CIRCULARISE

The EU Conflict Minerals Regulations

How to comply?

Guide

There are 4 elements falling under the ‘conflict minerals’ definition - tin, tantalum, tungsten, and gold[1]. Their sourcing often finances armed groups and causes human rights abuses in politically unstable areas. To ensure the conflict-free sourcing of minerals and metals, the EU has created the Conflict Minerals Regulation (or the Regulation on Responsible Minerals Sourcing). The regulation puts in place due diligence obligations for the firms importing conflict minerals to the EU (see Figure 1)[2].

This guide explains the basics of due diligence in line with the EU Conflict Minerals Regulation for responsible supply chains of minerals from conflict-affected and high-risk areas.

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What are the requirements of the EU Conflict Minerals Regulation?

The law puts in place due diligence obligations for the firms importing conflict minerals to the EU above a certain threshold[2]. Importers are required to implement a due diligence scheme, which includes following the 5 measures identified in the OECD Guidance, as well as establishing a system for demonstrating compliance[1].

EU Conflict Minerals: Obligations for importers

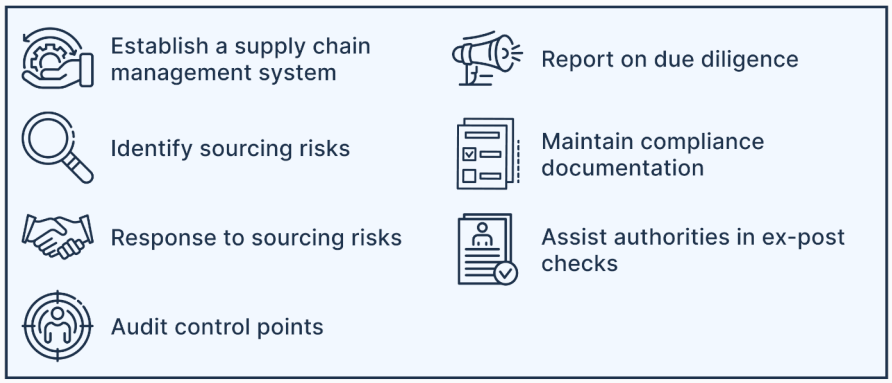

Figure 1: Obligations of the EU Conflict Minerals Regulation for importers of tin, tantalum, tungsten, and gold. Source: Circularise.

Read The EU Conflict Minerals Regulation for responsible sourcing blog to get an more detailed overview of what 'conflict minerals' are, where they are mined, what is the aim of the regulation, who does it affect, and what are the key requirements.

02

In Germany,

Circumvent sanctions are limited to 50K EUR.

Source: “The EU Conflict Minerals Regulation”

How complying with the EU Conflict Minerals Regulation can help me?

Non-compliance with the obligations of the Conflict Minerals Regulation is a dangerous route (see the list of requirements in Figure 1). It is costly for all supply chain partners and often leads to legal sanctions, reputational damage, and loss of contracts.

On the other hand, following the due diligence for conflict-free supply chains ensures firms can source minerals ethically and sustainability. If done correctly, compliance with upcoming regulations guarantees ethical business practices. Below you will find some of the key benefits of doing compliance right:

- **Circumvent sanctions**

A major risk associated with non-compliance is sanctions in the form of corrective measures[3]. After examining documents and audit reports or conducting on-the-spot inspections, the designated National Competent Authority (NCA) creates an order for a firm with a claim to address the issue[2]. Failure to introduce corrective measures is followed by a fine. The magnitude of penalties varies per Member State. Local authorities can also introduce extra measures such as an import ban in Finland or a “black list” of non-compliant companies in the Czech Republic.

- **Prepare for the upcoming regulations in the minerals & metals sourcing space**

Ensuring due diligence as identified in the EU Conflict

Minerals Regulation prepares firms for other existing and upcoming supply chain regulations. Some examples of relevant policies are the U.S. Dodd-Frank Act Section 1502, the German Supply Chain Act and the Critical Raw Materials Act (to be adopted in the first quarter of 2023)[4]. Similarly, it is likely that soon firms will have to expand their minerals due diligence to other metals, such as zinc, nickel, aluminium, cobalt, and lead.

- **Ensure commitments to social and environmental sustainability**

Furthermore, due diligence schemes guarantee that firms' sourcing practices do not lead to human rights violations. Currently, armed groups fund their activities through profits from mineral extraction[1]. These groups employ local communities and the environment. Experts say human rights abuses in the minerals supply chain include all forms of degrading treatment (e.g. beatings, threats, rape), forced and child labour, as well as exposure to hazardous substances[5]. Hence, it is essential for businesses to be on the lookout for what is happening deep in their supply chain.

Apple

terminated agreements in 2015 with many smelters and refiners when third-party audits exposed their unethical practices.

- **Maintain brand image**

Lack of sustainability efforts, in turn, can lead to reputational harm and the loss of contracts. As consumers are demanding more ethical products, such risks are growing.

03

How can I comply with the EU Conflict Minerals Regulation?

To fulfil the responsible sourcing obligations, importers of tin, tantalum, tungsten, and gold into the EU can consider the following steps:

Step 1	**Check whether the regulation affects your business**
Step 2	**Establish a robust management system for responsible sourcing**
Step 3	**Identify, assess, and prioritise sourcing risks**
Step 4	**Manage the identified risks**
Step 5	**Conduct third-party audits**
Step 6	**Report on due diligence with due regard for confidentiality**
Step 7	**Maintain compliance documentation**
Step 8	**Assist authorities with ex-post checks**

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Figure 2: 8 steps for due diligence. EU Conflict Minerals Regulation.

Source: Circularise

Step 1: Check whether the regulation affects your business

Consult Appendix 1 of this article or contact the designated NCA to check whether you import products above the threshold.

Step 2: Establish a robust management system for responsible sourcing

- Create a corporate minerals and metals supply chain policy and communicate it to upstream parties[2]. The policy should include common standards for responsible supply chain, against which an assessment can be made[6]. Namely, zero tolerance for serious abuses associated with the trade of minerals (degrading treatment, forced labour, child labour, human rights violations, war crimes, crimes against humanity, and genocide).
- Structure internal management to support the policy's implementation.
- Engage upstream suppliers by integrating the policy into contracts.
- Set up a mechanism through which any party can voice concerns about the handling of minerals.
- Integrate a chain of custody or supply chain traceability system that maps operations, business partners, and supply chains and provides data on:
    - Name and type of the minerals/metals;
    - Name and address of the supplier;
    - Quantities and dates of extraction of the minerals;

- Name and address of the smelters and refiners;
- Country of origin of the minerals/metals;
- Audit reports or statements of conformity of smelters and refiners (if present).

When minerals are mined in high-risk areas, provide additional data on the mine name, where minerals are kept, as well as taxes, fees, and royalties paid.

In case the 3TGs were obtained from other metals outside of the scope of the regulation, collect information only from the moment critical materials are separated from their primary mineral/metal.

Step 3: Identify, assess, and prioritise sourcing risks

- Carry out enhanced checks when location, supplier, or circumstance red flags are identified.
- Prioritise risks based on the severity of harm.

Step 4: Manage the identified risks

- Inform senior management regards the identified risks, with the purpose of incentivising long-term decision-making process on the supply of minerals.
- Fix internal systems.
- When risks cannot be addressed individually, seek help from existing networks (e.g. industry, monitoring groups, etc.) that can most effectively introduce measures. For example, as an importer, ask smelters to provide data necessary for ensuring compliance and/or giving auditors access to the grounds.

Step 5: Conduct third-party audits

- Evaluate the processes implemented at 'flagged' smelters and refiners to ensure responsible handling of minerals, including:
    - The state of the management system;
    - Risk assessment and response (e.g. switching suppliers);
    - Disclosure of the necessary information.
- When the smelters and refiners are included in the list of responsible smelters and refiners created by the European Commission, the importer audit is not required.

Step 6: Report on due diligence with due regard for confidentiality

- Ask the NCA for the templates for reporting and the requirements for the submission, as they may differ per country. To know what to expect, see this page for an example of a standardised template developed by the Responsible Minerals Initiative[7].
- Provide information about audit reports to your immediate downstream purchasers.
- Report on due diligence to the NCA. This can be done by sharing either the audit reports or, alternatively, the evidence of conformity with the due diligence scheme recognised by the European Commission. Read the Commission's 2019 Delegated Regulation to know how to get a supply chain due diligence scheme recognised.

- Publicly communicate about the due diligence procedure (steps taken and summary of audit reports).
- While reporting, be mindful of commercial confidentiality.

Step 7: Maintain compliance documentation

- Keep the documents that can prove compliance with the regulation.

Step 8: Assist authorities with ex-post checks

- If the designated NCA want to check compliance after the initial evaluation, grant them access to the documentation and the business premises.

04

Can to divide these 8 steps between upstream and downstream actors

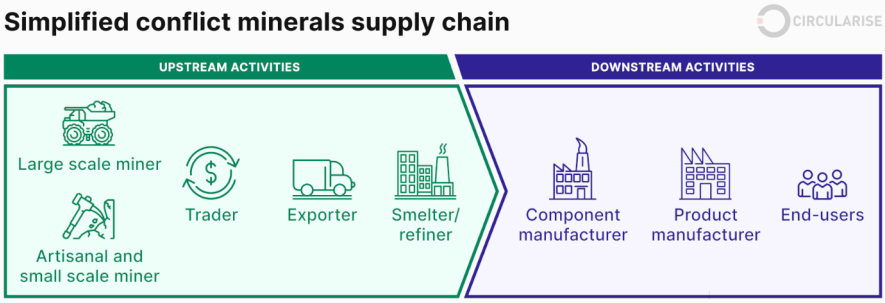

Figure 3: Simplified conflict minerals supply chain. Source: Deloitte & EPRM.

If desired by the importer, these steps can be divided between the upstream and downstream supply chain actors. Upstream companies can be responsible for:

- Establishing traceability or chain of custody of mine of origin;
- Assessing the high-risk activities on-the-ground;
- Partnering with key local actors to ensure local compliance;

At the same time, downstream companies can take care of:

- Identifying smelters and refiners that are controlled by armed groups;
- Scrutinising their upstream partner's due diligence efforts;
- Partnering with stakeholders to improve upstream mineral sourcing practices.

If your company is not an importer but is a miner, trader, transporter, manufacturer, or end-user enterprise instead, but you wish to voluntarily assess mineral sourcing practices, **see how this due diligence guidance can be personalised to your supply chain tier, mineral, and resource type** here**.**

Fulfilling all these steps described above is not easy. Businesses can seek help from the providers of due diligence and traceability software solutions.

05

Supply chain traceability as a solution for due diligence

According to Harvard Business Review,

80% of companies are unaware that they use conflict minerals.

One of the key steps to break the link between minerals and conflict is to map one's supply chain and ensure visibility. This requires tracking the chain of custody of material from the mine of origin to the brand owner or even the end user8. Within today's extremely complex and dispersed supply chains, this is a significant undertaking and presents a web of challenges from resourcing and administration to data integrity and intellectual property protection[8].

To overcome these challenges, companies should consider integrating digital traceability tools. One of the available solutions is Ciruclarise's software. It allows companies to manage Digital Product Passports and share key insights into their products with other supply chain actors, without risking sensitive data. The passports flow through along with the physical goods, with key information added at each step.

The information stored inside the Digital Product Passports can be about the due diligence performance, such as the name of the minerals, their quantities, country of origin, and dates of extraction, as well as data on the supplier, smelter and refiners, and audit reports. Hence, the software helps to fulfil the management system obligation (i.e. operating a chain of custody or supply chain traceability system that collects and shares data) set out in Article 4 of the EU Conflict Minerals Regulation.

Digital Product Passports also integrate Circularise's Smart Questioning encryption technology to share insights into product details, while keeping sensitive data private and secure. Therefore, the passports also assist in maintaining commercial confidentiality when collecting and sharing data as set out in Article 4.

Aside from ensuring compliance, the Circularise's tool enables greater efficiency in terms of time and finances. Digital Product Passports gather data from dispersed supply chain actors in a single place, thus eliminating the need for sharing numerous excel sheets and surveys. Finally, these organised records can later be accessed to prepare for the audits.

06

With the help of Circularise,

companies can assess their fulfilment of sustainable mining standards and related LCA data.

Circularise's work in the Rare Earth Elements space

Circularise is developing a "Circular System for Assessing Rare Earth Sustainability (CSyARES)" together with the Rare Earth Industry Association (REIA), the provider of mining process LCA data assessment Minviro, and the industry partners Grundfos and BEC Gmbh.

This blockchain-based traceability system will improve the transparency and sustainability of supply chains involving critical and rare earth materials by making credible upstream sustainability and LCA information available to the downstream actors.

As part of the project, Circularise integrates data coming directly from Minviro's LCA platform. The goal is to communicate evidence-backed data on raw materials from the upstream to the downstream actors. The data collected includes the assessment of the sustainable performance of supply chains based on REIA's standards for sustainable mining of raw materials.

This project has received funding from EIT RawMaterials and the European Union under Horizon Europe Partnership Agreement PA2021/EIT/EIT RawMaterials under grant No 21084.

Here's what some of our customers say about us:

"With the help of Circularise, as well as with the help of their partners we were able to trace for a number of specific cases plastics from raw material production to the final car."

Antoon Versteeg - Project Lead Innovation Research, Porsche

"Circularise helps us to maintain this confidentiality and only disclose the information needed from raw material producer to recycler. And with that, we can close the loop."

Uwe Peuker - Vice President Regional Product Management Polycarbonates, Covestro

"Circularise Plastics is building a data-exchange protocol with privacy at its heart, which we believe is a smart strategy as privacy concern is what often refrains companies from becoming more transparent."

Thomas Nuyts - Global Product Manager, Domo

Contact Circularise today

Circularise's Software system helps suppliers in chemicals and plastics, battery materials, metals, and other industries to trace and share material data including bill of materials and environmental data without risking their sensitive information.

By extension, it helps brands and OEMs to monitor their supply chains, get visibility into their own Scope 3 emissions, comply with upcoming due diligence regulations, and implement the circular economy in their operations.

To contact us, simply go to the link below!

https://circularise.com/contact

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Send us your feedback

Do you have any comments/feedback about this guide? Be sure to connect with us on our social media - we'd love to hear from you!

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Traceable supply chains for a circular economy

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