks that year).
Finland	'a few´	MEDIUM	The Ministry of Economic Affairs and Employment instructs the MSCA to "within the limits of the provisions on public access to information, ensure the widest possible public access and examine the possibility of publishing the information in register format on its website." This wording is also included in the recitals of the national implementation law.
France	50-70	LOW	No public disclosure on the names of importers.
Germany	150-200	LOW	No public disclosure of the names of importers.
Italy	50-100	LOW	No public disclosure of the names of importers.
Ireland	15	-	TBD
Luxembourg	30	-	TBD
The Netherlands	50	MEDIUM	The MSCA aims to collect, bundle, and publish importers' due diligence reports on a government website at the end of the year (only importers that have submitted their reports).
Northern Ireland (UK)	0-5	LOW	No public disclosure on the names of compliant importers.
Poland	30	LOW	No public disclosure on the names of importers.

Spain	20-25	LOW	No public disclosure of the names of importers.
Sweden	15	MEDIUM	Considering annually publishing ex-post check reports at the end of the year (only importers selected for ex-post checks that year, including companies that have not submitted their reports).
Non-EU (legislation pending)			
Norway	11,600 (larger companies)	HIGH	Multiple public disclosure requirements for companies.
Switzerland	Depending on thresholds (TBD)	LOW	No public disclosure on the names of importers.

POLICY REGARDING NONCOMPLIANCE			
Member state	Corrective measures	Amount of conditional fine	Will imposition of corrective action be made public?
Austria	1) Notice of corrective action 2) Conditional fine	Maximum 726 EUR	No
Belgium	1) Notice of corrective action 2) Conditional/procedural fine	TBD	No
Bulgaria	Notice of corrective action	N/A	No
Czech Republic	1) Notice of corrective action 2) Financial sanctions for non-compliance can be applied under the Czech Control Law.	Maximum 500.000 CZK	Yes
Finland	1 Notice of corrective action 2) Order of corrective action 3) Temporary prohibition of placing products on the market. 4) Conditional fine.	No maximum	
France	1) Notice of corrective action 2) Conditional fine 3) Temporary import ban	1,500 EUR per day	No
Germany	1) Notice of corrective action 2) Conditional fine	Maximum 50,000 EUR (can be enforced repeatedly until corrective action is undertaken).	No
Italy	1) Notice of corrective action 2) Conditional fine	Minimum 2,000 EUR, Maximum 20,000 EUR	
Ireland	Notice of corrective action	N/A	
Luxembourg	1) Notice of corrective action 2) Conditional fine	Minimum 10,000 EUR, Maximum 100,000 EUR	

The Netherlands	1) Notice of corrective action 2) Conditional fine	Maximum amount will be derived from the calculation of the economic benefit of non-compliancy.	Yes
Northern Ireland (UK)	1) Notice of corrective action 2) Conditional fine	Maximum 25,000 GBP	Probably yes
Poland	TBD	N/A	
Spain	Notice of corrective action	N/A	No
Sweden	Notice of corrective action	N/A	Probably yes
Non-EU (legislation pending)			
Norway	Conditional fine Penalties (in case of severe infringements)		
Switzerland	Conditional fine	Maximum 100,000 CHF	