

Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas

REGULATION (EU) 2017/821 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 17 May 2017

laying down supply chain due diligence obligations for
Union importers of tin, tantalum and tungsten, their ores, and
gold originating from conflict-affected and high-risk areas

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure⁽¹⁾,

Whereas:

- (1) Although they hold great potential for development, natural mineral resources can, in conflict-affected or high-risk areas, be a cause of dispute where their revenues fuel the outbreak or continuation of violent conflict, undermining endeavours towards development, good governance and the rule of law. In those areas, breaking the nexus between conflict and illegal exploitation of minerals is a critical element in guaranteeing peace, development and stability.
- (2) The challenge posed by the desire to prevent the financing of armed groups and security forces in resource-rich areas has been taken up by governments and international organisations together with economic operators and civil society organisations, including women's organisations that are to the forefront of drawing attention to the exploitative conditions imposed by these groups and forces, as well as to rape and violence used to control local populations.
- (3) Human rights abuses are common in resource-rich conflict-affected and high-risk areas and may include child labour, sexual violence, the disappearance of people, forced resettlement and the destruction of ritually or culturally significant sites.
- (4) The Union has been actively engaged in an initiative of the Organisation for Economic Co-operation and Development (OECD) to advance the responsible sourcing of minerals from conflict areas, which has resulted in a government-backed multi-stakeholder process leading to the adoption of the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*

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(‘OECD Due Diligence Guidance’) including the Annexes and Supplements thereto. In May 2011, the OECD Ministerial Council recommended the active promotion of the observance of that Guidance.

- (5) The concept of responsible sourcing is referred to in the updated OECD Guidelines for Multinational Enterprises⁽²⁾ and is in line with the UN Guiding Principles on Business and Human Rights⁽³⁾. Those documents aim to advance supply chain due diligence practices when businesses source from areas affected by conflict and instability. At the highest international level, UN Security Council Resolution 1952 (2010) specifically targeted the Democratic Republic of Congo (the DRC) and its neighbours in Central Africa calling for supply chain due diligence to be observed. Following up on that Resolution, the UN Group of Experts on the DRC also advocated compliance with the OECD Due Diligence Guidance.
- (6) In addition to multilateral initiatives, on 15 December 2010, the Heads of State and Government of the African Great Lakes Region took a political commitment in Lusaka to fight the illegal exploitation of natural resources in the region and approved, inter alia, a regional certification mechanism based on the OECD Due Diligence Guidance.
- (7) This Regulation, by controlling trade in minerals from conflict areas, is one of the ways of eliminating the financing of armed groups. The Union's foreign and development policy action also contributes to fighting local corruption, to the strengthening of borders and to providing training for local populations and their representatives in order to help them highlight abuses.
- (8) In its communication of 4 November 2008 entitled ‘The raw materials initiative — meeting our critical needs for growth and jobs in Europe’, the Commission recognised that securing reliable and undistorted access to raw materials is an important factor for the Union's competitiveness. The raw materials initiative contained in that Commission communication is an integrated strategy aimed at responding to different challenges related to access to non-energy and non-agriculture raw materials. That initiative recognises and promotes financial as well as supply chain transparency, and the application of corporate social responsibility standards.
- (9) In its resolutions of 7 October 2010, of 8 March 2011, of 5 July 2011 and of 26 February 2014, the European Parliament called for the Union to legislate along the lines of the US law on conflict minerals, Section 1502 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. In its communications of 2 February 2011 entitled ‘Tackling the challenges in commodity markets and on raw materials’ and of 27 January 2012 entitled ‘Trade, growth and development — Tailoring trade and investment policy for those countries most in need’, the Commission announced its intention to explore ways of improving transparency throughout the supply chain, including aspects of due diligence. In the latter communication and in line with the commitment made by it at the May 2011 OECD Ministerial Council, the Commission also advocated greater support for and use of the OECD Guidelines for Multinational Enterprises, and of the OECD Due Diligence Guidance, even outside the OECD membership.

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- (10) Union citizens and civil society actors have raised awareness with respect to Union economic operators not being held accountable for their potential connection to the illicit extraction of and trade in minerals from conflict areas. Such minerals, potentially present in consumer products, link consumers to conflicts outside the Union. As such, consumers are indirectly linked to conflicts that have severe impacts on human rights, in particular the rights of women, as armed groups often use mass rape as a deliberate strategy to intimidate and control local populations in order to preserve their interests. For this reason, Union citizens have requested, in particular through petitions, that the Commission make a legislative proposal to the European Parliament and to the Council to hold economic operators accountable under the relevant Guidelines as established by the UN and OECD.
- (11) In the context of this Regulation, and as set out in the OECD Due Diligence Guidance, supply chain due diligence is an ongoing, proactive and reactive process through which economic operators monitor and administer their purchases and sales with a view to ensuring that they do not contribute to conflict or the adverse impacts thereof.
- (12) Third-party auditing of an economic operator's supply chain due diligence practices ensures credibility for the benefit of downstream economic operators and contributes to the improvement of upstream due diligence practices.
- (13) Public reporting by an economic operator on its supply chain due diligence policies and practices provides the necessary transparency to generate public confidence in the measures economic operators are taking.
- (14) Union importers retain individual responsibility to comply with the due diligence obligations set out in this Regulation. However, many existing and future supply chain due diligence schemes ('due diligence schemes') could contribute to achieving the aims of this Regulation. Due diligence schemes that are aimed at breaking the link between conflict and the sourcing of tin, tantalum, tungsten and gold already exist. Such schemes use independent third-party audits to certify smelters and refiners that have systems in place to ensure the responsible sourcing of minerals. It should be possible to recognise those schemes in the Union system for supply chain due diligence ('Union system'). The methodology and criteria for such schemes to be recognised as equivalent to the requirements of this Regulation should be established in a delegated act to allow for compliance with this Regulation by individual economic operators that are members of those schemes and to avoid double auditing. Such schemes should incorporate the overarching due diligence principles, ensure that requirements are aligned to the specific recommendations of the OECD Due Diligence Guidance and meet the procedural requirements such as stakeholders' engagement, grievance mechanisms and responsiveness.
- (15) Union economic operators have, through public consultations, expressed their interest in the responsible sourcing of minerals and reported on current due diligence schemes designed to pursue their corporate social responsibility objectives, customer requests, or the security of their supplies. However, Union economic operators have also reported countless difficulties and practical challenges in the exercise of supply chain due diligence because of lengthy and complex global supply chains involving a high number

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of economic operators that are often insufficiently aware or ethically unconcerned. The Commission should review the cost of responsible sourcing and of third-party auditing, the administrative consequences of such sourcing and auditing and their potential impact on competitiveness, in particular that of small and medium-sized enterprises (SMEs), and should report its findings to the European Parliament and to the Council. The Commission should ensure that micro, small and medium-sized enterprises benefit from adequate technical assistance and should facilitate the exchange of information in order to implement this Regulation. Micro, small and medium-sized enterprises established in the Union which import minerals and metals should therefore benefit from the COSME programme established by Regulation (EU) No 1287/2013 of the European Parliament and of the Council⁽⁴⁾.

- (16) Smelters and refiners are an important stage in global mineral supply chains as they are typically the last stage in which due diligence can effectively be assured by collecting, disclosing and verifying information on the mineral's origin and chain of custody. After this stage of transformation, it is often considered to be unfeasible to trace back the origins of minerals. The same applies to recycled metals, which have undergone even further steps in the transformation process. A Union list of global responsible smelters and refiners could therefore provide transparency and certainty to downstream economic operators as regards supply chain due diligence practices. In accordance with the OECD Due Diligence Guidance, upstream economic operators such as smelters and refiners should undergo an independent third-party audit of their supply chain due diligence practices, with a view to also being included in the list of global responsible smelters and refiners.
- (17) It is essential that Union importers of minerals and metals who fall within the scope of this Regulation comply with its provisions, including Union smelters and refiners which import and process minerals and concentrates thereof.
- (18) To ensure the proper functioning of the Union system while guaranteeing that the vast majority of minerals and metals falling within the scope of this Regulation and imported into the Union are subject to its requirements, this Regulation should not apply in situations where the Union importers' annual import volumes of each mineral or metal concerned are below the volume thresholds listed in Annex I to this Regulation.
- (19) In order to ensure the proper functioning of the Union system and to facilitate the assessment of due diligence schemes that might be recognised under this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending Annex I to this Regulation by establishing and amending the volume thresholds of minerals and metals and in respect of setting out the methodology and criteria to be followed for that assessment acknowledging, in this regard, the work of the OECD. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁽⁵⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the

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Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (20) Member State competent authorities should be responsible for ensuring the uniform compliance of Union importers of minerals or metals who fall within the scope of this Regulation by carrying out appropriate *ex-post* checks. Records of such checks should be kept for at least five years. Member States should be required to establish the rules applicable to infringements of this Regulation.
- (21) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. The implementing powers relating to the recognition of due diligence schemes as equivalent, the withdrawal of equivalence in the case of deficiencies, as well as the establishment of the list of global responsible smelters and refiners should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽⁶⁾. In view of the nature of those implementing acts, given the limited discretionary powers of the Commission, whereby those acts should be based on the methodology and criteria to be adopted by means of a delegated act for the recognition of due diligence schemes by the Commission, the advisory procedure is considered to be the appropriate procedure for the adoption of those implementing acts.
- (22) In order to guarantee the efficient implementation of this Regulation, provision should be made for a transitional period to allow for, *inter alia*, the establishment of Member States' competent authorities, for the Commission to recognise due diligence schemes and for economic operators to become familiar with their obligations under this Regulation.
- (23) The Commission and the High Representative of the Union for Foreign Affairs and Security Policy should regularly review their financial assistance to and political commitments with regard to conflict-affected and high-risk areas where tin, tantalum, tungsten and gold are mined, in particular in the African Great Lakes Region, in order to ensure policy coherence, and in order to incentivise and strengthen the respect for good governance, the rule of law and ethical mining.
- (24) The Commission should report regularly to the European Parliament and to the Council on the effects of the Union system laid down by this Regulation. By 1 January 2023 and every three years thereafter, the Commission should review the functioning and the effectiveness of the Union system, and its impact on the ground as regards the promotion of responsible sourcing of the minerals falling within the scope of this Regulation from conflict-affected and high-risk areas and on Union economic operators including SMEs, and should report to the European Parliament and to the Council. Those reports may be accompanied, if necessary, by appropriate legislative proposals, which may include further mandatory measures.
- (25) In their Joint Communication of 5 March 2014 entitled 'Responsible sourcing of minerals originating in conflict-affected and high-risk areas: Towards an integrated EU approach' (the 'Joint Communication of 5 March 2014'), the Commission and the High Representative of the Union for Foreign Affairs and Security Policy committed to the

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implementation of accompanying measures leading to an integrated Union approach to responsible sourcing in parallel with this Regulation, with the aim not only of reaching a high level of participation by economic operators in the Union system provided for in this Regulation but also ensuring that a global, coherent and comprehensive approach is taken to promote responsible sourcing from conflict-affected and high-risk areas.

- (26) Preventing the profits from the trade in minerals and metals being used to fund armed conflict through due diligence and transparency will promote good governance and sustainable economic development. Therefore, this Regulation incidentally covers areas falling within the Union policy in the field of development cooperation in addition to the predominant area covered which falls under the common commercial policy of the Union,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1 This Regulation establishes a Union system for supply chain due diligence ('Union system') in order to curtail opportunities for armed groups and security forces to trade in tin, tantalum and tungsten, their ores, and gold. This Regulation is designed to provide transparency and certainty as regards the supply practices of Union importers, and of smelters and refiners sourcing from conflict-affected and high-risk areas.

2 This Regulation lays down the supply chain due diligence obligations of Union importers of minerals or metals containing or consisting of tin, tantalum, tungsten or gold, as set out in Annex I.

3 This Regulation shall not apply to Union importers of minerals or metals where their annual import volume of each of the minerals or metals concerned is below the volume thresholds set out in Annex I.

All volume thresholds are set at a level that ensures that the vast majority, but no less than 95 %, of the total volumes imported into the Union of each mineral and metal under the Combined Nomenclature code is subject to the obligations of Union importers set out in this Regulation.

4 The Commission shall adopt a delegated act, in accordance with Articles 18 and 19, if feasible by 1 April 2020 but no later than 1 July 2020, to amend Annex I by establishing the volume thresholds for tantalum or niobium ores and concentrates, gold ores and concentrates, tin oxides and hydroxides, tantalates and carbides of tantalum.

5 The Commission is empowered to adopt delegated acts in accordance with Articles 18 and 19 to amend the existing thresholds listed in Annex I every three years after 1 January 2021.

6 With the exception of Article 7(4), this Regulation shall not apply to recycled metals.

7 This Regulation shall not apply to stocks where a Union importer demonstrates that those stocks were created in the current form on a verifiable date prior to 1 February 2013.

8 This Regulation shall apply to minerals and metals referred to in Annex I that are obtained as by-products as defined in Article 2(t).

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Article 2

Definitions

For the purpose of this Regulation, the following definitions apply:

- (a) ‘minerals’ means the following, as listed in Part A of Annex I:
 - ores and concentrates containing tin, tantalum or tungsten, and
 - gold;
- (b) ‘metals’ means metals containing or consisting of tin, tantalum, tungsten or gold, as listed in Part B of Annex I;
- (c) ‘mineral supply chain’ means the system of activities, organisations, actors, technology, information, resources and services involved in moving and processing the minerals from the extraction site to their incorporation in the final product;
- (d) ‘supply chain due diligence’ means the obligations of Union importers of tin, tantalum and tungsten, their ores, and gold in relation to their management systems, risk management, independent third-party audits and disclosure of information with a view to identifying and addressing actual and potential risks linked to conflict-affected and high-risk areas to prevent or mitigate adverse impacts associated with their sourcing activities;
- (e) ‘chain of custody or supply chain traceability system’ means a record of the sequence of economic operators which have custody of minerals and metals as they move through a supply chain;
- (f) ‘conflict-affected and high-risk areas’ means 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;
- (g) ‘armed groups and security forces’ means groups referred to in Annex II to the OECD Due Diligence Guidance;
- (h) ‘smelter and refiner’ means any natural or legal person performing forms of extractive metallurgy involving processing steps with the aim to produce a metal from a mineral;
- (i) ‘global responsible smelters and refiners’ means smelters and refiners located inside or outside the Union that are deemed to fulfil the requirements of this Regulation;
- (j) ‘upstream’ means the mineral supply chain from the extraction sites to the smelters and refiners, inclusive;
- (k) ‘downstream’ means the metal supply chain from the stage following the smelters and refiners to the final product;
- (l) ‘Union importer’ means any natural or legal person declaring minerals or metals for release for free circulation within the meaning of Article 201 of Regulation (EU) No 952/2013 of the European Parliament and of the Council⁽⁷⁾ or any natural or legal person on whose behalf such declaration is made, as indicated in data elements 3/15 and 3/16 in accordance with Annex B to Commission Delegated Regulation (EU) 2015/2446⁽⁸⁾;

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- (m) ‘supply chain due diligence scheme’ or ‘due diligence scheme’ means a combination of voluntary supply chain due diligence procedures, tools and mechanisms, including independent third-party audits, developed and overseen by governments, industry associations or groupings of interested organisations;
- (n) ‘Member State competent authorities’ means authorities designated by Member States in accordance with Article 10 with expertise as regards raw materials, industrial processes and auditing;
- (o) ‘OECD Due Diligence Guidance’ means the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (Second Edition, OECD 2013), including all its Annexes and Supplements;
- (p) ‘grievance mechanism’ means an early-warning risk awareness mechanism allowing any interested party, including whistle-blowers, to voice concerns regarding the circumstances of extraction, trade and handling of minerals in and export of minerals from conflict-affected and high-risk areas;
- (q) ‘model supply chain policy’ means a supply chain policy that conforms to Annex II to the OECD Due Diligence Guidance outlining the risks of significant adverse impacts which may be associated with the extraction, trade, and handling of minerals in and export of minerals from conflict-affected and high-risk areas;
- (r) ‘risk management plan’ means the written response of a Union importer to the identified supply chain risks based on Annex III to the OECD Due Diligence Guidance;
- (s) ‘recycled metals’ means reclaimed end-user or post-consumer products, or scrap processed metals created during product manufacturing, including excess, obsolete, defective, and scrap metal materials which contain refined or processed metals that are appropriate for recycling in the production of tin, tantalum, tungsten or gold. For the purposes of this definition, minerals partially processed, unprocessed or a by-product from another ore are not considered to be recycled metals;
- (t) ‘by-product’ means a mineral or metal falling within the scope of this Regulation that has been obtained from the processing of a mineral or metal falling outside the scope of this Regulation, and which would not have been obtained without the processing of the primary mineral or metal falling outside the scope of this Regulation;
- (u) ‘verifiable date’ means a date which can be verified by the inspection of physical date stamps on products or of inventory lists.

Article 3

Compliance of Union importers with supply chain due diligence obligations

1 Union importers of minerals or metals shall comply with the supply chain due diligence obligations set out in this Regulation and shall keep documentation demonstrating their respective compliance with those obligations, including the results of the independent third-party audits.

2 Member State competent authorities shall be responsible for carrying out appropriate *ex-post* checks pursuant to Article 11.

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3 Pursuant to Article 8(1), interested parties may submit supply chain due diligence schemes for recognition by the Commission with a view to facilitating the compliance of Union importers with the relevant requirements set out in Articles 4 to 7.

Article 4

Management system obligations

Union importers of minerals or metals shall:

- (a) adopt, and clearly communicate to suppliers and the public up-to-date information on, their supply chain policy for the minerals and metals potentially originating from conflict-affected and high-risk areas;
- (b) incorporate in their supply chain policy standards against which supply chain due diligence is to be conducted consistent with the standards set out in the model supply chain policy in Annex II to the OECD Due Diligence Guidance;
- (c) structure their respective internal management systems to support supply chain due diligence by assigning responsibility to senior management, in cases where the Union importer is not a natural person, to oversee the supply chain due diligence process as well as maintain records of those systems for a minimum of five years;
- (d) strengthen their engagement with suppliers by incorporating their supply chain policy into contracts and agreements with suppliers consistent with Annex II to the OECD Due Diligence Guidance;
- (e) establish a grievance mechanism as an early-warning risk-awareness system or provide such mechanism through collaborative arrangements with other economic operators or organisations, or by facilitating recourse to an external expert or body, such as an ombudsman;
- (f) as regards minerals, operate a chain of custody or supply chain traceability system that provides, supported by documentation, the following information:
 - (i) description of the mineral, including its trade name and type;
 - (ii) name and address of the supplier to the Union importer;
 - (iii) country of origin of the minerals;
 - (iv) quantities and dates of extraction, if available, expressed in volume or weight;
 - (v) where minerals originate from conflict-affected and high-risk areas or, where other supply chain risks as listed in the OECD Due Diligence Guidance have been ascertained by the Union importer, additional information in accordance with the specific recommendations for upstream economic operators, as set out in the OECD Due Diligence Guidance, such as the mine of mineral origin, locations where minerals are consolidated, traded and processed, and taxes, fees and royalties paid;
- (g) as regards metals, operate a chain of custody or supply chain traceability system that provides, supported by documentation, the following information:
 - (i) description of the metal, including its trade name and type;

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- (ii) name and address of the supplier to the Union importer;
 - (iii) name and address of the smelters and refiners in the supply chain of the Union importer;
 - (iv) if available, 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 pursuant to Article 8;
 - (v) if the records referred to in point (iv) are not available:
 - countries of origin of the minerals in the supply chain of the smelters and refiners,
 - where metals are based on minerals originating from conflict-affected and high-risk areas, or other supply chain risks as listed in the OECD Due Diligence Guidance have been ascertained by the Union importer, additional information in accordance with the specific recommendations for downstream economic operators set out in that Guidance;
- (h) as regards by-products, provide information supported by documentation as from the point of origin of those by-products, namely the point where the by-product is first separated from its primary mineral or metal falling outside the scope of this Regulation.

Article 5

Risk management obligations

- 1 Union importers of minerals shall:
- a identify and assess the risks of adverse impacts in their mineral supply chain on the basis of the information provided pursuant to Article 4 against the standards of their supply chain policy, consistent with Annex II to, and the due diligence recommendations set out in, the OECD Due Diligence Guidance;
 - b implement a strategy to respond to the identified risks designed so as to prevent or mitigate adverse impacts by:
 - (i) reporting findings of the supply chain risk assessment to senior management designated for that purpose, in cases where the Union importer is not a natural person;
 - (ii) adopting risk management measures consistent with Annex II to, and the due diligence recommendations set out in, the OECD Due Diligence Guidance, considering their ability to influence, and where necessary take steps to exert pressure on suppliers who can most effectively prevent or mitigate the identified risk, by making it possible either to:
 - continue trade while simultaneously implementing measurable risk mitigation efforts,
 - suspend trade temporarily while pursuing ongoing measurable risk mitigation efforts, or
 - disengage with a supplier after failed attempts at risk mitigation;
 - (iii) implementing the risk management plan; monitoring and tracking performance of risk mitigation efforts; reporting back to senior management

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designated for this purpose, in cases where the Union importer is not a natural person; and considering suspending or discontinuing engagement with a supplier after failed attempts at mitigation;

- (iv) undertaking additional fact and risk assessments for risks requiring mitigation, or after a change of circumstances.

2 If a Union importer of minerals pursues risk mitigation efforts while continuing trade or temporarily suspending trade, it shall consult with suppliers and with the stakeholders concerned, including local and central government authorities, international or civil society organisations and affected third parties, and agree on a strategy for measurable risk mitigation in the risk management plan.

3 Union importers of minerals shall, in order to design conflict and high-risk sensitive strategies for mitigation in the risk management plan, rely on the measures and indicators referred to in Annex III to the OECD Due Diligence Guidance and measure progressive improvement.

4 Union importers of metals shall identify and assess, in accordance with Annex II to the OECD Due Diligence Guidance and the specific recommendations set out in that Guidance, the risks in their supply chain based on available third-party audit reports concerning the smelters and refiners in that chain, and, by assessing, as appropriate, the due diligence practices of those smelters and refiners. Those audit reports shall be in accordance with Article 6(1) of this Regulation. In the absence of such third-party audit reports from the smelters and refiners in their supply chain, Union importers of metals shall identify and assess the risks in their supply chain as part of their own risk management system. In such cases, Union importers of metals shall carry out audits of their own supply chain due diligence via an independent third-party in accordance with Article 6 of this Regulation.

5 In cases where they are not natural persons, Union importers of metals shall report the findings of the risk assessment referred to in paragraph 4 to their senior management designated for this purpose and they shall implement a response strategy designed to prevent or mitigate adverse impacts, consistent with Annex II to the OECD Due Diligence Guidance and with the specific recommendations set out in that Guidance.

Article 6

Third-party audit obligations

1 Union importers of minerals or metals shall carry out audits via an independent third party ('third-party audit').

That third-party audit shall:

- a include in its scope all of the Union importer's activities, processes and systems used to implement supply chain due diligence regarding minerals or metals, including the Union importer's management system, risk management, and disclosure of information in accordance with Articles 4, 5 and 7 respectively;
- b have as its objective the determination of conformity of the Union importer's supply chain due diligence practices with Articles 4, 5 and 7;
- c make recommendations to the Union importer on how to improve its supply chain due diligence practices; and
- d respect the audit principles of independence, competence and accountability, as set out in the OECD Due Diligence Guidance.

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2 Union importers of metals shall be exempted from the obligation to carry out third-party audits pursuant to paragraph 1 provided they make available substantive evidence, including third-party audit reports, demonstrating that all smelters and refiners in their supply chain comply with this Regulation.

The requirement of substantive evidence shall be deemed to be fulfilled where Union importers of metals demonstrate that they are sourcing exclusively from smelters and refiners listed by the Commission pursuant to Article 9.

Article 7

Disclosure obligations

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 evidence of conformity with a supply chain due diligence scheme recognised by the Commission pursuant to Article 8.

2 Union importers of minerals or metals shall make available to their immediate downstream purchasers all information gained and maintained pursuant to their supply chain due diligence with due regard for business confidentiality and other competitive concerns.

3 Union importers of minerals or metals shall, on an annual basis, publicly report as widely as possible, including on the internet, on their supply chain due diligence policies and practices for responsible sourcing. That report shall contain the steps taken by them to implement the obligations as regards their management system under Article 4, and their risk management under Article 5, as well as a summary report of the third-party audits, including the name of the auditor, with due regard for business confidentiality and other competitive concerns.

4 Where a Union importer can reasonably conclude that metals are derived only from recycled or scrap sources, it shall, with due regard for business confidentiality and other competitive concerns:

- a publicly disclose its conclusion; and
- b describe in reasonable detail the supply chain due diligence measures it exercised in reaching that conclusion.

Article 8

Recognition of supply chain due diligence schemes

1 Governments, industry associations and groupings of interested organisations having due diligence schemes in place ('scheme owners') may apply to the Commission to have the supply chain due diligence schemes that are developed and overseen by them recognised by the Commission. Such applications shall be supported by adequate evidence and information.

2 The Commission shall adopt delegated acts in accordance with Article 19, supplementing this Regulation by setting out the methodology and criteria allowing the Commission to assess whether supply chain due diligence schemes facilitate the fulfilment of the requirements of this Regulation by economic operators and allowing the Commission to recognise schemes.

3 Where, on the basis of the evidence and information provided pursuant to paragraph 1 and in accordance with the methodology and criteria for recognition established pursuant to

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paragraph 2, the Commission determines that the supply chain due diligence scheme, when effectively implemented by a Union importer of minerals or metals, enables that importer to comply with this Regulation, it shall adopt an implementing act granting that scheme a recognition of equivalence with the requirements of this Regulation. The OECD Secretariat shall, as appropriate, be consulted prior to the adoption of such implementing acts.

When making a determination on the recognition of a due diligence scheme, the Commission shall take into account the diverse industry practices covered by that scheme and shall also have regard to the risk-based approach and method used by that scheme to identify conflict-affected and high-risk areas, and the listed results thereof. Those listed results shall be disclosed by the scheme owner.

The implementing acts referred to in the first subparagraph of this paragraph shall be adopted in accordance with the advisory procedure referred to in Article 15(2).

4 The Commission shall also, as appropriate, periodically verify that recognised supply chain due diligence schemes continue to fulfil the criteria that led to a recognition of equivalence decision adopted pursuant to paragraph 3.

5 The owner of a supply chain due diligence scheme for which the recognition of equivalence was granted in accordance with paragraph 3 shall inform the Commission without delay of any changes or updates made to that scheme.

6 If there is evidence of repeated or significant cases where economic operators implementing a scheme recognised in accordance with paragraph 3 have failed to fulfil the requirements of this Regulation, the Commission shall examine, in consultation with the owner of the recognised scheme, whether those cases indicate deficiencies in the scheme.

7 Where the Commission identifies a failure to comply with this Regulation or deficiencies in a recognised supply chain due diligence scheme, it may grant the scheme owner an appropriate period of time to take remedial action.

Where the scheme owner fails or refuses to take the necessary remedial action, and where the Commission has determined that the failure or deficiencies referred to in the first subparagraph of this paragraph compromise the ability of the Union importer implementing a scheme to comply with this Regulation or where repeated or significant cases of non-compliance by economic operators implementing a scheme are due to deficiencies in the scheme, the Commission shall adopt an implementing act in accordance with the advisory procedure referred to in Article 15(2), withdrawing the recognition of the scheme.

8 The Commission shall establish and keep up-to-date a register of recognised supply chain due diligence schemes. That register shall be made publicly available on the internet.

Article 9

List of global responsible smelters and refiners

1 The Commission shall adopt implementing acts establishing or amending the list of the names and addresses of global responsible smelters and refiners.

That list shall be drawn up taking into account global responsible smelters and refiners covered by supply chain due diligence schemes recognised by the Commission pursuant to Article 8 and the information submitted by Member States pursuant to Article 17(1).

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) 2017/821 of the European Parliament and of the Council. (See end of Document for details)

2 The Commission shall use its best endeavours to identify those smelters and refiners included in the list referred to in paragraph 1 of this Article that source, at least partially, from conflict-affected and high-risk areas, in particular by drawing upon information provided by the owners of supply chain due diligence schemes recognised pursuant to Article 8.

3 The Commission shall establish or amend the list using the template in Annex II and in accordance with the advisory procedure referred to in Article 15(2). The OECD Secretariat shall, as appropriate, be consulted prior to the adoption of that list.

4 The Commission shall, by means of an implementing act, remove from the list the names and addresses of the smelters and refiners that are no longer recognised as responsible on the basis of information received pursuant to Article 8 and Article 17(1). That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 15(2).

5 The Commission shall, in a timely manner, update and make publicly available, including on the internet, the information included in the list of global responsible smelters and refiners.

Article 10

Member State competent authorities

1 Each Member State shall designate one or more competent authorities responsible for the application of this Regulation.

Member States shall inform the Commission of the names and addresses of the competent authorities by 9 December 2017. Member States shall inform the Commission of any changes to the names or addresses of the competent authorities.

2 The Commission shall make publicly available, including on the internet, a list of competent authorities using the template in Annex III. The Commission shall keep that list up-to-date.

3 Member State competent authorities shall be responsible for ensuring the effective and uniform implementation of this Regulation throughout the Union.

Article 11

Ex-post checks on Union importers

1 Member State competent authorities shall be responsible for carrying out appropriate *ex-post* checks in order to ensure that Union importers of minerals or metals comply with the obligations set out in Articles 4 to 7.

2 The *ex-post* checks referred to in paragraph 1 shall be conducted by taking a risk-based approach, as well as in cases when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning the compliance by a Union importer with this Regulation.

3 The *ex-post* checks referred to in paragraph 1 shall include, inter alia:

- a examination of the Union importer's implementation of supply chain due diligence obligations under this Regulation, including regarding the management system, risk management, independent third-party audit and disclosure;

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- b examination of documentation and records that demonstrate the proper compliance with the obligations referred to in point (a);
- c examination of audit obligations in accordance with the scope, objective and principles set out in Article 6.

The *ex-post* checks referred to in paragraph 1 should include on-the-spot inspections, including at the premises of the Union importer.

4 Union importers shall offer all the assistance necessary to facilitate the performance of the *ex-post* checks referred to in paragraph 1, in particular as regards access to premises and the presentation of documentation and records.

5 In order to ensure clarity of tasks and consistency of action among Member State competent authorities, the Commission shall prepare non-binding guidelines in the form of a handbook detailing the steps to be followed by Member State competent authorities carrying out the *ex-post* checks referred to in paragraph 1. Those guidelines shall include, as appropriate, templates of documents facilitating the implementation of this Regulation.

Article 12

Records of ex-post checks on Union importers

Member State competent authorities shall keep records of the *ex-post* checks referred to in Article 11(1), indicating in particular the nature and results of such checks, as well as records of any notice of remedial action issued under Article 16(3).

Records of the *ex-post* checks referred to in Article 11(1) shall be kept for at least five years.

Article 13

Cooperation and information exchange

1 Member State competent authorities shall exchange information, including with their respective customs authorities, on matters pertaining to supply chain due diligence and *ex-post* checks carried out.

2 Member State competent authorities shall exchange information on shortcomings detected through the *ex-post* checks referred to in Article 11(1) and on the rules applicable to infringement in accordance with Article 16 with the competent authorities of other Member States and with the Commission.

3 Cooperation under paragraphs 1 and 2 shall fully respect Directive 95/46/EC of the European Parliament and of the Council⁽⁹⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council⁽¹⁰⁾ as regards data protection and Regulation (EU) No 952/2013 as regards the disclosure of confidential information.

Article 14

Guidelines

1 In order to create clarity and certainty for and consistency among the practices of economic operators, in particular SMEs, the Commission, in consultation with the European

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External Action Service and the OECD, shall prepare non-binding guidelines in the form of a handbook for economic operators, explaining how best to apply the criteria for the identification of conflict-affected and high-risk areas. That handbook shall be based on the definition of conflict-affected and high-risk areas set out in Article 2(f) of this Regulation and shall take into account the OECD Due Diligence Guidance in this field, including other supply chain risks triggering red flags as defined in the relevant supplements to that Guidance.

2 The Commission shall call upon external expertise that will provide an indicative, non-exhaustive, regularly updated list of conflict-affected and high-risk areas. That list shall be based on the external experts' analysis of the handbook referred to in paragraph 1 and existing information from, inter alia, academics and supply chain due diligence schemes. Union importers sourcing from areas which are not mentioned on that list shall also maintain their responsibility to comply with the due diligence obligations under this Regulation.

Article 15

Committee procedure

1 The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2 Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.

Article 16

Rules applicable to infringement

1 Member States shall lay down the rules applicable to infringements of this Regulation.

2 Member States shall notify the rules referred to in paragraph 1 to the Commission and shall notify it without delay of any subsequent amendment thereto.

3 In the case of an infringement of this Regulation, Member State competent authorities shall issue a notice of remedial action to be taken by the Union importer.

Article 17

Reporting and review

1 By 30 June each year, Member States shall submit to the Commission a report on the implementation of this Regulation and, in particular, on notices of remedial action issued by their competent authorities pursuant to Article 16(3) and on the third-party audit reports made available pursuant to Article 7(1).

2 By 1 January 2023 and every three years thereafter, the Commission shall review the functioning and effectiveness of this Regulation. That review shall take into account the impact of this Regulation on the ground, including on the promotion and cost of responsible sourcing

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of the minerals within its scope from conflict-affected and high-risk areas and the impact of this Regulation on Union economic operators, including SMEs, as well as the accompanying measures outlined in the Joint Communication of 5 March 2014. The Commission shall discuss the review report with the European Parliament and with the Council. The review shall include an independent assessment of the proportion of total downstream Union economic operators with tin, tantalum, tungsten or gold in their supply chain, which have due diligence schemes in place. The review shall assess the adequacy and implementation of these due diligence schemes and the impact of the Union system on the ground as well as the need for additional mandatory measures in order to ensure sufficient leverage of the total Union market on the responsible global supply chain of minerals.

3 Based on the findings of the review under paragraph 2, the Commission shall assess whether Member State competent authorities should have competence to impose penalties upon Union importers in the event of persistent failure to comply with the obligations set out in this Regulation. It may, as appropriate, submit a legislative proposal to the European Parliament and to the Council in this regard.

Article 18

Methodology for calculation of thresholds

Unless otherwise provided in this Regulation, on the basis of customs information that shall be provided upon request of the Commission by the Member States on the annual import volumes by Union importer and by Combined Nomenclature code as listed in Annex I in their respective territories, the Commission shall select the highest annual import volume per Union importer and per Combined Nomenclature code corresponding to no less than 95 % of the total annual volume of imports into the Union for that Combined Nomenclature code as the new threshold to be inserted in Annex I. The Commission shall rely in doing so on the import information for each Union importer provided by the Member States for the previous two years.

Article 19

Exercise of the delegation

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Article 1(4) and (5) and Article 8(2) shall be conferred on the Commission for a period of five years from 8 June 2017. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power referred to in Article 1(5) and Article 8(2) shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3 The delegation of power referred to in Article 1(4) and (5) and Article 8(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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4 Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6 A delegated act adopted pursuant to Article 1(4) and (5) and Article 8(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 20

Entry into force and date of application

1 This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2 With the exception of the provisions referred to in paragraph 3, this Regulation shall apply from 9 July 2017.

3 Article 1(5), Article 3(1) and (2), Articles 4 to 7, Article 8(6) and (7), Article 10(3), Article 11(1), (2), (3), and (4), Articles 12 and 13, Article 16(3), and Article 17 shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 17 May 2017.

For the European Parliament

The President

A. TAJANI

For the Council

The President

C. ABELA

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) 2017/821 of the European Parliament and of the Council. (See end of Document for details)

ANNEX I

List of minerals and metals within the scope of Regulation (EU) 2017/821 classified under the Combined Nomenclature

Part A: Minerals

| Description | CN code | TARIC subdivision | Volume threshold (kg) |
|--|----------------------|-------------------|-----------------------------------|
| Tin ores and concentrates | 2609 00 00 | | 5 000 |
| Tungsten ores and concentrates | 2611 00 00 | | 250 000 |
| Tantalum or niobium ores and concentrates | ex 2615 90 00 | 10 | Article 1(4) and Article 18 apply |
| Gold ores and concentrates | ex 2616 90 00 | 10 | Article 1(4) and Article 18 apply |
| Gold, unwrought or in semi-manufactured forms, or in powder with a gold concentration lower than 99,5 % that has not passed the refining stage | ex 7108 ^a | | 100 |

a For the purpose of amending this threshold, the imported volume obtained by applying the methodology and criteria of Article 18 shall be set as the threshold for both ex 7108 tariff lines included in Annex I.

Part B: Metals

| Description | CN code | TARIC subdivision | Volume threshold (kg) |
|--------------------------------|---------------|-------------------|-----------------------------------|
| Tungsten oxides and hydroxides | 2825 90 40 | | 100 000 |
| Tin oxides and hydroxides | ex 2825 90 85 | 10 | Article 1(4) and Article 18 apply |
| Tin chlorides | 2827 39 10 | | 10 000 |
| Tungstates | 2841 80 00 | | 100 000 |
| Tantalates | ex 2841 90 85 | 30 | Article 1(4) and Article 18 apply |
| Carbides of tungsten | 2849 90 30 | | 10 000 |

a For the purpose of amending this threshold, the imported volume obtained by applying the methodology and criteria of Article 18 shall be set as the threshold for both ex 7108 tariff lines included in Annex I.

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| | | | |
|---|----------------------|----|-----------------------------------|
| Carbides of tantalum | ex 2849 90 50 | 10 | Article 1(4) and Article 18 apply |
| Gold, unwrought or in semi-manufactured forms, or in powder form with a gold concentration of 99,5 % or higher that has passed the refining stage | ex 7108 ^a | | 100 |
| Ferrotungsten and ferro-silico-tungsten | 7202 80 00 | | 25 000 |
| Tin, unwrought | 8001 | | 100 000 |
| Tin bars, rods, profiles and wires | 8003 00 00 | | 1 400 |
| Tin, other articles | 8007 00 | | 2 100 |
| Tungsten, powders | 8101 10 00 | | 2 500 |
| Tungsten, unwrought, including bars and rods obtained simply by sintering | 8101 94 00 | | 500 |
| Tungsten wire | 8101 96 00 | | 250 |
| Tungsten bars and rods, other than those obtained simply by sintering, profiles, plates, sheets, strip and foil, and other | 8101 99 | | 350 |
| Tantalum, unwrought including bars and rods, obtained simply by sintering; powders | 8103 20 00 | | 2 500 |
| Tantalum bars and rods, other than those obtained simply by sintering, profiles, wire, plates, sheets, strip and foil, and other | 8103 90 | | 150 |

^a For the purpose of amending this threshold, the imported volume obtained by applying the methodology and criteria of Article 18 shall be set as the threshold for both ex 7108 tariff lines included in Annex I.

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ANNEX II

List of global responsible smelters and refiners' template referred to in Article 9

| | | |
|-----------|--|---|
| Column A: | Name of smelters and refiners in alphabetical order | |
| Column B: | Address of the smelter or refiner | |
| Column C: | * indicator, if the smelter or refiner sources minerals originating from conflict-affected and high-risk areas | |
| A | B | C |

ANNEX III

List of Member State competent authorities template referred to in Article 10

| | | |
|-----------|---|---|
| Column A: | Name of Member States in alphabetical order | |
| Column B: | Name of the competent authority | |
| Column C: | Address of the competent authority | |
| A | B | C |

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- (1) Position of the European Parliament of 16 March 2017 (not yet published in the Official Journal) and decision of the Council of 3 April 2017.
- (2) OECD Guidelines for Multinational Enterprises, OECD 2011 edition.
- (3) Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework, endorsed by the UN Human Rights Council in its resolution 17/4 of 6 July 2011 (A/HRC/RES/17/4).
- (4) Regulation (EU) No 1287/2013 of the European Parliament and of the Council of 11 December 2013 establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014-2020) and repealing Decision No 1639/2006/EC (OJ L 347, 20.12.2013, p. 33).
- (5) OJ L 123, 12.5.2016, p. 1.
- (6) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).
- (7) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).
- (8) Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).
- (9) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).
- (10) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

Status:

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