

Whitepaper

EU Conflict Minerals Regulation

The New Responsible Sourcing Landscape



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The EU Conflict Minerals Regulation

On January 1, 2021, the EU Conflict Minerals Regulation (EU 2017/821)¹ came into effect. This regulation is intended to reduce the sourcing of minerals from conflict-affected and high-risk areas (CAHRAs). It applies to all parties importing minerals and metals into the EU and establishes requirements for businesses to maintain documentation demonstrating compliance with the regulation and the results of mandatory third-party audits.

Similar to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the EU rule focuses on tantalum, tin, tungsten, and gold (3TGs). However, the regulation differs by expanding the scope beyond the Democratic Republic of the Congo (DRC) and into conflicted-affected regions as a whole. The EU defines CAHRAs as areas “that are currently or could be affected by conflict and other related illegal activities.”² A group of external experts compiled the official list of 27 CAHRAs,³ and it will be updated regularly. The list is considered non-exhaustive, and companies in scope of the regulation must also comply with the requirements when operating on conflict-affected areas that are not listed.⁴



1 EUR-Lex. (2017, May 19). Official Journal of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TX-?uri=OJ:L:2017:130:TOC>

2 European Commission. (n.d.). The regulation explained. <https://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/#application>

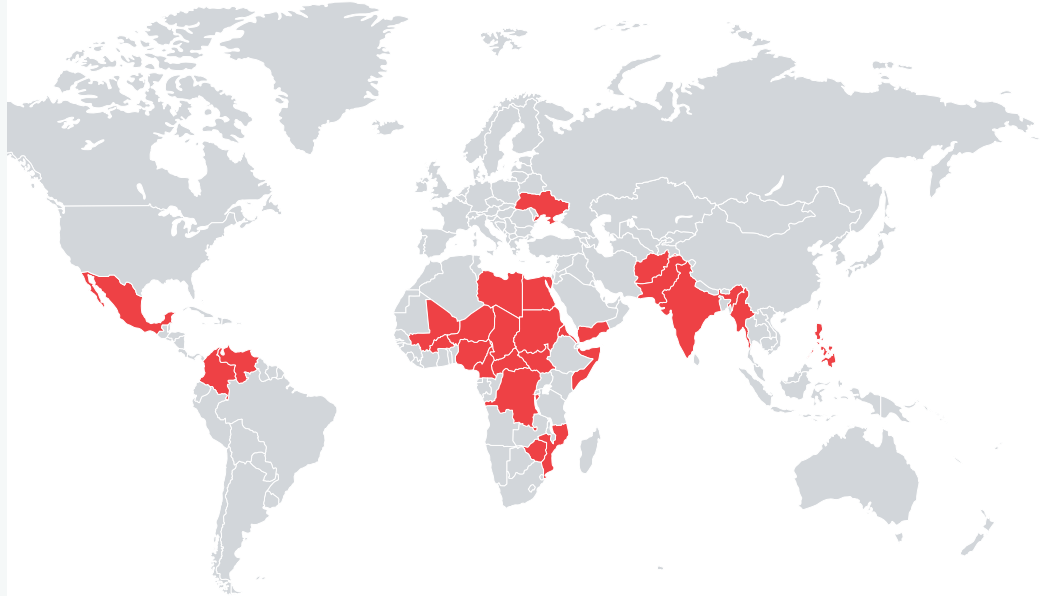
3 CAHRASList.net. (n.d.). Conflict-Affected and High-Risk Areas. <https://www.cahraslist.net/cahras>

4 European Commission. (n.d.). The regulation explained. <https://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/#application>



The CAHRAs List

- ▶ Afghanistan
- ▶ Burkina Faso
- ▶ Burundi
- ▶ Cameroon
- ▶ Central African Republic
- ▶ Chad
- ▶ Colombia
- ▶ DRC
- ▶ Egypt
- ▶ Eritrea
- ▶ India
- ▶ Libya
- ▶ Mali
- ▶ Mexico
- ▶ Mozambique
- ▶ Myanmar
- ▶ Niger
- ▶ Nigeria
- ▶ Pakistan
- ▶ Philippines
- ▶ Somalia
- ▶ South Sudan
- ▶ Sudan
- ▶ Ukraine
- ▶ Venezuela
- ▶ Yemen
- ▶ Zimbabwe



Conflict minerals rules in the EU were drafted on the backdrop of their U.S. counterpart, Section 1502 of the Dodd-Frank Act, which placed reporting obligations on public companies with international supply chains. Legislators applied lessons learned from the U.S. case and made adjustments based on identified gaps and additional data requested by the non-governmental organization (NGO) community and other stakeholders.

Under the regulation, importers of minerals and metals must establish internal systems of due diligence based on OECD guidelines. They are required to:

- ▶ Indicate the source of origin of the minerals they are importing
- ▶ Indicate the quantities imported and the location in which they were mined
- ▶ Provide supplier contact information
- ▶ Support these filings with documents



Enforcement of the regulation is the responsibility of individual member states. Authorities will examine documents, audit reports, and, if necessary, conduct on-the-spot inspections. Member states will order non-compliant entities to take remedial action within a set timeframe, and the entities will be subject to follow-up inspections.⁵

The EU Non-Financial Reporting Directive

After repeated consultations, the EU rules were divided into two distinct areas following different legislative tracks. The first relates to the import of in-scope minerals and metals (under the EU Conflict Minerals Regulation), while the second relates to the use of those minerals and metals in products by European public companies obligated to make non-financial disclosures (under the EU Non-Financial Reporting [NFR] Directive).

The directive includes a conflict minerals section that requires public-interest companies with more than 500 employees to publicly disclose information on their business impacts to society and the environment.

In relation to conflict minerals, the directive establishes expectations for companies to report on due diligence activities to ensure the ethical mining of 3TGs from CAHRAs. These disclosures should be consistent with OECD guidelines and include information on:

- ▶ The results of these activities
- ▶ The nature and number of risks identified
- ▶ The measures taken to prevent and mitigate the risk
- ▶ How the company has improved due diligence activities over time⁶

In-scope companies must disclose in their management report relevant and useful information on their policies, risks, and outcomes relating (at minimum) to:

- ▶ Environmental matters
- ▶ Social and employee aspects
- ▶ Respect for human rights
- ▶ Anti-bribery and anti-corruption issues
- ▶ Diversity in their board of directors

⁵ European Commission. (n.d.). The regulation explained. <https://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/#application>

⁶ European Commission. (2017). Communication from the Commission Guidelines on non-financial reporting (methodology for reporting non-financial information). [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0705\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0705(01)&from=EN)



The impact of the regulation will go beyond in-scope companies and reporting companies, as the flow-down requirements will impact the broader supply chain. The EU Conflict Minerals Regulation is indicative of the global nature of current responsible minerals reporting expectations.

Comparing the Dodd-Frank Act to the EU Conflict Minerals Regulation

	U.S.	EUROPEAN UNION
DIRECT SCOPE	U.S. public filers	EU importers
INDIRECT SCOPE	Upstream suppliers of public companies ESG-inclined companies Any company that uses a 3TG	Smelters EU manufacturers ESG-inclined companies Any company that uses a 3TG
AFFECTED REGIONS	DRC	CAHRAs (27 Regions)
MINERALS	3TGs	3TGs
REPORTING REQUIREMENTS	Conflict Minerals Report, uploaded to the EDGAR System or published to their website	EU Due Diligence Portal
ENFORCEMENT	Promulgated under the U.S. Securities and Exchange Commission (SEC) Loss of contract as customers require compliance	EU Commission Loss of contract as customers require compliance
BEST PRACTICES	OECD Guidance CMRT	OECD Guidance CMRT

The Expanding EU Conflict Mineral Landscape

The CAHRAs list will continue to evolve as geopolitical situations change. Companies should be prepared to enact stronger due diligence processes for any minerals sourced from:

- ▶ Areas in a state of armed conflict or fragile post-conflict
- ▶ Areas with weak or non-existent governance and security
- ▶ Failed states
- ▶ States with widespread and systematic violations of international law

Geography is not the only area of possible expansion. As cobalt, mica, and other minerals come under scrutiny from investors, NGOs, and other groups, companies are voluntarily expanding their sourcing programs beyond the 3TGs. So much so that the Responsible Minerals Initiative (RMI) developed the Extended Minerals Reporting Template (EMRT) to facilitate expanded supplier surveys.⁷

Expectations for Importers & Reporting Companies

While the EU conflict mineral regulatory landscape places an obligation on in-scope companies and importers to implement a management system, there will be expectations that follow for downstream companies.

Companies that currently report on conflict minerals, regardless of whether or not they are directly in scope of the EU Conflict Minerals Regulation, should be prepared to:

- ▶ Consider additional responsible minerals reporting
- ▶ Report more openly on due diligence processes
- ▶ Report on materials source of origin from a global perspective

Companies that are directly in scope of the EU Conflict Minerals Regulation will be expected to have programs with specific attributes.

What Are “Importers”?

An importer in the context of EU conflict minerals means any natural or legal person declaring minerals or metals for release for free circulation, or any natural or legal person on whose behalf such declaration is made.

⁷ Responsible Minerals Initiative. (2021, November 23). *Extended Minerals Reporting Template*. <http://www.responsiblemineralsinitiative.org/reporting-templates/emrt/>



All reporting companies must:

- ▶ Author public statements concerning the company's supply chain policy for any minerals and metals potentially originating from CAHRAs for posting on the EU's designated website
- ▶ Align programs and policies with the OECD Due Diligence Guidance
- ▶ Assign a senior manager to oversee due diligence
- ▶ Maintain five years' worth of supply chain records
- ▶ Implement contractual flow-downs that mandate suppliers engage in responsible minerals sourcing per Annex II to the OECD Due Diligence Guidance
- ▶ Implement a grievance mechanism (such as a hotline and/or online complaints system), as well as an early detection system that links to an ombudsman or third party

In addition to the above, mineral importers must also:

- ▶ Implement a chain of custody/supply chain traceability system documenting
- ▶ A description of the mineral
- ▶ Name and address of supplier
- ▶ Country of origin
- ▶ Quantities and dates of extraction
- ▶ Other relevant details in consideration of the high-risk mitigation actions outlined in the OECD Due Diligence Guidance, such as:
 - ▷ The name of the mine where the mineral originated from
 - ▷ The locations where the minerals were consolidated, traded, and processed
 - ▷ The taxes, fees, and royalties paid



Metal importers must also:

- ▶ Operate a chain of custody or supply chain traceability system that documents:
 - ▷ Metal description
 - ▷ Name and address of the importer
 - ▷ Name and address of the smelters and refiners in the supply chain
 - ▷ Records of the third-party audit reports of the smelters and refiners, or evidence of conformity with a supply chain due diligence scheme
 - » If unavailable, a record of the country or countries of origin for the minerals in the supply chains of the smelters and refiners should be maintained
 - » Where metals are based on minerals originating from conflict-affected and high-risk areas, or where other supply chain risks as listed in the OECD Due Diligence Guidance have been identified by the importer, the metal importer must gather additional information in accordance with the specific recommendations for downstream economic operators set out in the OECD Due Diligence Guidance

The Enforcement Process

The EU ensures compliance with the regulation by aggregating an inventory of all audits conducted on mineral and metal importers and processors, which must be disclosed to regulatory authorities. The regulation also requires member states to conduct “ex post checks” of economic operators to ensure the adoption of supply chain due diligence policies and practices that provide transparency and generate public confidence. “Ex post checks” include:

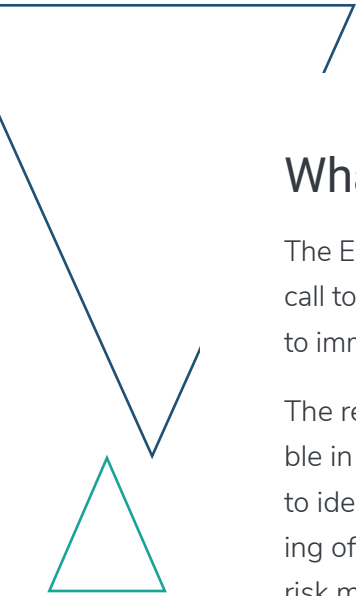
- ▶ An examination of the Union importer’s implementation of supply chain due diligence obligations under this regulation, including actions regarding risk management, independent third-party audits, and associated disclosures
- ▶ An examination of documentation and records that demonstrate compliance with the obligations referred to in the point above
- ▶ An examination of audit obligations in accordance with the scope, objective, and principles set out in Article 6 of the regulation



Each member state assigns an authority to conduct on-the-spot inspections of importers and to review five years of records of mineral and metal import data. Enforcement occurs at the member state level and records of ex post checks will be shared among the member states and maintained for a period of five years. Where infringements are identified, the competent authority in the associated member state will issue a notice of remedial action to be taken by the Union importer.

Identifying Risk

To comply with the regulation, reporting companies must adopt a management system that includes risk identification, independent third-party audits and records, and the public disclosure of this information. It also requires in-scope parties to take steps to identify and address actual and potential risks linked to CAHRAs. Once identified, the company must seek to prevent or mitigate adverse impacts associated with their sourcing activities.



What Should Reporting Companies Do if Risk Is Identified?

The EU Conflict Minerals Regulation cites the OECD Due Diligence Guidance, which bears a distinct call to action for parties that have identified risk or evidence of conflict minerals in the supply chain to immediately suspend or discontinue engagement with the supplier of concern.

The regulation does recognize that the immediate cessation of activities is not necessarily possible in all instances. Accordingly, it requires in-scope parties to implement a strategy to respond to identified risks, which can help prevent or mitigate adverse impacts. This involves the reporting of supply chain risk assessment findings to senior management, along with the adoption of risk management measures consistent with the OECD Due Diligence Guidance.

There is significant motivation for reporting companies to engage in comprehensive supply chain due diligence from the onset. Specifically, Union importers of metals are obligated to self audit unless they can demonstrate evidence of having undertaken adequate due diligence. Adequate due diligence could include an audit performed by a third party and any associated audit reports demonstrating that all smelters and refiners in their supply chain comply with the regulation.

The material benefits of extensive due diligence are a chief reason many companies choose a software solution to survey their supply chains. Such solutions can help to mitigate the cost of auditing all suppliers manually.



The Evolution of Conflict Minerals

The U.S. Dodd-Frank Act was crucial to evolving the global conversation on conflict minerals. However, its narrow focus no longer addresses the broader concerns of investors, consumers, and industry. As awareness grows about the risks of mineral sourcing from CAHRAs, scrutiny will be applied to more jurisdictions and more minerals beyond those laid out in the U.S. legislation. The EU Conflict Minerals Regulation is the largest step toward comprehensive responsible sourcing and is built to evolve alongside these concerns.

Additionally, conflict minerals are an inextricable part of the greater sustainability conversation that is now demanding global attention. Manufacturers with accurate data from deep in their supply chains will be better positioned to become sustainability leaders and take advantage of changing investor and consumer attitudes.

That, however, is easier said than done. Digging through thousands of supplier submissions to assess supply chain risks is not a scalable approach as requirements evolve and your company grows. Solutions, such as Assent, are critical to unlocking the scalability and expertise needed for efficient collection and analysis.

For more information about how Assent can help your company meet its conflict minerals requirements, contact our experts at info@assent.com.





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