

Briefing Note: EU Legislation on Conflict Minerals

On 22 November 2016, after several years of negotiations, the presidency of the European Council and the European Parliament reached a successful conclusion on regulation of conflict minerals. When this comes into force as a legislated framework, it will require a significant number of companies to hugely increase efforts to ensure that their products and business don't contribute to human rights abuses in high risk areas.

As of January 2017, the regulation is at the "informal final agreement." Member states will now approve it, and those affected will be expected to act on it from January 1, 2021.

What are conflict minerals? Conflict minerals are those sourced from countries where mines are controlled and operated by armed groups. These minerals are used in a wide range of products, across sectors including ICT, healthcare, telecommunications, aerospace and automobiles.

Sale of these in-demand minerals allows armed groups to retain their hold on the mines, in turn supporting the continuation of conflict. In addition, such mines tend to cause human rights abuses, often having horrific working conditions, long hours and very low pay, and employing child labour.

Which businesses are covered and what will they have to do? All direct importers, smelters and refiners of tin, tantalum, tungsten and gold ("3TG minerals") and their ores from "High Risk Countries" into the EU will have to carry out mandatory due diligence using the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas.

These OECD guidelines provide detailed recommendations to help companies protect human rights and avoid contributing to conflict through their mineral purchasing decisions and practices. The Guidance focuses on the 3TG minerals and is appropriate for any company potentially sourcing minerals or metals from conflict-affected and high-risk areas.

The five steps stated by the guidelines, which will provide the framework of the EU regulation, are as follows:

1. Establish strong company management systems
2. Identify and assess risks in the supply chain
3. Design and implement a strategy to respond to identified risks
4. Carry out independent third party audit of smelters'/ refiners' due diligence practices
5. Report annually on supply chain due diligence.

Who else is affected? As well as direct importers, large EU firms (listed companies, banks, insurance undertakings and other companies that are so designated by Member States) with more than 500 employees which buy minerals to use in their products are encouraged to report on their

sourcing practices and due diligence processes. They will also be invited to join a European registry. Though this will be voluntary, these businesses will be affected by similar reporting obligations under legislation such as the Non-Financial Reporting Directive, which will be easier to fulfil if they have followed the OECD guideline recommendations. (See our [Briefing on Legislation and its effects on responsible business](#) for more information.)

What are “High Risk Countries”? The focus of the regulation is mainly on the Democratic Republic of the Congo and surrounding areas (The African Great Lakes region), but the EU will additionally provide a handbook which identifies other regions businesses should be aware of.

Who is exempt? There is an exemption for the smallest importers (dentists and small jewellery firms are specifically mentioned) meaning they will not have to resource due diligence checks. BITC encourages smaller retailers still to learn the right questions to ask to help prevent human rights abuses in minerals supply chains. Recycled materials, existing EU stocks and byproducts are also excluded.

What should companies do now? Action is not required until 2021, but this does not mean companies should wait until then to act. Time will be required to put in place the processes needed to ensure effective reporting. Companies that act now will be able to show performance improvement when the legislation comes into force. Additionally, the United Kingdom’s decision to leave the EU should not affect businesses’ decision on when to act, as the legislation will still affect all those selling or supplying to any EU member state.

While many are in favour of this legislation, it does not go far enough for most campaigners. It’s likely there will be increasing pressure from NGOs to include manufacturers amongst the companies covered by the legislation, and to widen the types of minerals it covers. Most people have heard of blood diamonds and would agree that they should be covered, but many will not be aware of minerals such as jade and ruby from Myanmar and coal and emeralds from Columbia, all associated with human rights abuses and high on campaigners lists.

What is BITC’s view? While the issue of conflict minerals sounds very technical, it can be likened to any other complex supply chain issue. Behind the very complicated reality of modern international supply chains is the very simple idea that businesses should know where things they buy come from. When this principle is ignored, problems inevitably occur – the horsemeat scandal is one example of what happens when supply chains aren’t audited properly.

As always, companies should engage and collaborate with their supply chains to create shared benefits. Suppliers will benefit from businesses’ knowledge and experience, while businesses will gain a better relationship with them, and be better able to inform their customers about the products they sell.

Key challenges identified by BITC members

- Currently, consumers are not asking many questions about mineral provenance, and conflict-free products aren't faring better at market. There is an expectation that this will change, with leading companies ready to engage on the subject.
- Awareness of the issue varies between different geographic regions. Our members explicitly referenced Asia as a key market where European practitioners struggle to engage with due to low awareness and understanding of the issue. More comprehensive global understanding is needed to increase action.
- Greater stakeholder engagement is needed, especially within companies. Members commented that due diligence exercises are expensive and so budget holders need to be completely convinced of their necessity.
- Companies would like to further understand which questions investors are asking about the issue, and would like tips on how to ensure that the issue is understood by the investor community.

Next steps

BITC and members would like to see the following next steps:

- 1) Sharing of best practice examples. These should be cross-sector and cover businesses at all levels of maturity, not only those just starting out.
- 2) Open and honest thought pieces on challenges, uncertainties, and failures to help avoid the same mistakes in the future.
- 3) Convening of companies, NGOs and the public sector to work collaboratively on the issue, giving equal attention to its technical, political and emotional aspects.
- 4) An agreed standard question set. Companies want to ensure that the questions they are asking their suppliers are in line with those asked by other businesses. This will increase the impact businesses of all sizes have, as suppliers hear the same questions again and again and thus see them as important.

How we can help

BITC Advisory Services can help member companies understand how they will be affected by coming legislation and how to promptly prepare for future reporting and auditing requirements. If you would like to hear more get in touch with Elena Espinoza, Head of Advisory Services by emailing Elena.Espinoza@bitc.org.uk.