

December 21, 2020

## Conflict Minerals Compliance – European Commission Publishes Global List of Conflict-Affected and High-Risk Areas

The EU Conflict Minerals Regulation takes effect on January 1, 2021. With the effective date of the Regulation nearing, last Thursday, the European Commission published its long-awaited global list of conflict-affected and high-risk areas, or CAHRAs. The Regulation is concerned with sourcing from CAHRAs anywhere in the world. This contrasts with the approach taken by the U.S. Conflict Minerals Rule, which divides the world into the Democratic Republic of the Congo region and everywhere else. The global focus of the Regulation will over time have a significant impact on responsible minerals-sourcing compliance by all companies, not just those subject to the Regulation. In this Alert, we discuss the CAHRA list and some of its compliance implications.

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### A Brief Overview of the EU Conflict Minerals Regulation

The Regulation applies to importers into the European Union of tin, tantalum, tungsten and gold (3TG). The Regulation includes an annex that contains a detailed description, including Combined Nomenclature codes, of the specific 3TG ores, concentrates and metals that come within its scope.

Importers of 3TG minerals and metals are required to have appropriate management systems in place, take steps to identify and assess risks of adverse impacts in their 3TG supply chains, manage identified risks and provide specified information to their immediate customers and the public. These requirements conform to the Organisation for Economic Co-operation and Development’s Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, with which the Regulation is intended to align.

The Regulation requires the European Commission to call upon external expertise to provide an indicative, non-exhaustive, regularly updated list of CAHRAs. The list is intended to support importers in their due diligence.

For a more detailed discussion of the Regulation, see our earlier Alerts [here](#), [here](#), [here](#) and [here](#).

The Regulation was adopted in 2017. The extended transition period – of more than three years – before the Regulation took effect was intended to allow the European Union sufficient time to establish procedures and control mechanisms, prepare guidance and recognize due diligence schemes. This included allowing the European Commission time to engage a third party to prepare the CAHRA list.

The European Commission estimated that the Regulation will apply directly to between 600 and 1,000 3TG importers. The vast majority of product and component manufacturers are not importers within the meaning of the Regulation. However, some larger companies that manufacture in the European Union also are importers of in-scope 3TG metals and therefore will be required to comply with the Regulation. If not already done, compliance personnel at companies with large EU manufacturing operations should determine whether they directly import 3TG into the European Union.

### Determining CAHRAs

The Regulation does not designate specific countries or regions by name as CAHRAs. Instead, it contains a general principles-based definition of what it means to be a CAHRA.

The Regulation defines CAHRAs as “areas in a state of armed conflict or fragile post-conflict as well as areas witnessing weak or non-existent governance and security, such as failed states, and widespread and systematic violations of international law, including human rights abuses.” CAHRAs are not limited to nation-states. They also can be sub-national. In August 2018, the European Commission published non-binding guidelines for identifying CAHRAs. The guidelines expanded on elements of the definition in the Regulation:

- *State of armed conflict*: presence of armed conflict, widespread violence or other risks of harm to people, but excluding internal disturbances and tensions such as riots and isolated and sporadic acts of violence.
- *Fragile post-conflict areas*: areas where active hostilities have ceased that have a weak capacity to carry out basic governance functions and lack the ability to develop mutually constructive societal relationships due to the prior conflict.
- *Failed states*: involves an implosion of power and authority structures, a collapse of law and order and the absence of institutions capable of representing the state.

## The CAHRA List

The European Commission engaged RAND Europe to prepare the CAHRA list. The initial CAHRA list includes 27 countries, more than what many industry participants expected. These countries and their listed sub-national areas are included on the Annex to this Alert. RAND Europe will review and update the CAHRA list quarterly.

The CAHRA list is based on 26 resources and datasets. Sources consulted include, among others, Amnesty International, the British Geological Survey, the Bureau of International Labor Affairs, the Geneva Academy Rule of Law in Armed Conflicts, Global Witness, the Heidelberg Institute's Conflict Barometer, Human Rights Watch, the Natural Resource Governance Institute, the UN's Department of Economic and Social Affairs and Office of the High Commissioner for Human Rights, the Uppsala Conflict Data Program and the World Bank. The list largely is based on desk research. It did not involve field work activities or widespread primary data collection efforts.

The CAHRA list is intended to facilitate the calibration of due diligence efforts by EU importers of in-scope 3TG. It is intended as a part of an importer's due diligence. Because the list is indicative and non-exhaustive, it does not take the place of broader due diligence efforts by importers subject to the Regulation. In addition, consistent with the nature of the CAHRA list, importers sourcing from areas not on the list still are required to undertake due diligence in accordance with the Regulation.

The list is not intended as a blacklist (although we expect many countries to nevertheless protest their inclusion on the list). The Regulation does not restrict subject importers from conducting business in or sourcing from areas on the list. However, sourcing from some countries on the list or doing business with persons in those countries may be prohibited under sanctions regimes.

The CAHRA list does not include all areas experiencing conflict. The list only includes countries and sub-national areas associated with in-scope 3TG supply and value chains. It also does not take into account concepts of security, fragility and stability that do not come within the Regulation's definition of CAHRAs. Furthermore, the list is not intended to capture all areas that present human rights concerns.

## Where Do We Go From Here?

The Regulation will be a game changer for conflict minerals compliance.

Importers that are subject to the Regulation will of course need to take the CAHRA list into account in their due diligence.

The Regulation also will impact a large number of companies not directly subject to it, as has been the case with the U.S. Conflict Minerals Rule. We expect leading downstream companies, in the European Union, the United States and elsewhere, to over time refine and expand their supply chain policies, inquiries and other procedures to take the CAHRA list into account, both to mitigate supply chain risk and as part of their commitment to responsible sourcing and human rights. This will in turn require or at least put pressure on other tiers of the supply chain and peer companies to follow suit.

As an initial step, downstream companies that have not already done so should assess whether their 3TG compliance programs are sufficiently flexible to address evolving commercial, consumer and other stakeholder expectations arising from the Regulation and its focus on CAHRAs anywhere in the world.

### About Our Practice

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For further information on the practice, click [here](#).

Please click [here](#) to visit our CSR and Supply Chain Compliance website.

December 21, 2020

## Annex – Initial List of CAHRAs

Afghanistan	Badakhshān, Bādghīs, Baghlān, Balkh, Bāmyān, Dāykundī, Farāh, Fāryāb, Ghaznī, Ghōr, Helmand, Herāt, Jowzjān, Kābul, Kandahār, Kāpīsā, Khōst, Kunar, Kunduz, Laghmān, Lōgar, Nangarhār, Nīmrōz, Nūristān, Paktīkā, Paktiyā, Panjshayr, Parwān, Samangān, Sar-e Pul, Takhār, Uruzgān, Wardak, Zābul
Burkina Faso	Nord, Sahel
Burundi	
Cameroon	North-West, South-West
Central African Republic	Bamingui-Bangoran, Bangui, Basse-Kotto, Gribingui, Haute-Kotto, Haut-Mbomou, Kémo-Gribingui, Lobaye, Haute-Sangha/Mambéré-Kadéï, Mbomou, Nana-Mambéré, Ombella-Mpoko, Ouaka, Ouham, Ouham-Pendé, Sangha, Vakaga
Chad	Lac, Ouaddaï, Sila
Colombia	Antioquia, Cauca
Democratic Republic of the Congo	Bas-Uélé, Équateur, Haut-Katanga, Haut-Lomami, Haut-Uélé, Ituri, Kasāï, Kasāï Central, Kasāï Oriental, Kinshasa, Kongo Central, Kwango, Kwilu, Lomami, Lualaba, Mai-Ndombe, Maniema, Mongala, Nord-Kivu, Nord-Ubangi, Sankuru, Sud-Kivu, Sud-Ubangi, Tanganyika, Tshopo, Tshuapa
Egypt	Shamāl Sīnā'
Eritrea	
India	Chhattisgarh, Jammu and Kashmir
Libya	Al Buṭnān, Al Jabal al Akhḍar, Al Jabal al Gharbī, Al Jafārah, Al Jufrah, Al Kufrah, Al Marj, Al Marqab, Al Wāḥāt, An Nuqāṭ al Khams, Az Zāwiyah, Banghāzī, Darnah, Ghāt, Miṣrātah, Murzuq, Nālūt, Sabhā, Surt, Ṭarābulus, Wādī al Ḥayāt, Wādī ash Shāṭī'
Mali	Gao, Mopti, Ségou, Tombouctou
Mexico	Baja California, Chihuahua, Guanajuato, Jalisco, México, Michoacán de Ocampo, Sinaloa, Zacatecas
Mozambique	Cabo Delgado
Myanmar	Chin, Kachin, Kayin, Rakhine, Shan
Niger	Diffa, Tillabéri
Nigeria	Adamawa, Borno, Kaduna, Yobe, Zamfara
Pakistan	Azad Jammu and Kashmir, Balochistan, Khyber Pakhtu
Philippines	Autonomous Region in Muslim Mindanao
Somalia	Awdal, Bakool, Banaadir, Bari, Bay, Galguduud, Gedo, Hiiraan, Jubbada Dhexe, Jubbada Hoose, Mudug, Nugaal, Sanaag, Shabeellaha Dhexe, Shabeellaha Hoose, Sool, Togdheer, Woqooyi Galbeed

## ALERT ▪ Annex – Initial List of CAHRAs

South Sudan	Central Equatoria, Eastern Equatoria, Jonglei, Lakes, Northern Bahr el Ghazal, Unity, Upper Nile, Warrap, Western Bahr el Ghazal, Western Equatoria
Sudan	Gezira, Gedaref, Blue Nile, Central Darfur, East Darfur, Kassala, Khartoum, North Darfur, North Kordofan, Northern, Red Sea, River Nile, Sennar, South Darfur, South Kordofan, West Darfur, West Kordofan, White Nile
Ukraine	Donets'k
Venezuela	
Yemen	‘Adan, Abyan, Al Bayḍā’, Aḍ Ḍāli’, Al Ḥudaydah, Al Jawf, Al Mahrah, Al Maḥwīt, Amānat al ‘Āṣimah [city], ‘Amrān, Dhamār, Ḥaḍramawt, Ḥajjah, Ibb, Laḥij, Ma’rib, Raymah, Ṣā‘dah, Ṣan‘ā’, Shabwah, Tā‘izz
Zimbabwe	