Update on the EU Conflict Minerals Legislative Proposal

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The proposal seeks to address trade in minerals derived under duress and that perpetuate conflicts

- This is particularly true of minerals mined in the Democratic Republic of the Congo (‘DRC’) and surrounds.

- Mining – often undertaken in isolated rural areas – has long been overseen by armed groups.

- Conditions are often dire: working up to 48 hours at a time, miners risk life and limb amongst mudslides and tunnel collapses.

Note: these are the 'covered countries' in the US Dodd-Frank Act

The minerals mined include the '3TGs' used in electronics

	Tin	Used in alloys, tin plating and solders for electronic circuits.
	Tungsten	Used in metal wires, electrodes, and contacts in lighting, electronic, electrical and heating applications.
	Tantalum	Mainly used to produce tantalum capacitors, particularly for applications requiring high performance, small format and high reliability, e.g. hearing aids, pacemakers, GPS, laptops, mobile phones and games consoles.
	Gold	Present in some chemical compounds used in certain semiconductor and manufacturing processes.

The US responded ahead of the EU with a law targeting major American stock market listed companies

- The Dodd-Frank Act established requirements for companies that use 3TGs in their products, but only when the 3TGs are from ‘covered countries’.

- This was furthered with the adoption of a rule by the US securities regulator, SEC, in August 2012.

- For companies in scope, there is a basic process that they must adhere to.

- The due diligence process is not prescribed, however.

OECD Guidance proposes five steps for a due diligence process

Step	Activity	Practice
1	Establish strong management systems	Adopt and commit to a supply chain policy for conflict minerals; establish a system that allows the identification of the smelters in the company’s mineral supply chain; maintain records (preferably electronic) for at least 5 years; incorporate policies and traceability into supplier agreements and contracts; establish grievance/whistle-blower mechanisms.
2	Identify and assess risks	Identify smelters/refiners in your supply chain; assess due diligence practice of smelters.
3	Respond to risks	Report findings to Senior Management; exercise leverage over suppliers who can work most effectively to mitigate risks further back in the chain; monitor, track, adapt and adjust risk mitigation efforts.
4	Audit	Carry out an independent third party audit of the smelter/refiner’s due diligence programme.
5	Publicly report	Report, preferably in annual sustainability or CSR reports, information about your due diligence programme, such as: the company policy, responsible management, steps taken to identify smelters/refiners and assess their diligence, etc.

The European Commission proposed a draft law emphasising self-certification in 2014

- No mandatory requirements were proposed while the upstream part of the supply chain was targeted.
- The proposal stipulated that importers of the 3TGs into the EU should self-certify against OECD Guidance, provide information to downstream companies that use the 3TGs, and report to their relevant national Market Surveillance Authority.
- European Commission, meanwhile, to compile an 'approved list'.

Last month, the European Parliament voted to amend the Commission's draft law in some key respects

- The vote supported the Commission's stance on geographical scope and initial focus upon the 3TGs.

- The Parliament did not, however, favour self-certification. Instead, it sought to bring in mandatory requirements as follows:

  – EU-based 3TG importers to establish due diligence systems and be subject to audits of these systems;

  – Downstream companies that use the 3TGs also to identify and address risks arising in their supply chains, providing information on the practices they follow to do this.

Next steps and likely outcomes

- Discussions go on and, while there is no formal timetable, further developments can be expected.

- It is difficult to conclude anything at this juncture, save the consensus around geographical scope and the 3TGs as targets suggests these may be fixed.

- Clearly, the debate is now around approach, specifically whether this one of self-certification or mandatory requirements, equally whether downstream companies are in or out.

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