Responsible Mineral Dialogue
UK Implementation

Introduction from the UK Competent Authority

April 2019
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Who we are

BEIS - Office for Product Safety & Standards

• Technical and product-based regulations with an environmental focus
• Competent Authority for Conflict Minerals in the UK

FCO

• Policy lead on Conflict Minerals Regulation
• European Partnership for Responsible Minerals (EPRM)
Elsewhere in Government

- Customs data
- Linked serious organised crime
- Coordinated intelligence and risk-profiling
Elsewhere in Government

- **Modern Slavery Act**
  - carries on a business, (or part of a business) in the UK
  - supplies goods or services; and
  - has an annual turnover of £36M or more

Approximately **17,000 UK-registered companies** are caught by the requirements
Elsewhere in Government

- Part of the Government’s wider agenda for corporate social responsibility
- **National Contact Point** (NCP) to promote the OECD Guidelines and implement a complaints mechanism set out in the Guidelines.

OECD has also sector based *due diligence guidance* which provides practical support to companies on how to implement the Guidelines, which the UK NCP also promotes to companies.

This includes **Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas**
Elsewhere in Government

- Key work from source countries, including that in and around mine sites and smelters
- Intelligence and data to highlight future trends
- Feedback on success of work undertaken further down supply chain
Elsewhere in Cooperation
Introduction to EU Regulation

EU Regulation 2017/821 supply chain due diligence obligations

• Covers importers of 3TG:
  • Tin
  • Tungsten
  • Tantalum
  • Gold

• ... as these are known to fund conflict in certain parts of the world

• The Regulation comes into force on 1st January 2021, with an expectation that business should be able to comply from that date

• The Regulation requires Importers of 3TG to follow OECD guidance, estimated at affecting 600-1000 EU importers

• About 500 smelters/ refiners will be affected
The EU Regulation makes compliance with the OECD guidance mandatory, but only for businesses that:

- Are EU Importers, Article 2(l), based on customs codes/definitions, of tin, tantalum, tungsten and gold
- Smelters/refiners are indirectly in scope, because Union importers must undertake greater due diligence, including third party audit, if not using ‘responsible’ smelters/refiners from a list maintained by the EC

Specific exclusions include:
- EU importers of annual import volumes below a specified threshold as defined from time to time – this is to be set on the basis that at least 95% of total volumes imported into the EU are subject to the due diligence requirements
- Recycled metals
- Stocks (held by Union importer) created prior to 1 Feb 2013
- Minerals or metals obtained as by-products of the processing of other minerals/metals that are out of scope
• OECD propose due diligence regime for mineral supply chain to mitigate risk of financing conflict
• The EU Regulation obliges (some) businesses to adopt these guidelines
• Collectively, the guidance and Regulation means
  • i) business must undertake specific actions – depending upon their role in the supply chain
  • ii) obtain third party audit of some functions
  • iii) publish their policies and practices for due diligence

a ‘Competent Authority’ must be appointed to monitor compliance and act to address infringements
Role of European Commission

European Commission

1. Recognition of certain supply chain due diligence schemes
2. Monitor effectiveness of recognised schemes
3. Keep a register of recognised schemes
4. Identify and hold list of ‘responsible smelters/ refiners’, keeping the list updated
5. Hold and publish a list of Competent Authorities
6. Publish guidelines for conduct of checks
7. Publish guidelines on the identification of conflict and high-risk areas, drawing on OECD guidance
Role of Competent Authorities

Member State competent authorities

1. Undertake risk-based checks
2. Checks to include ‘on-the-spot inspections’ and at the premises’ of importers
3. Exchange information on the outcomes of checks with customs authorities, other competent authorities (subject to confidential information)
4. Apply rules for infringements, decided by the Member State, including a notice of remedial action to Importers
5. Report on enforcement actions to the European Commission
Due Diligence

The OECD refer to due diligence as:

“an on-going, proactive and reactive process”

AND

“Risk-based due diligence [is] the steps companies should take to identify and address actual or potential risks in order to prevent or mitigate adverse impacts associated with their activities or sourcing decisions”
Due Diligence

Three steps company’s should take:

1. Understand what happens through the supply chain from extraction, transportation, refining, manufacturing and selling of products containing minerals from affected areas;

2. Asses risk against company policy expectations, which is a statement of intent of how the company will trade or deal with counter-parties so as to exclude trading in minerals sourced from, or that promote, conflicts; and

3. Control or mitigate risks by taking actions suitable for its position in the supply chain and the commercial relationships it holds both up and downstream.
EU vs OECD scope

EU Regulation

*Indirectly* applies to **smelters/refiners** recognised as ‘responsible’ within recognised due diligence schemes

**Importers** of 3TG into EU markets **must** follow OECD guidance; whilst importers of metals may meet 3rd party obligations if using smelters/refiners from an ‘approved’ list

OECD guidelines

Apply to **all businesses** trading in 3TG

Actions and obligations depend upon role in supply chain
Summary of requirements on business

**EU Importers** must communicate their supply chain policy with suppliers & public (Article 4)

**EU Importers** must comply with due diligence, keep documentary evidence and 3rd party audits (Article 3); adopting OECD model policy and best practice internal management systems (Article 4)

**EU Importers** must adopt supply chain policy into agreements with suppliers (Article 4)

**EU Importers of minerals** identify, assess and respond to risk of adverse impacts, following OECD annex III (Article 5)

**EU Importers of metals** assess and respond to risk of smelters and refiners based on 3rd party audit or own due diligence, following OECD guidance (Article 5)

**EU Importers** must use 3rd party audit, or use 'responsible' smelter/refiner (Article 6 & 9)

**EU Importers** must share 3rd party audits or conformity with recognised schemes; inform downstream purchases, and publicly report annually on compliance (Article 7)

**Competent authorities** must undertake checks (Article 3)
Responsible’ smelters/ refiners

- Commission will hold a list of ‘responsible’ smelters/refiners that process minerals from conflict/high-risk areas.

- The Commission sources the names/addresses for such ‘responsible’ smelters/refiners from the good practice, and knowledge, ‘recognised due diligence schemes’.

   - Establish recognised due diligence schemes
   - Metal importers exempt from 3rd party audit if using recognised smelter/refiner (Article 6)
   - EU establish list of global responsible smelters/refiners
   - Recognised schemes set up audits of smelters/refiners
   - List derived from, in part, recognised due diligence schemes
EU Exit
EU Exit

The UK is committed to implementing Conflict Minerals legislation

- Need to develop a UK Statutory Instrument
  - Impact Assessment
  - Public Consultation
  - Awareness Activities

Complicated legal scenarios associated with whether or not the UK leaves with a “deal”. And when.
Approach to Enforcement

- **Starting process**: engage low-risk / compliant organisations
- **Develop expertise**: develop sources of information throughout sectors
- **Guide industry**: work with / inspect less compliant organisations
- **Effect change**: refine guidance and enforcement to achieve outcomes

Office for Product Safety & Standards
Approach to Enforcement

Regulators’ Code

- support compliance & growth
- engage with those we regulate
- base our activity on risk
- share information
- offer clear guidance
- be transparent

We do not take enforcement action just because an organisation asks a question or highlights a problem
Approach to Enforcement

- Education
- Informal Warning
- Enforcement undertaking
- Compliance / Enforcement / Stop Notice
- Formal Caution
- Fines
- Product withdrawal / Seizure
- Court Action
- Publicity
Thank you for your attention