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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Review of the functioning and effectiveness of Regulation (EU) 2017/821 (Conflict Minerals Regulation) pursuant to Article 17 (2) of Regulation (EU) 2017/821

I. INTRODUCTION

The purpose of this Report is to present the findings of the European Commission (hereafter the Commission) on the first review of the functioning and effectiveness of *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*[1] (the Regulation). The Regulation entered into force on 8 June 2017. Its operational due diligence requirements apply to Union importers of Tin, Tungsten, Tantalum, and Gold (3TG) since 1 January 2021. Specifically, the Regulation establishes a Union system for supply chain due diligence, in order to curtail opportunities for armed groups and security forces to benefit from trade in 3TG through preventing the financing of such armed groups and security forces in resource-rich areas and avoiding related severe human rights abuses. The due diligence obligations for Union importers are aligned with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD DD Guidance) and integrate the 5-step framework for risk-based due diligence set out in the OECD DD Guidance.[2] The Regulation is designed to provide transparency and certainty as regards the supply practices of Union importers of 3TG, and of smelters and refiners sourcing from conflict-affected and high-risk areas (CAHRAs). Member State competent authorities (MSCAs) are responsible for the uniform implementation of the Regulation and for carrying out ex-post compliance checks on Union importers.

According to Article 17 (2), the Commission shall review the functioning and effectiveness of the Regulation by 2023 and every three years thereafter. Specifically, the review shall

> *"take into account* ***the impact of this Regulation on the ground****, including on the promotion and cost of responsible sourcing 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*."

In addition to the requirements explicitly set out in Article 17, the Commission has identified and examined further elements linked to the coverage and scope of the Regulation, which may have an impact on the Regulation's functioning and effectiveness. This Report responds to this requirement on the Commission to review the Regulation. It summarizes the findings of the

[1] OJ L 130, 19.5.2017, p. 1.
[2] OECD (2016), OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264252479-en

review study and highlights key focus areas that the Commission could continuously support and potentially further assess in the context of the upcoming reviews.

II. THE FIRST REVIEW - SCOPE AND METHODOLOGY

This Report analyses the effectiveness and functioning of the Regulation along several dimensions: (1) The impact in producing countries[3], in particular on mitigating risks of significant adverse impacts which may be associated with extracting, handling and exporting minerals from conflict-affected and high-risk areas, (2) the impact on economic operators in the EU, including on Small and Medium-sized Enterprises (SMEs), (3) the evaluation of accompanying measures such as the recognition of supply chain due diligence schemes and the impact of the indicative and non-exhaustive list of CAHRAs provided by the external expertise the Commission has called on pursuant to Article 14 (2) of the Regulation (hereinafter the CAHRA list)[4] and (4) additional considerations including on the material scope of the Regulation, the role of import volume thresholds and the interlinkages with other legislative initiatives covering the extractive sector.

This Report has been supported by an external study, inputs from MSCAs via their annual reports on the implementation of the Regulation[5] as well as consultations of the Commission with a broad range of stakeholders. The findings of the external study are based on mixed methods consisting of an extensive literature review, analysis of secondary data, field research[6], desk research and interviews and workshops with relevant stakeholders including MSCAs, European upstream and downstream operators, owners of due diligence schemes, miners, local traders, civil society and other stakeholders. The Report is based on research covering the period up to the first half of 2023.

III. REVIEW OF THE FUNCTIONING AND EFFECTIVENESS OF THE REGULATION

1. Impacts on the ground in 3TG producing countries

In 2023, the EU imported 3TG (as defined in Annex 1 of the Regulation, i.e. both metals and the minerals containing them) at a value of EUR 18.3 bn. The majority of imports in value terms consisted of gold ores and concentrates (71%), followed by tantalum (23%) tin (5%) and tungsten (1%).

In terms of quantities, total imports amounted to 26,000 tonnes, of which 45% were gold ores and concentrates, 37% tantalum, 15% tin and 3% tungsten (including the minerals that contain these metals).

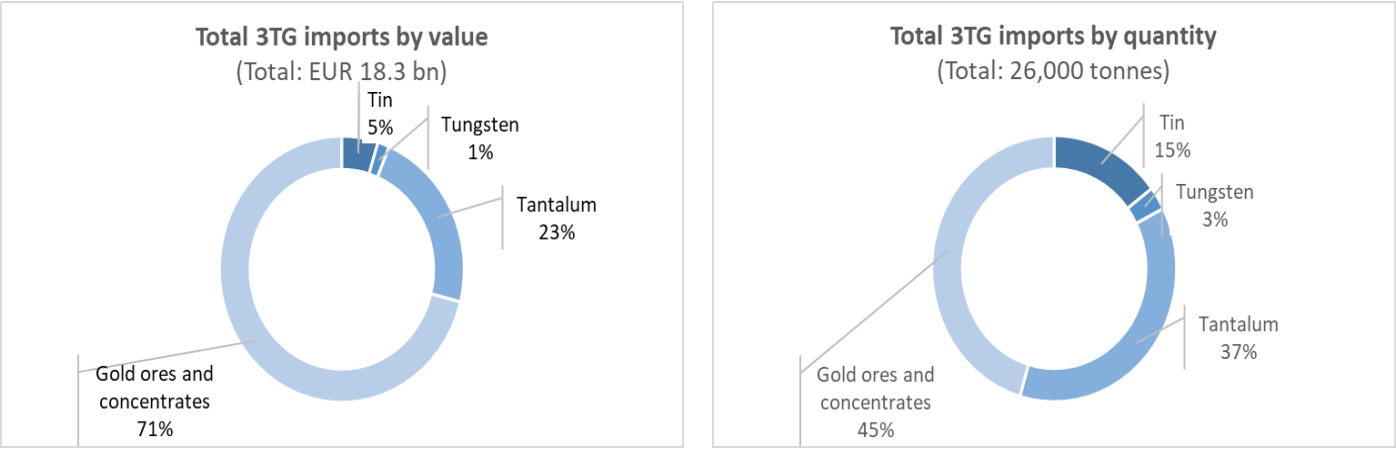
[3] With "producing countries", we refer to countries in which the extraction of 3TG minerals and ores takes place.

[4] The CAHRAs list provided by the external expertise and the information provided on the dedicated website for this list does not constitute an official opinion of the European Commission or the EU as to whether a specific region or area is or is not a CAHRA as defined in Article 2(f) of Regulation (EU) 2017/821.

[5] Article 17 (1) of the Regulation.

[6] On-the-ground case studies were carried out in Colombia and Democratic Republic of the Congo (DRC). Both countries feature on the CAHRA list and are key players of the 3TG market with active production of each mineral/metal, at varying scales.

Figure 1 - EU27 3TG imports in 2023



Source: ESTAT Comext
Note: Based on 8-digit CN codes as per Annex 1 of the Regulation

As can be seen in Table 1 below, only a marginal share of direct 3TG imports originate from countries with areas included in the CAHRA list.

Table 1 - Origin of EU 3TG imports in 2023

Item Name	Total EU Imports (1000 EUR)	Imports from CAHRAs (1000 EUR)	Direct imports from CAHRAs (%)	Countries with regions included in the list of CAHRAs	Non CAHRAs top-5 main countries of origin
Tin	875,963	12,808	1.46%	India, Democratic Republic of Congo, Türkiye, Afghanistan, Venezuela, Pakistan, Ukraine, Zimbabwe, Nigeria, Philippines, Egypt, Colombia, Burundi	Switzerland, South Africa, United Kingdom, Ecuador, Canada
Tungsten	282,892	2,929	1.04%	India, Türkiye, Philippines, Egypt, Ukraine, Pakistan	South Korea, Japan, China, USA, South Africa
Tantalum	4,136,535	1,616	0.04%	Venezuela, India, Ukraine, Türkiye, Philippines, Colombia, Nigeria, Mozambique	Indonesia, Brazil, China, Peru, Bolivia
Gold ores and concentrates	12,992,874	628,175	4.83%	India, Democratic Republic of Congo, Türkiye, Afghanistan, Venezuela, Pakistan, Ukraine, Zimbabwe, Nigeria, Philippines, Egypt, Colombia, Burundi	China, USA, Vietnam, South Korea, Canada

Source: ESTAT Comext
Note: Based on 8-digit CN codes as per Annex 1 of the Regulation

To review the impacts of the Regulation on the ground in 3TG producing countries with a focus on CAHRAs, the Democratic Republic of the Congo (DRC) (Kinshasa and Kindu regions) and Colombia (Bogotá and Medellín regions) were selected for on-the-ground and in-depth assessment. The two countries were selected to achieve a balance between relevance,

feasibility, and geographical representation, while ensuring coverage of all four minerals/metals in scope of the Regulation.

The external study additionally examined via desk-based research the impacts in areas included in the CAHRAs list in Africa, Latin America and Asia - specifically in Burkina Faso, Burundi, Nigeria, South Sudan, Venezuela, India and Myanmar. Lastly, important 3TG transit countries, notably Rwanda and the United Arab Emirates (UAE), also formed part of the desk-based assessment with the aim to provide a more holistic view of the global impacts of the Regulation.

The selection of these specific countries for in-depth and desk-based assessment is not the result of a comparison with other countries that also have CAHRAs included in the list.

a. Field research in the **DRC**

The DRC has been central for 'conflict minerals' since the concept emerged over two decades ago, due to its large reserves of 3TGs and the well-documented risks linked to armed conflict and related severe human rights abuses along 3TG supply chains. The entire DRC is on the CAHRA list.[7] The prevalence of artisanal small-scale mining (ASM) gives rise to key challenges, with cooperatives often being poorly formalised and affected by significant risks and abuses in the form of forced labour, exploitation by armed groups, (bribery, money laundering), and fraudulent misrepresentation of the origin of minerals. These risks are often referred to as "OECD DD Guidance - Annex II" risks[8]. Specifically, for gold from artisanal mining, there is currently no at-scale traceability programme, making it difficult to carry out upstream due diligence and responsibly source certified gold to reach the European market.

Table 2- Exports of 3TG from DRC in 2022

Item Name	Total exports (1000 EUR)	Main importing countries	EU share
Tin	19,533	China, United Arab Emirates	0%
Tungsten	3,162	United Arab Emirates, Thailand, Malaysia, Hong Kong, EU	3%
Tantalum	38,154	Hong Kong, United Arab Emirates, China, Thailand, EU	7%
Gold ores and concentrates	685,084	South Africa, United Arab Emirates, Burundi, Rwanda, Uganda	0%

Source: UN Comtrade
Notes: based on HS6 codes as per Annex 1 of the Regulation

The study identified some positive impacts, albeit not directly attributable to the Regulation, in terms of increased awareness and uptake of due diligence practices, including of the OECD DD Guidance on which the Regulation is based. The results of the field research however also show that awareness specifically of the Regulation is generally low in the DRC, with a resulting lack

[7] Cfr. Section III. 3. b.
[8] Annex II risks are defined in the OECD Due Diligence Guidance and are recognised as "significant adverse impacts which may be associated with extracting, trading, handling and exporting minerals" from CAHRAs". Annex II includes: any forms of torture, cruel, inhuman and degrading treatment; any forms of forced or compulsory labour, the worst forms of child labour; other gross human rights violations and abuses such as widespread sexual violence; war crimes or other serious violations of international humanitarian law, crimes against humanity or genocide.

of demonstrable direct impact. Nonetheless, knowledge of the OECD 5-step framework - that the Regulation is based on - is much more widespread. Stakeholders interviewed were aware of the due diligence requirements laid out by the OECD DD Guidance and the need to comply with the US Dodd-Frank Act[9] (DFA), which focuses specifically on the DRC and neighbouring countries

b. Field research in **Colombia**

Colombia is an OECD member since 2020.[10] The country is home to significant gold production with identified links to Annex II risks such as gold production to fuel non-state armed groups, drug trafficking, and illegal mining.[11] The Colombian *departamentos* of Antioquia, Arauca, Bolívar, Cauca, Nariño, Norte de Santander, and Valle del Cauca are included in the CAHRA list. In July 2022, Colombia adopted Law 2250 which provides the domestic regulatory basis for due diligence for 3TGs (as well as silver and platinum). Moreover, the Colombian government is undertaking several initiatives that mirror the objectives of different aspects of the OECD DD Guidance and thus the Regulation, even if these initiatives are not explicitly and consistently framed as due diligence. Formalisation of ASM is one such example, as ASM mining communities are particularly exposed to Annex II risks. The external study additionally highlighted efforts by groups like the Alliance for Responsible Mining (ARM) and the Swiss Better Gold Initiative to promote responsible sourcing within the Colombian ASM gold sector.

Stakeholders consulted in Colombia pointed to the fact that identifying costs directly associated to the Regulation is not possible due to the low volumes of direct exports from Colombia to the EU.[12]

Table 3- Exports of 3TG from Colombia in 2022

Item Name	Total exports (1000 EUR)	Main importing countries	EU share
Tin*	3,621	China, Trinidad and Tobago, Ecuador	0%
Tungsten^	25	Peru, Ecuador, Mexico	0%
Tungsten and tin oxides and hydroxides	87	EU, Panama	93%
Tantalum	5	Argentina	0%
Gold ores and concentrates	2,976,472	USA, EU, Free Zones, India, United Arab Emirates	16%

Source: UN Comtrade
Notes: based on HS6 codes as per Annex 1 of the Regulation
* Excluding tin oxides and hydroxides (CN 2825 90 85)
^ Excluding tungsten oxides and hydroxides (CN 2825 90 40)

[9] Section 1502 of the US Dodd-Frank Wall Street Reform and Consumer Act of 2010 requires U.S. listed companies to disclose whether the use 3TGs and whether these minerals originate in the DRC or adjoining country.
[10] OECD, 'Colombia'.
[11] Frédéric Massé & Philippe Le Billon (2017), 'Gold mining in Colombia, post- war crime and the peace agreement with the FARC', *Third World Thematics.*
[12] Interview with a civil society gold expert, 24 April 2023.

The results of the field work indicated limited awareness specifically of the Regulation on the ground in Colombia, with a resulting lack of identifiable direct impact. Stakeholders interviewed were, however, familiar with the OECD DD Guidance – this is encouraging, considering the fact that one of the main aims of the Regulation is to ensure that Union 3TG importers perform due diligence in a manner that is consistent with the OECD DD Guidance. The concept of supply chain traceability has particularly been internalised in Colombia's gold sector among economic operators and public authorities.

c. Desk-based case studies

The external study supporting the Commission's review pointed to the following issues in the countries selected for desk review.

In **Burkina Faso**, Annex II risks identified in the gold sector include bribery, fraudulent misrepresentation, money laundering and non-payment of taxes, direct or indirect support to non-state armed groups, and involvement of public security forces. Eight regions of the country are on the CAHRA list. During the interviews conducted for this study with key stakeholders in Burkina Faso, there was limited awareness of the Regulation's existence. In terms of responsible sourcing priorities, most interviewees were focused on the issue of mercury pollution linked to gold extraction. The interviews conducted suggest that more outreach regarding the Regulation would be necessary to increase awareness of its purpose and functioning. The EU Delegation in Ouagadougou is supporting artisanal gold mining, including in the context of the *Foundations for Peace* project.

Burundi is included in the CAHRA list. The formality and legality of its mining sector has been negatively affected by the 2019 ban on gold export for private traders, which has potentially contributed to increased illegal exports of gold. According to the stakeholders consulted, currently there are only a few foreign companies operating in the country, mainly of Chinese and Russian origin and none are exporting directly to the EU. Furthermore, there is very limited availability of mining data. The study did not identify evidence of any direct impact of the Regulation on the ground.

Six federal states of **Nigeria** are listed in the CAHRA list. The mining sector in Nigeria is currently nascent and characterised by relatively limited production of 3TG minerals, except for tantalum. Notably, Nigeria accounts for approximately 13 % of global tantalum production.[13] Still, illegal gold mining and smuggling constitute key Annex II risks in the country's north-west regions in particular (Zamfara state). The mining sector has so far not been among the priority sectors of engagement of the EU partnership with Nigeria and as a result, there has not been direct engagements on the basis of the Regulation in the country. Indirectly however, through EU's support to the Integrated National Financing Framework (INFF), and the related work on fiscal federalism, support is provided to the development of a framework for a robust minerals sector (including sector formalisation and reforming revenue generation).

[13] EITI (2022), 'Mission critical: Strengthening governance of mineral value chains for the energy transition'. https://eiti.org/documents/mission-critical, p. 99.

Rwanda's primary mined natural resources are 3TG and gemstones.[14] The 3T deposit belt that stretches from the eastern DRC through Rwanda and into Burundi accounts for 51 % of the global tantalum supply, and Rwanda contributes, according to its own statistics, to 28 % of global production, mainly in the form of concentrates.[15] While no regions of Rwanda feature in the CAHRA list, the country is important for the mining and transit of 3TG, some of which, according to international sources, may have been smuggled across the border from the DRC.[16] The EU currently supports responsible sourcing, implementation of international social and environmental protection standards and the advancement of the Sustainable Development Goals in Rwanda through the *Sustainable Development of the Mining Sector in Rwanda* project.[17] Beyond this project, no impacts directly attributable to the Regulation could be identified in Rwanda. Nevertheless, in the past decade, the Rwandan Government has implemented a range of legislative initiatives and endorsed due diligence schemes for industries to mitigate negative risks linked to mining exploration and processing operations. Such measures reflect the broader efforts to promote due diligence in the country, which the Regulation is part of.

Eight regions in **South Sudan** are on the CAHRA list. Interviews conducted in the country showed that illegal mining is widespread in the gold sector, predominantly carried out by unregistered artisanal miners. Additionally, there is a notable lack of transparency concerning the ownership of companies operating in the sector. With regard to the Regulation, no projects on responsible sourcing or conflict minerals have so far been identified in the country. Moreover, many interviewed stakeholders asserted that due diligence and responsible sourcing in the gold sector do not appear to be among the government's priorities.

In **Venezuela**, there are many risks linked to the extraction of gold and the entire country is included in the CAHRA list. Additionally, the lack of official statistics results in high levels of opacity in the sector.[18] According to consulted sources, large portions of Venezuelan gold are allegedly smuggled into neighbouring countries such as Colombia, Brazil, Suriname, and Guyana. Besides the external study, no other existing studies were found to evaluate the impact of the regulation in Venezuela. The study was unable to identify any efforts by the government to implement due diligence measures or legal changes in the mining code or any other national legislation as a result of the Regulation. There is some level of awareness of the Regulation among academics and researchers but civil society organisations as well as mining experts contacted were not aware of the Regulation.[19] It has therefore been impossible to assess any impacts on the ground that would be directly attributable to the Regulation.

India is the second largest consumer of gold (after China), reaching 774 tonnes in 2022. Due to insufficient domestic supply, the demand is primarily met through imports, often through the

[14] Major tin deposits have been found in Rutongo, Musha and Ntunga. Tantalum deposits are primarily located in Rutsiro, Muhanga, Kamonyi, etc. RMB Geological Collection. Tungsten can be found in Nyakabingo, Gifurwe and Bugarama. Gold is primarily mined in the northern and western provinces of Rwanda, Miyove, Nyungwe, and Birambo. Mining Africa, https://www.rmb.gov.rw/index.php?eID=dumpFile&t=f&f=68168&token=bca415628ca0d601bb28468f283b98d21a6986c1 .
[15] Barreto et al., 'Economic Contributions of Artisanal and Small-Scale Mining in Rwanda: Tin, Tantalum and Tungsten'.
[16] UN Security Council, Midterm report of the Group of Experts submitted in accordance with paragraph 6 of resolution 2688 (2023), S/2023/990.
[17] Delegation of the European Union to Rwanda, 'EU and Germany Join Forces to Boost Rwanda's Mining Sector,' 30 June 2023.
[18] Wilson Center, 'Exploiting Venezuela's Uncertain Future'. OECD, 'Gold Flows from Venezuela'.
[19] Interviews conducted on 30 March 2023 and 5 April 2023, respectively.

UAE, which poses a risk (see below more details on the concerns related to UAE responsible sourcing). In 2022-2023, local mining contributed to about 1.5 % of the gold supply, while recycling accounted for around 14 %.[20] The most identified risk in the Indian gold sector is smuggling, linked to non-payment of government taxes and fees and to money laundering. Two states – Chhattisgarh and Jammu and Kashmir – figure on the CAHRA list. Findings of the external study show that there is some awareness of the Regulation in India, in particular within certain organisations present in the country, such as the World Gold Council, Gems and Jewellery Export Promotion Council or the Indian Bullion and Jewellery Association.

In **Myanmar**, the tin industry is fully controlled by senior junta officials, rendering any assessment of production and trade complex. In 2021, estimates showed production of about 29,000 tonnes per year; with more than 700,000 tonnes in reserves. This makes Myanmar the fourth largest tin producer and home to the third largest tin reserves worldwide.[21] Most of the country's production ends up in Chinese refineries. The International Tin Association identifies the Chinese based Yunnan Tin Company as one of the major recipients of Myanmar's tin. 15 of Myanmar's 21 administrative areas are included in the CAHRAs list. Findings from the external study suggest that there is negligible awareness of the Regulation in Myanmar, and it was not possible to confirm any impacts on the ground directly attributable to the Regulation. Most of the interviewees focused their efforts in Myanmar on the issue of political instability and violence and did not address due diligence requirements explicitly.

The **UAE** is not a mining producer of any of the minerals covered by the Regulation but occupies a central place in the trade and transformation of gold. In forty years, it has gone up from being outside the top-100 gold importing countries to being in the top-10 nowadays, with imports from Africa experiencing a notable rise.[22] Some stakeholders interviewed argue that access to any information on UAE gold trade is very difficult. There are widespread concerns that requirements for responsible sourcing appear weak, despite a recent spate of relevant initiatives. The UAE Ministry of Economy has announced new OECD-aligned due diligence regulations covering the gold sector to go into effect in January 2024. While impacts directly attributable to the Regulation could not be identified in the UAE and the country is not included in the CAHRAs list, the UAE plays a significant role as transit hub, in particular for gold. It is therefore relevant for the functioning and effectiveness of the Regulation and important for due diligence in the sector more generally.

d. Conclusions and recommendations

The Regulation introduces supply chain due diligence obligations only on Union importers of 3TG, and as such has no direct legal effect on entities and processes in third countries. In light of this, the impacts and costs in third countries of the EU Regulation are difficult to distinguish from those resulting from broader global efforts to promote due diligence in minerals supply chains. Nevertheless, it is encouraging that in the majority of third countries assessed, there are some efforts by many actors in the 3TG sector to implement OECD-aligned due diligence in line with the Regulation's objectives. The requirements of the Regulation are part of this

[20] Indian Gold Policy Centre, '8th Annual Report 2022-2023', 26.
[21] Nicholas Gardiner et al., 'Tin mining in Myanmar: Production and potential', *Resources Policy*, December 2015.
[22] Carnegie Endowment for International Peace, 'https://carnegie-production-assets.s3.amazonaws.com/static/files/PageVittori_DubaiCorruption_final.pdf, 7 July 2020.

broader ecosystem of due diligence and responsible business conduct measures and can thus be seen as one of the tools contributing to improving due diligence in 3TG supply chains.

The study identified potential to improve the impact of the Regulation through increased engagement by the EU in 3TG producing and transit countries. The effectiveness and functioning of the Regulation could be further enhanced through increased outreach, beginning with outreach by EU Delegations in countries with areas included in the CAHRA list. Strong interest and receptivity about the Regulation were encountered across local stakeholder groups. Therefore, further engaging stakeholders involved in 3TG production and trade in countries with CAHRAs, where possible, presents a significant opportunity to enhance the Regulation's impact.

2. Impacts on EU economic operators

a. Uptake of due diligence by EU economic operators, including downstream operators

The assessment shows that when the Regulation entered into force, Union importers and downstream operators had different levels of awareness of due diligence according to their role in the 3TG supply chain and company size. Engagement in 3TG international trade covered by the US DFA since 2010 strongly influenced companies' awareness about the principles of due diligence and how to implement them.

Many Union importers that were first introduced to due diligence through the Regulation were made aware of their obligations through contacts with MSCAs. A positive outcome of the study was the fact that companies, thanks to the contacts with MSCAs, have been gradually improving the implementation of their due diligence obligations under the Regulation. MSCAs highlight the need to continue raising awareness on the detailed requirements of the Regulation for operators. While some SMEs have reported facing difficulties in carrying out external third-party verifications, the majority of consulted Union importers within the scope of the Regulation's due diligence requirements rely on supply chain due diligence schemes. This suggests that any potential recognition of such schemes that fulfil the requirements by the Commission would facilitate the compliance of importers with relevant requirements and shape many companies' experiences of the Regulation (cfr. section "3. Accompanying Measures" for details).

Uptake of due diligence and compliance levels of EU economic operators vary across Member States. The main shortcomings reported relate to lack of information on management system obligations and risk management obligations, incomplete audit reports, failures regarding disclosure and reporting obligations and inconsistencies between reported import volumes and customs data. One additional key challenge faced is a general EU-wide shortage of qualified auditors and a lack of audits that meet the relevant requirements of the Regulation. The views on the costs of compliance from interviewees differed significantly. On the one hand, due diligence is increasingly a mainstream norm in the metals and minerals industry, and the Regulation aligns with many standard business practices. On the other hand, companies explained that administrative burdens and auditing costs of compliance could be rather significant, especially for SMEs. It was estimated that the costs for an audit range from EUR

8,000 to EUR 10,000, a significant expense for SMEs. At the same time, companies (and MSCAs, see below) suggested that a possible recognition of schemes and an eventual list of EU-recognised responsible smelters could lower these costs significantly.

While the Regulation lays down due diligence obligations only on Union importers of the metals and minerals as such, there are indications that economic operators further downstream in the value chains are also advancing with their due diligence efforts. To undertake an assessment of due diligence uptake by downstream companies, the Commission is preparing an online voluntary tool for downstream companies to publish information on their due diligence practices, the Responsible Minerals Information System – ReMIS, which is expected to be launched in the second half of 2024 (cfr. section "3. Accompanying Measures").

b. Enforcement of the Regulation by MSCAs

The Regulation requires MSCAs to carry out "appropriate ex-post compliance checks" on economic operators. The analysis carried out for this review has shown that MSCAs are endowed with different capacities, resources allocated, and expertise as regards raw materials, industrial processes and auditing. As a result, they have varying abilities to carry out and follow up on ex-post checks. As a general note, after only the first round of annual ex-post compliance checks conducted, the findings of MSCAs are limited. Several Member States noted that more time is needed to gain insights regarding import patterns and potential circumventions, and to have a clearer picture based on relevant data.

As per Article 17 (1) of the Regulation, by 30 June each year, Member States shall submit to the Commission a report on the implementation of the Regulation. The latest findings from MSCAs' reports that are included in this review therefore date back to 30 June 2023 and cover checks carried out in 2022. It is important to note that, after only the first round of annual ex-post compliance checks conducted, the findings of MSCAs are limited.

The information submitted to the Commission via the annual implementation reports of MSCAs confirms that in 2021, MSCAs started outreach, awareness sessions for operators and preparations for ex-post checks. An increasing number of MSCAs have started carrying out ex-post compliance checks in 2022, of which many were planned to be concluded in 2023. In total, the Commission received implementation reports from 22 out of the 27 Member States on 30 June 2023.

12 of the 22 Member States had already planned or started conducting ex post checks: Austria, Belgium, Bulgaria, Cyprus, Czechia, Denmark, Finland, France (pilot checks), Germany, Luxemburg, Malta and Spain. In Poland, the ex-post checks had not started, as the legislative basis for them in Polish National Law had not yet been put in place.[23] Portugal announced it would commence ex-post checks in the second half of 2023. Ex-post checks in other Member States had not been conducted, as no importers were identified above the import volume thresholds laid down in the Regulation.

In 2022, based on the customs data provided by MS reporting information, there were 8,286 identified Union importers of 3TG minerals and metals of which 477 (6%) imported quantities

[23] The government of Poland adopted an act on modalities of implementation of the Regulation on 12 March 2024.

equal to or above the annual volume thresholds. Thresholds have been set to ensure that covered imports correspond to at least 95% of the total volumes of 3TG imported into the EU (cfr. section III. 4. b). There is a wide variation among Member States as regards the numbers of importers that fall within the scope of the Regulation.

Findings confirm that the level of compliance strongly varies, and some Member States have not reported any conclusive findings of their ex-post compliance checks because of multiple reasons, including the ongoing development of their internal auditing system, assignment of a competent authority, or due to the fact that they had only recently received the relevant customs data from their customs authorities.

In terms of implementation by MSCAs, both the external study, as well as the annual implementation reports of MSCAs point to a number of challenges. Member States reported that the majority of Union importers within the scope of the Regulation's due diligence requirements rely on supply chain due diligence schemes which can facilitate their compliance with the Regulation. However, this facilitating element is not applicable yet given that the Commission has not recognised any scheme to date (cfr. Section III 3 a). Another challenge raised in particular by smaller Member States is the lack of capacity and resources of MSCAs to enforce the Regulation. MSCAs have expressed their support for further exchanges of best practices and coordination among them. MSCAs have also highlighted a number of risks related to Union imports of gold (cfr. section III 4. e.), as well as challenges to traceability posed by materials in recycled form or finished products, which currently fall outside the scope of the Regulation, especially in the gold sector, where recycling may be associated with conflict materials.

Member States remain responsible for the uniform implementation of the Regulation, as per Article 10 (3). To facilitate the exchanges among Member States and support a uniform implementation of the Regulation, the Commission has introduced relevant tools, notably the quarterly Expert Group Meetings on the Responsible Sourcing of Tin, Tantalum, Tungsten and Gold (3TG Expert Group), as well as the ongoing work on setting up a platform for the secured exchange of relevant customs data among Member States (Responsible Minerals Monitoring System). The external review study has identified the 3TG Expert Group as an effective platform for MSCAs and the Commission to meet, exchange information and increase convergence in enforcement.

The ongoing work on a platform for the exchange of customs data, currently in the pilot phase, can support the exchanges of Member States aiming at monitoring and preventing circumventing practices by Union importers. Specifically, the platform will allow MS to share and consult the importing company-related customs information for the minerals and metals covered by the Regulation to minimise the risk that importers split shipments and import via different Member States to remain under the applicable import volume thresholds imposed by the Regulation.

3. Accompanying measures to the Regulation

This section examines the functioning and effectiveness of the various tools supporting the implementation of the Regulation. These tools are listed in the table below.

Table 4 - Overview of tools supporting the implementation of the Regulation

Tools supporting implementation	Reference in the Regulation / Description
a. Supply Chain Due Diligence Schemes and The List of Responsible Smelters and Refiners ("EU White List")	Recital 14 and Article 8 of the Regulation, Recital 16 and Article 9 of the Regulation
b. List of Conflict-Affected and High-Risk Areas (CAHRAs list)	Article 14 (2) of the Regulation; Commission Recommendation (EU) 2018/1149 of 10 August 2018; Methodology and list developed and regularly updated by RAND Europe: CAHRAs (cahraslist.net)
c. European Partnership for Responsible Minerals (EPRM)	Launched in 2016 as a multi-stakeholder initiative undertaking projects in the 3TG ASM sector. Forum between industry, governments and civil society. https://europeanpartnership-responsibleminerals.eu/
d. Other measures outlined in the Joint Communication of 5 March 2014[24]	Policy dialogues with third countries, Raw Materials Diplomacy, Development Cooperation with third countries. Since 2021, Strategic Raw Material Partnerships with third countries[25].
e. Responsible Minerals Information System (ReMIS)	Online voluntary tool for downstream companies to publish information on their due diligence practices. The tool is technically ready to be launched and the Commission is finalising data protection arrangements with Member States before making ReMIS publicly available.
f. Due Diligence Ready! portal	With a focus specifically on SMEs, the Due Diligence Ready! tool developed by the Commission is operational and used as a supporting tool in the efforts of understanding and implementing due diligence. The portal supports SMEs to: • learn about the benefits they can gain from performing due diligence on their supply chains

[24] JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Responsible sourcing of minerals originating in conflict-affected and high-risk areas Towards an integrated EU approach, JOIN/2014/08 final.

[25] Raw materials diplomacy - European Commission (europa.eu)

	• understand, assess and mitigate risks and impacts in their supply chains related to responsible sourcing • understand and implement the OECD DD Guidance and learn how to do due diligence for responsible mineral sourcing (the OECD DD Guidance applies to all minerals. Research and stakeholders interviewed did point to the need for more step-by-step and targeted support through the tool. https://single-market-economy.ec.europa.eu/sectors/raw-materials/due-diligence-ready_en

a. Recognition of due diligence schemes and EU "White List"

The Regulation recognizes that due diligence schemes can facilitate the compliance of Union importers with the Regulation's requirements. According to Articles 3 and 8, the Commission shall adopt implementing acts recognising supply chain due diligence schemes based on applications from scheme owners. The process for the assessment and criteria for potential recognition of schemes is outlined in a Delegated Regulation[26], which is based on the methodology developed by the OECD to assess due diligence schemes for minerals, thereby ensuring that such schemes effectively meet the standards of the Regulation.

Currently, five schemes are in the process of being assessed for recognition, with no scheme recognized to date. The assessments are based on in-depth documentation review, interviews with stakeholders involved with the schemes and on-the-spot verification, so-called "shadow audits". They examine both the policies and standards of the schemes and how they are implemented. The schedule for assessments, and in particular for the shadow audits", was heavily impacted by the Covid19 pandemic, resulting in delays in the assessment processes. The necessary stringency of criteria, the various steps of the procedure and the need to carry out thorough assessments as well as the possibility of reapplication, are also determining factors for the duration of the recognition process.

Interviews with companies confirm that many of them are already members of schemes or align their practices to these schemes, even though they are not yet recognized. While some stakeholders have mentioned the cost of due diligence schemes as a potential limiting factor for compliance, the estimated costs appear to be financially proportionate for many actors.

Additionally, some stakeholders have flagged the importance of transparency of the schemes. Schemes can facilitate access to information on the materials' origin to confirm compliance with the legal obligations of the Regulation. Nevertheless, in the majority of ex-post checks conducted by MSCAs on Union importers participating in supply chain due diligence schemes, the importers could not provide the authorities with information on the country of origin, as is

[26] Commission Delegated Regulation (EU) 2019/429 of 11 January 2019 supplementing Regulation (EU) 2017/821 of the European Parliament and of the Council as regards the methodology and criteria for the assessment and recognition of supply chain due diligence schemes concerning tin, tantalum, tungsten and gold, OJ L 75, 19.3.2019, p. 59–65.

required by Article 4 of the Regulation. Closer engagement and exchange between MSCAs, Union importers and schemes with regard to these transparency challenges should be further encouraged.

It is important to flag that, notwithstanding the recognition of schemes as a tool to facilitate implementation, Union importers retain the individual responsibility to comply with the requirements of the regulation irrespective of whether they are part of recognized schemes. Hence, the schemes can be tools to facilitate the compliance by Union importers, but do not relieve them from their individual responsibility to conduct due diligence.

The Regulation provides that the Commission shall adopt an implementing act establishing a list of responsible smelters and refiners as per Article 9 of the Regulation. To draw up the list, the Commission shall take into account smelters and refiners covered by recognised due diligence schemes, as well as information provided by Member States. As no schemes have been recognised to date, the EU list has not yet been drawn up.

b. The CAHRAs list

The Regulation foresees assistance to economic operators in identifying CAHRAs. Pursuant to Article 14, the European Commission has developed non-binding guidelines for the identification of CAHRAs and other supply chain risks.[27] It has also tasked RAND Europe to provide external expertise in the form of a methodology to determine countries to be placed on the CAHRA list, and to provide an indicative, non-exhaustive and regularly updated list of conflict-affected and high-risk areas.[28] As already underscored in footnote 4 above, the CAHRA list provided by the external expertise (and the information provided on the dedicated website for this list) does not constitute an official opinion of the European Commission or the EU as to whether a specific region or area is or is not a CAHRA as defined in Article 2(f) of Regulation (EU) 2017/821. Nevertheless, the CAHRA list serves as an operational tool to guide risk mitigation efforts and enable companies to apply due diligence in line with the EU Regulation.

The inclusion of an area as conflict-affected and/or high-risk in the list does not prohibit, imply, or suggest that business activities should not be conducted in this area. The list enables companies to identify those areas where they should conduct risk-based due diligence in order to source or continue sourcing 3TGs with the help of due diligence company processes.

Companies interviewed in the context of the external study confirm the CAHRAs list is a useful tool to assess risks of regional conflicts. Some respondents report using it together with other lists for CAHRAs such as the one produced by the Responsible Minerals Initiative (RMI). Other stakeholders suggested that awareness of the list could be improved. Interviews also confirm that it is important to continue emphasizing the indicative non-exhaustive nature of the list. In terms of the content of the list, some stakeholders have suggested considering technical changes including the frequency of the update and updates to the methodology to refine the geographical areas, as well as to consider the inclusion of transit countries in the list.

[27] Commission Recommendation (EU) 2018/1149 of 10 August 2018 *on non-binding guidelines for the identification of conflict-affected and high-risk areas and other supply chain risks under Regulation (EU) 2017/821 of the European Parliament and of the Council*, OJ L 208, 17.8.2018, p. 94–106.
[28] The list is available on https://www.cahraslist.net/.

c. The European Partnership for Responsible Minerals (EPRM)

The European Partnership for Responsible Minerals (EPRM) was launched in 2016 to support the implementation of the upcoming Regulation through i) responsible production, ii) responsible sourcing, and iii) linking production and sourcing. The EPRM, predominantly funded by the European Commission and some Member States, is a multi-stakeholder initiative and functions as a forum between industry, governments and civil society. It aims to build capacity on due diligence practices across the 3TG supply chain.

The EPRM has two main objectives. The first is to support SMEs in performing due diligence, through tools such as the "Due Diligence Check" providing a questionnaire to assess companies' alignment with the OECD DD Guidance and offering concrete advice to improve practices and the "Due Diligence Hub" providing tailored information to perform due diligence. The second objective is to support ASM to produce more responsibly and accessing formal markets at national and international levels. To that end, the EPRM finances projects in CAHRAs and aims at building best practices and collaboration along 3TG supply chain actors to strengthen responsible practices.[29]

Over the years, the EPRM has built due diligence knowledge, provided a forum for multi-stakeholder discussions, and confirmed the added-value of support to upstream due diligence via on-the-ground projects. The delivery of results, in particular since 2021, has significantly increased. The partnership also appears to be better aligned with EU priorities.

Areas for further improvement include the need to increase the membership basis, diversify its funding sources, increase outreach to producing countries, strengthen the focus on sustainability and improve its monitoring and evaluation capacity of its own activities. Stakeholder consultations also highlight the opportunity to facilitate the application process to EPRM grant funding for civil society organisations and stakeholders from CAHRAs, to further train local supply chain actors in CAHRAs on due diligence mechanisms, possibly jointly with collaborative industry schemes, and to expand linkages between beneficiaries and economic operators.

d. Other measures outlined in the Joint Communication of 5 March 2014 – Raw Materials Diplomacy

With regard to Raw Materials Diplomacy and development cooperation beyond existing programmes such as the EPRM, the EU has carried out many activities supporting sustainable development of the mining sector in partner countries. Tantalum and tungsten, two of the materials covered by the Regulation, also feature on the EU list of Critical Raw Materials (CRMs) and are therefore within the scope of broader EU efforts in the field of CRMs. One key example of such efforts, forming part of the external dimension of the Critical Raw Materials

[29] During the period 2017-2020, the EPRM awarded 18 grants or other forms of project subsidies with a total expenditure of €6 million. Three additional pilot projects were selected and started implementation in early 2022, with a further Call for Proposal launched in the summer of 2023.

Act[30] is the work on concluding Strategic Partnerships on raw materials value chains between the European Union and third countries.

Such Partnerships are based on a bilateral and non-binding Memorandum of Understanding (MoU) and a roadmap of concrete actions to be agreed within six months from the conclusion of the MoU. The key pillars of these MoUs aim at promoting environmental, social and governance (ESG) standards and responsible mining practices, mobilizing funding for relevant infrastructure, building capacity, cooperating on research and innovation and integrating raw materials value chains by fostering business engagement and sustainable investments.

To date, the EU has already signed Partnerships with Argentina, Australia, Canada, Chile, the Democratic Republic of the Congo, Greenland, Kazakhstan, Namibia, Norway, Rwanda, Ukraine, Uzbekistan, and Zambia, with further Partnerships, notably with other African countries, in the pipeline.

This work on Strategic Partnerships is complementary to the aims of the Joint Communication of 5 March 2014 and the Critical Raw Materials Act, going hand in hand with the objective of promoting responsible sourcing of raw materials. This work is also supported whenever appropriate by political dialogues that the EU maintains with countries of relevance from the perspective of responsible minerals value chains.

e. The Responsible Minerals Information System (ReMIS)

While the Regulation does not lay down binding due diligence obligations for downstream economic operators, the Commission shall evaluate the uptake of due diligence by those operators (Article 17 (2) of the Regulation). To undertake this assessment, the Commission is setting up the Responsible Minerals Information System – ReMIS. This is an online voluntary tool for downstream companies to publish information on their due diligence practices. ReMIS is technically ready to be launched and the Commission is finalising data protection arrangements with Member States. As ReMIS has not been launched yet, it has not been possible for this first review to comprehensively undertake an assessment of due diligence uptake by downstream companies.

f. The "Due Diligence Ready!" portal

The Commission has specifically developed the "Due Diligence Ready!"[31] portal to help companies source minerals and metals responsibly and, if applicable, comply with regulatory requirements, including Regulation (EU) 2017/821. The portal provides general information[32] on due diligence obligations as well as a set of tools[33] to help with the due diligence workflow. It also delivers Webinars and PowerPoint training material[34] for download in seven languages (English, French, German, Italian, Polish, Portuguese and Spanish). Additionally, the portal offers (recorded) training material, among others based on a virtual session hosted in June 2023,

[30] COM(2023)160 final, https://eur-lex.europa.eu/resource.html?uri=cellar:903d35cc-c4a2-11ed-a05c-01aa75ed71a1.0001.02/DOC_1&format=PDF
[31] https://single-market-economy.ec.europa.eu/sectors/raw-materials/due-diligence-ready_en
[32] https://single-market-economy.ec.europa.eu/sectors/raw-materials/due-diligence-ready/about_en
[33] https://single-market-economy.ec.europa.eu/sectors/raw-materials/due-diligence-ready/due-diligence-toolbox_en
[34] https://single-market-economy.ec.europa.eu/sectors/raw-materials/due-diligence-ready/training-and-events_en

addressed to SMEs in Europe and industry associations. The objective of that virtual training session was to:

- Set the context of the EU Regulation looking at objectives, scope and state of play.
- Provide practical guidance to SMEs to implement due diligence in their own companies.
- Focus recommendations to the context of SMEs in Europe, who most likely have to deal with limited resources to implement due diligence practices.
- Remind companies of the tools available in the sector to support, and that the DDR portal aims at collecting them in one place for companies to access easily. It should also remind the SMEs advisory service where companies can turn to for questions.

A free email advice[35] service was launched in February 2023, through which project experts have been available to explain and guide SMEs importing 3TGs on how to implement the Regulation. This email advisory has been available also in seven languages.

Research conducted for the purposes of the external study on the review of the Regulation, as well as stakeholders interviewed, pointed specifically to the importance of targeted support through the tool, which is undergoing continuous improvements and updates.

4. Additional elements of the review that may impact the effectiveness of the Regulation

In addition to the elements explicitly prescribed by the review article of the Regulation, the review examined further issues that may impact the functioning and effectiveness of the Regulation. These include an assessment with regard to the existing coverage of the Regulation (risks related to thresholds and to illicit trade in gold), the scope in terms of minerals and risks covered by the due diligence obligations, as well as the possible interlinkages with other relevant EU legislation in the extractive sector (Batteries Regulation, Critical Raw Materials Act, Corporate Sustainability Due Diligence Directive).

Import volume thresholds

The Regulation has a global scope, i.e. any importer of 3TG irrespective of origin with an annual import volume that exceeds the thresholds established in Annex I is subject to the due diligence obligations. Importers who fall below these thresholds do not have a legal obligation under the Regulation, but are encouraged to carry out due diligence on a voluntary basis. The thresholds in the Annex have been set to ensure that covered imports correspond to at least 95% of the total volumes of 3TG imported into the EU, so that the overwhelming majority of imports is covered by the due diligence requirements while at the same time avoiding unwarranted administrative burden on SMEs and low-volume importers.

While the external study concludes that the thresholds can effectively achieve the objective of relieving SMEs from excessive administrative burden, concerns have been raised by stakeholders that the existing thresholds may result in circumvention practices by Union importers. In addition, some stakeholders expressed concern that the established thresholds exclude high-risk imports, exempting them from due diligence requirements. This concern is

[35] https://single-market-economy.ec.europa.eu/sectors/raw-materials/due-diligence-ready/about_en#free-email-advisory

particularly relevant in the case of gold, considering the potentially high monetary value of small volume imports that fall below the thresholds, as well as the fact that high-risk imports could also be associated with relatively low import quantities.

These issues require careful monitoring. However, there is currently no clear evidence of circumventing practices (e.g. dividing imports across several importers to remain below the thresholds) identified by the external study or reported to the Commission by MSCAs. The Commission and Member States are working closely to ensure continuous monitoring of import patterns. The Commission is notably preparing an IT tool, the Responsible Minerals Monitoring Tool (RMT), an online platform that would allow a secure exchange of customs data among MSCAs.

In view of the lack of adequate data to date, the study concluded that it is premature to consider modifying the thresholds or revising the threshold calculation methodology. Implementation efforts will therefore focus on facilitating information exchange between MSCAs with a view to enhancing monitoring capacities and quantitative insights on direct and indirect trade data, investment and profit-sharing trends; thereby enabling a deeper analysis of the potential impact of the thresholds in the future.

Illicit trade in gold

The Regulation recognises that illicit trade indirectly links consumers to conflicts that have severe impacts on human rights outside the EU. The external study highlights that transit hubs play a role in global supply chains of 3TG by linking potential illicitly sourced and traded gold to the EU market.

The issue of illicit trade, especially for gold given its inherent characteristics, is extremely complex and multi-dimensional. Due diligence is one of the tools available in international efforts to combat smuggling. In this regard, there are instruments such as due diligence schemes and traceability mechanisms to help address risks of illicit trading at different stages of the supply chain. Tools within the Regulation's framework can play a positive role to tackle illicit trade to the EU. For example, the inclusion of cross-border transit countries and other hubs of imported minerals and metals from CAHRAs in the CAHRA list could contribute to a more thorough assessment of the metals/minerals' origin by buyers.

Material scope

The Regulation lays down due diligence obligations for four minerals and metals: tin, tantalum, tungsten and gold. The reason behind this choice at the time of adoption of the Regulation is threefold. First, 3TG are the four minerals that are most often associated with armed conflicts and related human rights abuses. Secondly, the Regulation draws on well-established principles of the OECD DD Guidance. While the Guidance applies in principle to all minerals, it includes two supplements specifically on 3TG, tailored to the challenges associated with the structure of the supply chains of these four minerals. Thirdly, the scope of the Regulation is aligned with efforts of other partners – for instance, the US also has legislation on conflict minerals: Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Act of 2010 covers the same four products, although with a narrower geographical scope (as it focuses on the DRC and neighbouring countries).

Beyond 3TG, other minerals and metals that are critical for the green and digital transitions may be associated with conflict-related risks, due to their current and projected large demand and the fact that major deposits exist in socially and/or environmentally fragile regions. For this reason, the review has sought to analyse whether bringing other minerals/metals under the scope of the Regulation would be necessary to fulfil the objective of preventing the financing of armed groups and security forces in resource rich CAHRAs. Specifically, the external study has assessed cobalt, copper, lithium and nickel in terms of their production structure and exposure to comparable risks as 3TG. These four minerals feature in the EU's list of critical raw materials, with copper, lithium and nickel also considered as strategic raw materials[36]. They are therefore within the scope of the Critical Raw Materials Act. Furthermore, cobalt, lithium and nickel are within the scope of the Batteries Regulation and hence covered by the due diligence requirements enshrined therein.

Cobalt is a versatile metal used in various applications, including batteries as well as the aerospace, defence and medical sectors. The DRC supplies more than 70% of the global market. The mineral is extracted primarily as a by-product of large-scale copper mining in the southern provinces of Haut-Katanga and Lualaba that do not face the significant presence of non-state armed groups. China controls 70% of the global processing of cobalt intermediates[37] and it is well-represented in the mining of cobalt with 15 of the 19 industrial operations controlled by Chinese interests, while artisanal mining production is also largely bought by Chinese refiners, including Huayou Cobalt.[38] The majority of the cobalt supply is used in the manufacturing of batteries, especially for lithium-ion batteries, used in consumer electronics, electric vehicles and energy storage systems.

Copper is a metal widely used in electrical equipment, construction, industrial machinery, and alloys. Chile dominates copper production, with immense industrial operations such as the Escondida or Andina mines. Currently, Peru, Indonesia and Mongolia are in the process of opening new mines[39], while the DRC is estimated to become the second global copper producer by 2026.[40] Being a primary metal, the extraction of copper is often linked to the extraction of cobalt, as is the case in the DRC Copperbelt. While most extraction of copper ore is through large scale mining, artisanal production of copper also exists as miners often oscillate between copper and cobalt depending on global prices.

Lithium is a lightweight metal used in lithium-ion batteries, particularly for electric vehicles.[41] Lithium is also used in alloys, glass, ceramics, lubricants and pharmaceuticals. It is primarily found in igneous rocks (spodumene) and mineral springs (brines), with the majority of its production coming from Australia and Chile. The global lithium reserves are dominated by a few countries, including Chile, Argentina and Bolivia.[42] Mining lithium requires large-scale mechanised extraction due to low-grade deposits, making it less suitable for artisanal and small-

[36] Critical raw materials - European Commission (europa.eu)
[37] Andrew Gulley, (2022) 'One hundred years of cobalt production in the Democratic Republic of the Congo'. *Resources Policy* 79: 103007; IEA (2021) 'The Role of Critical Minerals in Clean Energy Transitions.'
[38] Dionne Searcey, Michael Forsythe, and Eric Lipton, 'A Power Struggle Over Cobalt Rattles the Clean Energy Revolution', *New York Times*, 20 November 2021.
[39] World Economic Forum (2022), 'Which countries produce the most copper'.
[40] *Reuters* (2023) 'Congo could seize Peru's No. 2 copper spot as Andean output slows'.
[41] World Economic Forum. 2023. This chart shows which countries produce the most lithium.
[42] Natural Resources Canada. n.d., 'Lithium Facts.'

scale mining. However, with significant recent discoveries in the DRC[43] and Zimbabwe,[44] an artisanal mining sector is developing in these countries.

Nickel is a widely used metallic element, crucial for plant growth and commonly found in stainless steel and electric vehicle batteries. Currently, nickel is predominantly mined in industrial settings in Indonesia, the Philippines, Russia and the French overseas territory of New Caledonia.[45] Artisanal mining of nickel has been noted in the Philippines and Indonesia. No studies point to a systemic use of nickel proceeds in funding armed groups. Nickel mining requires significant investment and mechanised processes, thereby limiting artisanal mining.

While due diligence of supply and value chains is highly relevant also for other metals and minerals, it is not advisable to expand the scope of the Regulation at this stage for two main reasons. First, the other minerals/metals are characterized by different challenges in terms of production structure (predominantly by large-scale mining), value chain linkages and possible associated risks. Second, other pieces of legislation apply (or will apply) to these other minerals/metals - notably the Batteries Regulation and the Directive on Corporate Sustainability Due Diligence (cfr. section below). In particular, the Batteries Regulation in its Annex X lists the risk categories and the internationally recognised due diligence instruments applicable to the due diligence requirements laid down in the Batteries Regulation and covering specifically cobalt, nickel, natural graphite and lithium. These categories include human rights, such as child and forced labour (Annex X, point 2 (b)). The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas is also listed under point 4 (f) as one of the relevant internationally recognised instruments applicable. Therefore, while the material scope of the two Regulations does not overlap, the due diligence obligations in both instruments address the OECD DD Guidance's Annex II risks.

Adding further metals to the scope of the Regulation could therefore duplicate requirements in other Union legislation and risk making the regulatory landscape for economic actors complex and creating confusion on the ways in which minerals due diligence should be conducted. As a result, the priority for the time being should be continued progress towards implementation of the Regulation in its current form, paying particular attention -also in the context of future reviews of this Regulation and of other due diligence legislation- to how to ensure continued complementarity and interoperability of the various pieces of EU due diligence legislation relevant in this context.

Risks covered

In terms of risks covered by the due diligence obligations, the Regulation covers risks associated with armed conflict and related human rights abuses in line with the OECD DD Guidance and its Annex II ("serious abuses associated with the extraction, transport or trade of minerals"). Environmental risks are neither covered by the Regulation nor by the OECD DD Guidance. However, there are identifiable links between the environmental impact of mining and armed conflict. On the one hand, state and non-state armed groups' interference with mining activities may have negative environmental impacts. On the other hand, conflict may

[43] *Resource World Magazine*, 'Tantalex Lithium's Titan plant construction 80% complete, DRC', 2023.
[44] *Reuters*, 'Premier African Minerals completes Zimbabwe lithium plant, production imminent' , 2023.
[45] Natural Resources Canada. n.d. 'Nickel facts.'

arise from environmental deterioration caused by 3TG activities, including issues such as population displacement, soil degradation, limited access to food, and compromised water availability.

Such links between the environment and conflict could play a role vis-à-vis the effectiveness of the Regulation, as environmental due diligence could potentially contribute to one of the key objectives of the Regulation, decoupling 3TG trade from armed conflict. At the same time, the Directive on Corporate Sustainability Due Diligence (CSDDD) (when in force) will already extend due diligence obligations to environmental aspects. As such, many EU operators throughout minerals supply chains, will need to conduct environmental due diligence. Furthermore, at present, the Regulation is based on the OECD DD Guidance. Therefore, adding environmental due diligence under the Regulation (which is currently not covered by the OECD DD Guidance) could risk making the regulatory landscape for economic actors more complex and, given other Union legislation, create confusion on the ways in which minerals due diligence should be conducted. As a result, the priority for the time being should be continued progress towards implementation of the Regulation in its current form.

Coherence between the Regulation and other EU legislation

The Regulation is the first supply chain due diligence-focused EU legislation. Since the entry into force of the Regulation, several legislative initiatives have been developed that can interact with its objective, scope and focus to various degrees. The table below compares the geographical, material and corporate coverage, the due diligence obligations, the role of schemes recognition and liabilities of the Regulation with the CSDDD, the Batteries Regulation, the Regulation Establishing a Framework for Setting Ecodesign Requirements for Sustainable Products (ESPR), the Critical Raw Materials Act (CRMA) and the Regulation on Prohibiting Products Made with Forced Labour on the Union market (Forced Labour Regulation).

An important common element is the geographical coverage as all these legislative instruments have a potential global reach (despite the Regulation's specific focus on CAHRAs). In terms of material coverage, the Batteries Regulation, like this Regulation, applies to a narrow scope of products/minerals but there is no overlap between the two. The CRMA identifies tantalum and tungsten as critical raw materials in its Annex II. The other instruments, notably the CSDDD, do not define a limited material coverage but rather apply horizontally. In terms of the corporate coverage, i.e. the economic operators subject to the requirements, horizontal instruments such as the CSDDD will apply to large economic actors, while the entities subject to the requirements in the Regulation are defined by its specific material focus and the import volume thresholds (which also imply specific flexibilities targeted at SMEs while not explicitly excluding them from the scope).

In terms of due diligence requirements, the Regulation has a targeted approach (i.e. due diligence is required to be carried out with a view to ensuring that supply chains do not finance armed conflict and related human rights abuses), aligned with the OECD DD Guidance. The CSDDD's and the Batteries Regulation's due diligence requirements are more extensive as they also cover environmental issues, as well as social and human right risks more broadly.

Neither the CRMA, the ESPR nor the Forced Labour Regulation impose due diligence obligations.

In terms of recognition of schemes, the Regulation, the CRMA and the Batteries Regulation provide for this possibility. The schemes that are currently under assessment in the context of the Regulation (cfr. Section III 3.a.) cover specifically 3TGs.

Table 5 - Comparison between Regulation and other relevant legislative initiatives

	Regulation	**CSDDD**	**Batteries Regulation**	**ESPR**	**CRMA**	**Forced Labour Regulation**
Geographical Coverage	Global with focus on CAHRAs	Global	Global with some focus on CAHRAs	Global	Global	Global
Material Coverage	3TG	Horizontal	Cobalt, lithium, nickel, natural graphite	Cross-cutting with some product limitations	34 CRM in Annex II including tantalum and tungsten	Horizontal
Corporate Coverage	Importers of 3TG according to established thresholds	Economic actors > 1000 employees and annual turnover of > EUR 450 M	For due diligence obligations: Economic operators placing or putting into service batteries on the EU market and with annual turnover ≥ EUR 40 M	All companies, with exemption from obligations on destruction of unsold consumer products for small and micro enterprises	Not applicable	Horizontal
Due Diligence Obligations	Risks and adverse impacts associated with conflict and related human rights abuses	Human rights and environmental	Social, human rights and environmental	Not applicable	Not applicable	Not applicable
Recognition of schemes	Yes	No	Yes (methodology not yet determined)	Not applicable	Yes	Not applicable
Liabilities	Member States determine rules applicable to infringements	Member States to determine administrative penalties for non-compliance and civil liability in case of harm to rightsholders	Member States to determine penalties for non-compliance; restriction of the sale of batteries as last resort	Member States determine sanctions	Not applicable	Market bans on products; Member States to determine penalties for non-compliance with bans

In sum, on the one hand the Regulation requires the implementation of due diligence for a quite narrow set of minerals and metals, and a specific set of risks. On the other hand, some of the EU's recently adopted regulatory frameworks already (or will soon) extend due diligence throughout the value chain to address a wide range of products and socio-economic, worker safety and environmental issues, and thereby help to ensure secure and sustainable EU supply and value chains of critical minerals and beyond. Some of these regulations partially interact with the Regulation in terms of material scope, corporate coverage and requirements. However, in its present scope, the interaction is limited, often complementary and does not appear to represent a significant additional regulatory burden on minerals due diligence efforts within the EU regulatory framework.

IV. CONCLUSION

With only two years since the operational due diligence requirements of the Regulation started applying, this first mandatory review comes at a very early stage in the implementation of the Regulation. The full roll-out, implementation and enforcement of the various aspects of the Regulation and accompanying measures has faced some additional delays due to e.g. the Covid-19 pandemic and other implementation challenges that will continuously be addressed in consultation with all relevant stakeholders. Therefore, this first review report does not draw definitive conclusions on many of the aspects examined. Nevertheless, it provides useful indications on the functioning and effectiveness of the Regulation and identifies areas to be further evaluated in the context of the next reviews.

Key findings

With regard to the impacts of the Regulation on the ground in third 3TG producing countries and notably conflict-affected and high-risk areas, the external study identified limited impacts among local stakeholders that could be attributed directly to the Regulation. Due to the Regulation's design laying down binding due diligence requirements on EU imports, more time and data are needed further upstream in the supply chain to be able to distinguish the impact of the Regulation in third countries from broader global efforts to promote due diligence in minerals supply chains. Given the increased international efforts on due diligence with respect to 3TG, it will remain challenging to attribute impacts in producing countries specifically to the Regulation. Nevertheless, it is encouraging that in several of the third countries examined, there exist broader international efforts by many actors in the 3TG sector to advance OECD-aligned due diligence in line with the Regulation's objectives.

Within the EU, Member States have made progress in their efforts to implement the Regulation. MSCAs have been set up and the first rounds of ex-post compliance checks have been conducted in most Member States with Union importers within the scope of the Regulation. Nonetheless, MSCAs still face challenges, most notably with regard to transparency and access to relevant due diligence information. While independent third-party audits constitute a key part of the due diligence requirements, a shortage of qualified auditors was reported both by economic operators and MSCAs as a significant challenge in implementing the Regulation. In addition, the review identified a varying degree of capacities and resources among MSCAs, pointing to the need to further improve engagement and exchanges among them, most notably

to ensure a uniform implementation of the Regulation and to avoid attempts to circumvent the requirements.

Regarding the cost of compliance, as well as accompanying tools of the Regulation, the review confirms that due diligence schemes can support compliance and are considered a generally affordable tool. The role of schemes, however, needs to be continuously clarified to avoid an overreliance on schemes, as economic operators remain individually responsible to comply with the Regulation irrespectively whether they participate in such schemes (including when the scheme has been recognised by the Commission). The CAHRAs list that is drawn up and updated based on external expertise is a useful tool that is regularly used by economic operators and MSCAs. Specific improvements to the underlying methodology to this list should be considered by the Commission on a continuous basis. The review confirmed the added value of other tools, such as the EPRM or the Strategic Partnerships on Raw Materials, that complement the efforts of the Regulation by bringing in the international cooperation perspective and by engaging further with third partner countries.

Finally, the review examined questions around the scope of the Regulation and related issues that can impact its functioning and effectiveness, beyond those prescribed by the Regulation. The assessment suggests that an expansion of the material scope (possible inclusion of further minerals or metals and notably cobalt), or the risk scope (possible inclusion of further risks such as environmental ones) is to a large extent already resulting from other subsequent EU legislation, and most notably the CSDDD and the Batteries Regulation. As several of the requirements in these recent pieces of legislation have not entered into application yet, it is premature to draw decisive conclusions on how these will interact with the Regulation, which ultimately will depend on how these other initiatives are implemented. At this moment, it is therefore not possible to conclude that changes to the Regulation would be necessary to improve its functioning, or to fully assess if other legislation sufficiently complements the effectiveness of the Regulation.

Future outlook

In light of the above, this first review sheds light on the need for the EU to intensify its engagement and awareness raising efforts around the Regulation and its objectives. This could include strengthening the efforts to communicate about the Regulation on-the-ground and to relevant key stakeholders, and support relevant development projects. EU Delegations could be a primary interlocutor and facilitator when engaging with local actors.

Moreover, the Commission can look further into how to improve convergence in the enforcement of the Regulation by MSCAs. While the Commission is already working on several tools, such as the platform for the exchange of customs data or the regular exchanges through the 3TG Expert Group Meetings, continuously providing clarifications or guidance and facilitating the cross-border cooperation among MSCAs in tackling challenges related to responsible mineral sourcing and compliance with the Regulation should be further pursued.

Importantly, the key takeaway of this first review exercise is that the impacts of the Regulation should not be assessed in an isolated manner. This Regulation forms part of broader ecosystem of measures whose objective it is to advance responsible sourcing of 3TG, preventing its contribution to conflict and severe human rights abuses. In that respect, this review reflected on

initial positive developments both in third countries and within the EU, notably on the indications of increased uptake of due diligence and an improved understanding, implementation and dissemination of the OECD DD Guidance more broadly. Such broader uptake internationally of due diligence in the 3TG sector and beyond must be supported and further enhanced. In parallel with ensuring effective implementation of EU policies, the EU has an important role to play in supporting further international efforts, leading by example and engaging with all relevant stakeholders, third countries and in international fora.