Linklaters

Landmark EU Conflict Minerals Regulation mandates importer due diligence



The new Regulation requires importers into the EU of tin, tantalum, tungsten and gold to establish and implement governance frameworks from 1 January 2021.

EU Regulation 2017/821 comes into force from 1 January 2021 and aims to stop the financing of armed groups and security forces through the trade of tin, tantalum, tungsten and gold (**3TG**) from conflict-affected and high-risk areas.

New rules for importers

The Regulation will require importers of in-scope 3TG into the EU to comply with a range of supply chain due diligence obligations.

The obligations will largely impact upstream companies (miners, traders and smelters/refiners) as those downstream companies operating beyond the metal stage of products (component producers, manufacturers and end users) are not caught by the regime, although this will be reviewed by the Commission by January 2023 (and every three years thereafter).

The Regulation applies to 3TG sourced from "all conflict-affected areas and high-risk areas", which include "areas in a state of armed conflict or fragile post-conflict as well as areas witnessing weak or non-existent governance and security, such as failed states, and widespread and systematic violations of international law, including human rights abuses". This is significantly broader than its US Dodd-Frank Wall Street Reform and Consumer Protection Act equivalent which applies only to 3TG from the DRC and Great Lakes Region.

A non-exhaustive and indicative list of countries from which 3TG is sourced and which fall within the scope of the Regulation is expected from the European Commission in Q3 2020. Smaller volumes of 3TG and recycled metals are excluded from the Regulation.

What will importers need to do?

Those caught by the Regulation will have to comply with supply chain due diligence obligations across four areas: (i) management systems; (ii) risk management; (iii) verification; and (iv) disclosure.

These require the adoption and communication of relevant supply chain policies, structuring management systems to support supply chain due diligence with senior management oversight, incorporation of relevant requirements into supply contracts and operation of a chain of custody or supply chain traceability system supported by documentation. Grievance mechanisms must also be established as an early-warning risk awareness system, and risk assessments and risk management strategies developed more generally. Due diligence schemes established by governments and industry associations may apply to be recognised as equivalent to the requirements of the Regulation.

The Regulation also sets requirements for independent third-party audits of importer efforts to comply, unless importers can demonstrate that they are sourcing exclusively from smelters and refiners included by the Commission on their forthcoming list of global responsible smelters and refiners.

Finally, in line with current trends towards greater transparency on ESG matters, the Regulation introduces a number of disclosure obligations. These include the disclosure of audits and information obtained during the course of supply chain due diligence as well as public reporting on annual basis on policies and practices for responsible sourcing.

The Regulation aligns with, and frequently draws on, the requirements of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. These guidelines are already well established in this area and provide detailed, practical guidance on due diligence. This alignment of soft and hard law demonstrates the increasing influence of soft law on the regulation of ESG matters.

The Regulation will also interplay with other regimes on responsible sourcing, for example those of the LMA and LBMA, applicable to tin and gold respectively.

Get ready to comply

The Regulation will have effect from 1 January 2021 which means importers will need to be thinking ahead about how they will comply.

Key contacts



Vanessa Havard-Williams
Partner, London
Tel: +44 20 7456 4280
vanessa.havard-williams@linklaters.com



Rachel Barrett
Partner, London
Tel: +44 20 7456 5414
rachel.barrett@linklaters.com



Adam Lurie
Partner, Washington, D.C.
Tel: +1 202 654 9227
adam.lurie@linklaters.com



James Marlow
Associate, London
Tel: +44 20 7456 5967
james.marlow@linklaters.com



Abu Dhabi | Amsterdam | Antwerp | Bangkok | Beijing | Berlin | Brisbane* | Brussels | Cape Town*** | Dubai | Düsseldorf
Frankfurt | Hamburg | Hanoi* | Ho Chi Minh City* | Hong Kong | Jakarta** | Jeddah$^{\Delta}$ | Johannesburg*** | Lisbon | London
Luxembourg | Madrid | Melbourne* | Milan | Moscow | Munich | New York | Paris | Perth* | Port Moresby* | Riyadh$^{\Delta}$ | Rome
São Paulo | Seoul | Shanghai$^{\Delta\Delta}$ | Singapore | Stockholm | Sydney* | Tokyo | Warsaw | Washington, D.C.

** Office of integrated alliance partner Allens*
*** Office of formally associated firm Widyawan & Partners*
**** Office of collaborative alliance partner Webber Wentzel*

$^{\Delta}$ Office of Zamakhchary & Co. Linklaters in agreement with Zamakhchary & Co.
$^{\Delta\Delta}$ Linklaters Shanghai and Linklaters Zhao Sheng (joint operations office with Zhao Sheng Law Firm)

linklaters.com

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of the LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP and of the non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ, England or on www.linklaters.com and such persons are either solicitors, registered foreign lawyers or European lawyers. Please refer to www.linklaters.com/regulation for important information on our regulatory position.

GC19916_F/06.20