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'I' ITEM NOTE

From:	Presidency
To:	Permanent Representatives Committee (Part 2)
No. Cion doc.:	7701/14 WTO 101 COMER 87 RELEX 228 UD 83 CODEC 782 + ADD 1
Subject:	Proposal for a Regulation of the European Parliament and of the Council 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 (First reading) - Confirmation of the final compromise text with a view to agreement

1. On 5 March 2014, the Commission submitted to the Council a proposal for a Regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas (doc. 7701/14 + ADD 1). The proposal was accompanied, on 5 March 2014, by a joint communication from the Commission and the High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament and the Council on responsible sourcing of minerals originating in conflict-affected and high-risk areas Towards an integrated EU approach (doc. 7704/14).

2. The proposed Regulation was thoroughly examined on a number of occasions by the Working Party on Trade Questions during the Greek, Italian, Latvian, Luxembourg, Dutch and Slovak Presidencies, and amendments were inserted.
3. The European Parliament adopted its amendments to the Commission's proposal in the plenary session of 20 May 2015 (rapporteur Mr Iuliu WINKLER, EPP), in view of negotiations with the Council.
4. In its meeting of 16-18 December 2015, Coreper endorsed the negotiating mandate, on the basis of the positions set out in Annex to doc. 15355/15.
5. On this basis, five political trilogue meetings took place in the course of the year 2016, on 2 February, 5 April, 11 May, 15 June and 22 November. At the trilogue on 15 June, a political understanding was reached between the three Institutions and complemented by an intended Commission declaration on 16 June and a letter from the European Parliament dated 20 July. At the last political trilogue, on 22 November, a compromise was reached on the text of the draft Regulation of the European Parliament and of the Council 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 as set out in Annexes I and II. This compromise also included a number of statements as set out in Annexes III to VII.
6. On 5 December 2016, the Working Party on Trade Questions endorsed the compromise found with the European Parliament.
7. The INTA Committee of the European Parliament is expected to vote on the compromise in its meeting on 23-24 January 2016, and thus clear the way for an adoption of the draft regulation at first reading in the first months of 2017.

8. The Permanent Representatives' Committee is therefore invited to:

- confirm the outcome of the examination in the Working Party on Trade Questions;
- confirm the final compromise package, as contained in the Annexes to this note and on the understanding that it will be submitted to legal scrubbing;
- agree to the statements set out in Annexes III and IV;
- authorise the Presidency to send a letter to the Chair of the European Parliament's INTA Committee confirming that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the final compromise package contained in the Annexes to the letter (subject to the revision by the lawyer-linguists of both institutions), the Council would, in accordance with Article 294 paragraph 4 of the Treaty, approve the European Parliament's position and the act would be adopted in that wording.

PE-CONS xx/16 – 2014/0059 (COD)

REGULATION (EU) 2016/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Natural mineral resources in conflict-affected or high risk areas – although holding great potential for development – can be a cause of dispute where their revenues are fuelling the outbreak or continuation of violent conflict, undermining endeavours towards development, good governance and the rule of law. In these areas, breaking the nexus between conflict and illegal exploitation of minerals is **a critical *element in guaranteeing* peace, *development* and stability.**
- (1a) Human rights abuses are common in resource-rich conflict-affected and high-risk areas and may include child labour, sexual violence, disappearance of people, forced resettlement and the destruction of ritually or culturally significant sites.***
- (2) The issue concerns resource-rich ***areas*** where the challenge posed by the desire to ***prevent*** the financing of armed groups and security forces has been taken up by governments and international organisations together with business operators and civil society organisations, ***including women's organisations that are at the forefront of drawing attention to the exploitative conditions imposed by these groups, as well as to rape and violence used to control local populations.***

- (3) The Union has been actively engaged in an Organisation for Economic Co-operation and Development (OECD) initiative to advance the responsible sourcing of minerals from conflict regions, which has resulted in a government-backed multi-stakeholder process leading to the adoption of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Due Diligence Guidance¹) including supplements on tin, tantalum and tungsten, and on gold. In May 2011, the OECD Ministerial Council recommended to actively promote the observance of this Guidance.
- (4) The concept of responsible sourcing is referred to in the updated OECD Guidelines for Multinational Enterprises and is in line with the United Nations (UN) Guiding Principles on Business and Human Rights. These documents aim at advancing supply chain due diligence practices when businesses source from regions affected by conflict and instability. At the highest international level, UN Security Council Resolution 1952 (2010) specifically targeted the Democratic Republic of Congo (the DRC) and its neighbours in Central Africa calling for supply chain due diligence to be observed; the UN Group of Experts on the DRC, following up Security Council Resolution 1952 (2010), also advocates compliance with the OECD Due Diligence Guidance.

¹ *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition*, OECD Publishing (OECD (2013)). <http://dx.doi.org/10.1787/9789264185050-en>.

- (5) In addition to multilateral initiatives, on 15 December 2010, the Heads of State and Government of the Great Lakes Region took a political commitment in Lusaka to fight the illegal exploitation of natural resources in the region and approved inter alia a regional certification mechanism based on the OECD Due Diligence Guidance.
- (5a) This Regulation is one of the ways of eliminating the financing of armed groups by means of controlling trade of minerals from conflict regions; the European Union's foreign and development policy action also contributes to fighting local corruption, porosity of borders to providing training for local populations and their representatives in order to help them highlight abuses.***
- (6) The Commission in its 2008 Communication recognised that securing reliable and undistorted access to raw materials is an important factor for the EU's competitiveness. The Raw Materials Initiative (RMI) is an integrated strategy aimed at responding to different challenges related to access to non-energy non-agriculture raw materials. The RMI recognises and promotes financial as well as supply chain transparency, and the application of corporate social responsibility standards.

- (7) In its resolutions of 7 October 2010, *of 8 March 2011, of 5 July 2011 and of 26 February 2014*, the European Parliament *called* for the Union to legislate along the lines of the US 'conflict minerals' law alias Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and the Commission announced in its Communications of 2011 and 2012 its intention to explore ways of improving transparency throughout the supply chain, including aspects of due diligence. In the latter communication and in line with the commitment it had made at the May 2011 OECD Ministerial Council, the Commission also advocated greater support for and use of the OECD Guidelines for Multinational Enterprises, and of the OECD Due Diligence Guidance – even outside the OECD membership.
- (8) Union citizens and civil society actors have raised awareness with respect to companies operating under the Union's jurisdiction for not being held accountable for their potential connection to the illicit extraction and trade of minerals from conflict regions. The consequence is that such minerals, potentially present in consumer products, link consumers to conflicts outside the Union. *As such, consumers are indirectly linked to conflicts that have severe impacts on human rights, notably the rights of women, as armed groups often use mass rape as a deliberate strategy to intimidate and control local populations in order to protect their interests.* To this end, citizens have requested, notably through petitions, that legislation be proposed to the European Parliament and the Council holding companies accountable under the Guidelines as established by the UN and OECD.

- (9) In the context of this Regulation, *and as set out in the OECD Due Diligence Guidance, the* supply chain due diligence is an on-going, proactive and reactive process through which *economic* operators monitor and administer their purchases and sales with a view to ensuring that they do not contribute to conflict and adverse impacts thereof.
- (10) Third-party auditing of a company's supply chain due diligence practices ensures credibility for the benefit of downstream companies and contributes to the improvement of the upstream due diligence practices.

(11) Public reporting by a company on its supply chain due diligence policies and practices provides the necessary transparency to generate public confidence in the measures companies are taking.

(11b) Union importers retain an individual responsibility to comply with the due diligence obligations under this Regulation. However, many existing and future supply chain due diligence systems could contribute to achieving the aims of this Regulation. There already exists schemes aimed at breaking the link between conflict and the sourcing of tin, tantalum, tungsten and gold. Those schemes use independent third-party audits to certify smelters and refiners with systems in place to ensure responsible sourcing of minerals only. Those schemes could be recognised in the Union system. The criteria and methodology for such schemes to be recognised as equivalent to the requirements of this Regulation will be clarified in a delegated act to allow for compliance with the obligations of the Regulation by individual operators that are members of the schemes and to avoid double auditing. Such schemes should incorporate the overarching due diligence principles, ensure that requirements are aligned to the specific recommendations of the OECD due diligence framework and meet the procedural requirements such as stakeholders' engagement, grievance mechanisms and responsiveness.

(12) Union companies have expressed their interest through the public consultation in the responsible sourcing of minerals and reported on current industry schemes designed to pursue their corporate social responsibility objectives, customer requests, or the security of their supplies. However, Union companies have also reported countless difficulties ***and practical challenges*** in the exercise of supply chain due diligence because of lengthy and complex global supply chains involving a high number of operators that are often insufficiently aware or ethically unconcerned. The cost of responsible sourcing, ***third party auditing, their administrative consequences*** and their potential impact on competitiveness notably on SMEs should be ***closely monitored and reported*** by the Commission. ***The Commission should ensure that micro- small and medium size enterprises benefit from adequate technical assistance and facilitate the exchange of information in order to implement this Regulation. SMEs established in the Union which import minerals and metals should thereby benefit from the Commission’s COSME programme.***

- (13) Smelters and refiners are an important point in global mineral supply chains as they are typically the last stage in which due diligence can effectively be assured by collecting, disclosing and verifying information on the mineral's origin and chain of custody. After this stage of transformation it is often considered unfeasible to trace back the origins of minerals. ***The same applies to recycled metals, which have undergone even further steps in the transformation process.*** A Union list of ***global*** responsible smelters and refiners could therefore provide transparency and certainty to downstream companies as regards supply chain due diligence practices. ***In accordance with the OECD Due Diligence Guidance, upstream undertakings such as smelters and refiners should undergo an independent third-party audit of their supply chain due diligence practices, with a view to also being included in the list of responsible smelters and refiners.***
- (13a) It is essential that Union importers of the minerals and metals in scope comply with the Regulation, including Union smelters and refiners which process and import minerals and concentrates thereof.***

(13ab) To ensure the workability of the supply chain due diligence system while guaranteeing that the vast majority of minerals and metals in scope entering the EU are subject to its requirements, this Regulation should not apply in situations where the importers' annual import volumes of each mineral or metal concerned are below the volume thresholds set out in Annex 1 of this Regulation.

13ac) In order to ensure the workability of the supply chain due diligence system, in order to facilitate the assessment of due diligence schemes that might be recognised under this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the volume thresholds of minerals and metals set out in Annex 1 of this Regulation; setting out the criteria and methodology to be followed for that assessment acknowledging, in this regard, the work of the OECD.

It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (14) The Member State competent authorities are responsible to ensure the uniform compliance of the **Union** importers by carrying out appropriate ex-post checks so as to verify whether the **Union** importers of the minerals or metals within the scope of the Regulation comply with the supply chain due diligence obligations. Records of such checks should be kept for at least 5 years. Member States are responsible to lay down the rules applicable to infringements of the provisions of this Regulation.

(15) In order to ensure the proper implementation of this Regulation, implementing powers should be conferred on the Commission. The implementing powers relating to: *recognising due diligence schemes as equivalent; withdrawing equivalence in case of deficiencies; as well as establishing* the list of responsible smelters and refiners should be exercised in accordance with Regulation (EU) No 182/2011. *The advisory procedure is considered to be the appropriate procedure for the adoption of relevant implementing acts.*

(15a) In order to guarantee the efficient implementation of this Regulation, provision should be made for a transitional period to allow for – amongst others – the establishment of Member States' competent authorities, the Commission to recognise supply chain due diligence schemes and for Union importers to become familiar with their obligations under this Regulation.

- (15b) The Commission and the High Representative of the Union for Foreign Affairs and Security Policy should regularly review their financial assistance and political commitments with regard to conflict-affected and high risk areas where tin, tantalum, tungsten and gold are mined, especially in the Great Lake Region, in order to ensure policy coherence, and in order to incentivise and strengthen the respect for good governance, the rule of law notably in respect of ethical mining.*
- (16) The Commission should report regularly to the European Parliament *and the Council* on the effects of the scheme. *Two* years after *the date of application of this Regulation* and every *three* years thereafter, the Commission should review the functioning and the effectiveness of this Regulation, *and the latest impact of the scheme on the ground* as regards the promotion of responsible sourcing of the minerals within its scope from conflict-affected and high-risk areas *and on Union businesses including small and medium-sized enterprises and report to the European Parliament and to the Council*. The reports may be accompanied, if necessary, by appropriate legislative proposals, which may include *further* mandatory measures,

(16a) In their Joint Communication of 5 March 2014, the Commission and the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy committed to the implementation of accompanying measures leading to an integrated EU approach to responsible sourcing in parallel with this Regulation, with the aim not only of reaching a high level of participation by companies in the Union system provided for in this Regulation but also ensuring that a global, coherent and comprehensive approach is taken to promote responsible sourcing from conflict affected and high-risk areas.

(17) Preventing the profits from the trade of minerals being used to fund armed conflict through due diligence and transparency will promote good governance and sustainable economic development. Therefore, this Regulation incidentally covers areas falling within the Union policy in the field of development cooperation in addition to the predominant area covered and which falls under the common commercial policy of the Union.

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation sets up a Union system for supply chain due diligence in order to curtail opportunities for armed groups and security forces to trade in tin, tantalum and tungsten, their ores, and gold. It is designed to provide transparency and certainty as regards the supply practices of importers, smelters and refiners sourcing from conflict-affected and high-risk areas.
2. This Regulation lays down the supply chain due diligence obligations of Union importers of minerals or metals containing or consisting of tin, tantalum, tungsten and gold, as set out in *Annex I in accordance with the Union system set out in this Regulation.*

This Regulation does not apply to Union importers of those minerals or metals, in situations where their annual import volumes of each mineral or metal concerned are below the volume thresholds set out in Annex 1 of this Regulation.

All volume thresholds are set at a level that ensures that the vast majority but no less than 95% of the total imported volumes into the EU of each mineral and metal per Combined Nomenclature code falling within the scope of this Regulation is subjected to the obligations of Union importers set out in this Regulation.

2a. The Commission shall adopt a delegated act, in accordance with Articles 15b and 15c and preferably nine months but no later than six months before the application of this Regulation as set out in Article 16(2), to amend the thresholds for tantalum or niobium ores and concentrates, gold ores and concentrates, tin oxides and hydroxides, tantalates and carbides of tantalum.

The Commission is empowered to adopt delegated acts to amend the existing thresholds in Annex I in accordance with Articles 15b and 15c every three years after the application of this Regulation as set out in Article 16(2).

2b. With the exception of the provisions of Article 7(4), this Regulation shall not apply to recycled metals.

2c. If demonstrated by a verifiable date to have been created in the current form prior to 31 January 2013, stocks shall be excluded from the scope of this Regulation.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

- (a) 'minerals' means ores and concentrates containing tin, tantalum and tungsten, and gold as set out in **Part A of Annex I**;
- (b) 'metals' means metals containing or consisting of tin, tantalum, tungsten and gold as set out in **Part B of Annex I**;
- (ba) 'recycled metals' means reclaimed end-user or post-consumer products, or scrap processed metals created during product manufacturing; 'recycled metals' includes excess, obsolete, defective, and scrap metal materials which contain refined or processed metals that are appropriate to recycle in the production of tin, tantalum, tungsten and/or gold; minerals partially processed, unprocessed or a by-product from another ore are not recycled metals;**
- (c) 'mineral supply chain' means the system of activities, organisations, actors, technology, information, resources and services involved in moving and processing the minerals from the extraction site to their incorporation in the final product;

- (d) 'chain of custody or supply chain traceability system' means a record of the sequence of entities which have custody of minerals and metals as they move through a supply chain;
- (e) 'conflict-affected and high-risk areas' means areas in a state of armed conflict, 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;
- (f) 'downstream' means the metal supply chain from the smelters or refiners to the end use;
- (g) 'importer' means any natural or legal person declaring minerals or metals within the scope of this Regulation for release for free circulation within the meaning of Article **201 of Council Regulation (EU) No 952/2013 or the natural or legal person on whose behalf such declaration is made, as indicated in data element 3/15 and 3/16 according to the provisions laid down in Annex B of Delegated Regulation (EU)2015/2446;**

- (j) 'grievance mechanism' means an early-warning risk awareness mechanism allowing any interested party or whistle-blower to voice concerns regarding the circumstances of mineral extraction, trade, handling and export in conflict-affected and high-risk areas;
- (k) 'model supply chain policy' conforms to Annex II of the OECD Due Diligence Guidance outlining the risks of significant adverse impacts which may be associated with the extraction, trade, handling and export of minerals from conflict-affected and high risk areas;
- (l) 'risk management plan' means the importers' written response to the identified supply chain risks based on Annex III to the OECD Due Diligence Guidance ;

- (m) '*smelter and refiner*' means *any natural or legal person performing* forms of extractive metallurgy involving processing steps with the aim to produce a metal from *a mineral*;
- (n) 'upstream' means the mineral supply chain from the extraction sites to the smelters or refiners, included;
- (o) 'supply chain due diligence' refers to the obligations of *Union* importers of tin, tantalum and tungsten, their ores, and gold in relation to their management systems, risk management, third-party audits and disclosure of information with a view to identifying and addressing actual and potential risks linked to conflict-affected and high risk-areas to prevent or mitigate adverse impacts associated with their sourcing activities;
- (p) 'responsible smelters or refiners' means smelters or refiners *located inside or outside the EU that are deemed to comply with the obligations of this Regulation*;
- (q) 'Member State competent authorities' means the designated one or more authorities with knowledge as regards raw materials, industrial processes *and auditing*.

- (qa) 'supply chain due diligence scheme' means a combination of voluntary supply chain due diligence procedures, tools and mechanisms, including third-party audits, developed and overseen by governments, relevant industry associations, or other groupings of interested organizations;*
- (qb) 'armed groups and security forces' means groups referred to in Annex II of the OECD Due Diligence Guidance;*
- (r) 'verifiable date' means a date which can be verified through inspection of physical date stamps on products or inventory list;*
- (s) 'by-product' means a mineral or metal in scope of the Regulation set out in Annex I that has been obtained from the processing of a mineral or metal outside the scope of the Regulation originally containing the mineral or metal. The by-product would not have been obtained without the processing of the primary mineral or metal outside the scope of the Regulation;*
- (t new) 'OECD Due Diligence Guidance' means the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (Second Edition, OECD 2013), including all its Annexes and Supplements;*

Article 3

Obligations and compliance of Union importers of minerals and metals

1. Any **Union** importer of minerals or metals within the scope of the Regulation **shall comply with** the supply chain due diligence obligations set out in this Regulation **and keep records of** documentation **demonstrating its compliance with** the obligations including **the** results of independent third-party audits.
2. The Member State competent authorities shall **be responsible for carrying out** appropriate ex-post checks **pursuant to Article 10 of this Regulation** in order to ensure that **Union** importers of the minerals or metals within the scope of this Regulation comply with **the** obligations **set out in** Articles 4, 5, 6, and 7 of this Regulation.
3. **Pursuant to Article 7b of this Regulation, interested parties may submit supply chain due diligence schemes for recognition by the Commission with a view to facilitate the compliance of Union importers with the relevant requirements set forth in Articles 4, 5, 6, and 7 of this Regulation.**

Article 4

Management system obligations

Any Union importer of the minerals or metals within the scope of this Regulation shall:

- (a) adopt and clearly communicate *up to date information* to suppliers and the public *on* its supply chain policy for the minerals and metals potentially originating from conflict-affected and high-risk areas;
- (b) incorporate in its supply chain policy the standards against which supply chain due diligence is to be conducted consistent with the standards set forth in the model supply chain policy in Annex II to the OECD Due Diligence Guidance;
- (c) structure its internal management systems to support supply chain due diligence by assigning responsibility to senior staff to oversee the supply chain due diligence process as well as maintain records for a minimum of 5 years;
- (d) strengthen its engagement with suppliers by incorporating its supply chain policy into contracts and agreements with suppliers consistent with Annex II to the OECD Due Diligence Guidance;

- (e) establish a company-level grievance mechanism as an early-warning risk-awareness system or provide such mechanism through collaborative arrangements with other companies or organisations, or by facilitating recourse to an external expert or body (e.g. ombudsman);
- (f) as regards minerals, operate a chain of custody or supply chain traceability system that provides, supported by documentation, the following information:
 - (i) description of the mineral, including its trade name and type;
 - (ii) name and address of the supplier to the importer;
 - (iii) country of origin of the minerals;
 - (iv) quantities and dates of extraction, expressed in volume or weight, *if available*;
 - (v) when minerals originate from conflict-affected and high-risk areas, *or other supply chain risks as listed in the OECD Due Diligence Guidance have been ascertained by the importer*, additional information, such as the mine of mineral origin; locations where minerals are consolidated, traded and processed; and taxes, fees, royalties paid, in accordance with the specific recommendations for upstream companies as set out in the OECD Due Diligence Guidance;

- (g) as regards metals, operate a chain of custody or supply chain traceability system that provides, supported by documentation, the following information:
- (i) description of the metal, including its trade name and type;
 - (ii) name and address of the supplier to the importer;
 - (iii) name and address of the smelters or refiners in the importers' supply chain;
 - (iv) ***if available, records of the smelters' or refiners' third-party audit reports, or evidence of conformity with a supply chain due diligence scheme recognized by the Commission pursuant to Article 7b;***
 - (v) ***if such records are not available:***
 - ***countries of origin of the minerals in the smelters' or refiners' supply chain.***
 - ***when metals are based on minerals originating from conflict-affected and high-risk areas, or other supply chain risks as listed in the OECD Due Diligence Guidance have been ascertained by the importer, additional information shall be provided in accordance with the specific recommendations for downstream companies set out in the OECD Due Diligence Guidance;***

- (h) as regards by-products, information supported by documentation shall be provided as from the point where the by-product mineral or metal is first separated from its primary mineral or metal outside the scope of the Regulation. This shall be considered the point of origin.*

Article 5

Risk management obligations

1. Any Union importer of minerals within the scope of this Regulation shall:
 - (a) identify and assess the risks of adverse impacts in its mineral supply chain on the basis of the information provided pursuant to Article 4 against the standards of its supply chain policy, consistent with Annex II and the due diligence recommendations of the OECD Due Diligence Guidance;
 - (b) implement a strategy to respond to the identified risks designed so as to prevent or mitigate adverse impacts by:
 - (i) reporting findings of the supply chain risk assessment to its designated senior management;

- (ii) adopting risk management measures consistent with Annex II and the due diligence recommendations of the OECD Due Diligence Guidance, considering its ability to influence, and where necessary take steps to put pressure on suppliers who can most effectively prevent or mitigate the identified risk, by making it possible either to:
 - (a) continue trade while simultaneously implementing measurable risk mitigation efforts;
 - (b) suspend trade temporarily while pursuing on-going measurable risk mitigation efforts; or
 - (c) disengage with a supplier after failed attempts at mitigation;
- (iii) implementing the risk management plan, monitoring and tracking performance of risk mitigation efforts, reporting back to designated senior management and considering suspending or discontinuing engagement with a supplier after failed attempts at mitigation;
- (iv) undertaking additional fact and risk assessments for risks requiring mitigation, or after a change of circumstances.

2. If a *Union* importer *of minerals* pursues risk mitigation efforts while continuing trade or temporarily suspending trade, it shall consult with suppliers and affected stakeholders, including local and central government authorities, international or civil society organisations and affected third parties, and agree on a strategy for measurable risk mitigation in the risk management plan.
3. *Any Union* importer *of minerals* shall, in order to design conflict and high-risk sensitive strategies for mitigation in the risk management plan, rely on the measures and indicators under Annex III of the OECD Due Diligence Guidance and measure progressive improvement.

4. *Any Union importer of metals within the scope of this Regulation shall identify and assess the risks in its supply chain based on available third-party audit reports from the smelters or refiners in its supply chain, and, by assessing, as appropriate, the due diligence practices of the smelters and refiners in its supply chain, consistent with Annex II of the OECD Due Diligence Guidance and the specific recommendations of the OECD Due Diligence Guidance. These audit reports shall be in accordance with Article 6.1 of this Regulation. In the absence of such third-party audit reports from the smelters or refiners in its supply chain, the Union importer of metals shall include the identification and assessment of the risks in its supply chain in its own risk management system. The Union importer of metals shall carry out audits of its own supply chain due diligence via an independent third-party in accordance with Article 6 of this Regulation.*
5. *Any Union importer of metals shall report findings of the risk assessment to its designated senior management and implement a response strategy designed to prevent or mitigate adverse impacts, consistent with Annex II of the OECD Due Diligence Guidance and the specific recommendations of the OECD Due Diligence Guidance.*

Third-party audit obligations

1. *Any Union* importer of the minerals or metals within the scope of this Regulation shall carry out audits via an independent third-party.

The independent third-party audit shall:

- (a) include in the audit scope all of the *Union* importer's activities, processes and systems used to implement supply chain due diligence regarding minerals or metals within the scope of the Regulation, including the responsible importer's management system, risk management, and disclosure of information;
 - (b) determine as the objective of the audit the conformity of the *Union* importer's supply chain due diligence practices with Articles 4, 5 and 7 of this Regulation, ***and make recommendations in the audit report for the auditee to improve its supply chain due diligence practises;***
 - (c) respect the audit principles of independence, competence and accountability as set out in the OECD Due Diligence Guidance.
2. ***Any Union importer of metals shall be exempted from carrying out independent third-party audits pursuant to paragraph 1 of this Article provided it makes available substantive evidence, including third-party audit reports, demonstrating that all smelters and refiners in their supply chain conform to the provisions of this Regulation.***

Substantive evidence shall be deemed to exist when importers of metals demonstrate they are sourcing exclusively from smelters and refiners listed by the Commission pursuant to Article 8 of this Regulation.

Article 7

Disclosure obligations

- 1. Any Union importer of minerals or metals within the scope of this Regulation shall make available to the Member State competent authority the independent third party audit(s) carried out in accordance with Article 6 of this Regulation or evidence of conformity with a supply chain due diligence scheme recognised by the Commission pursuant to Article 7b.*
- 2. Any Union importer of minerals or metals within the scope of this Regulation shall make available to its immediate downstream purchasers all information gained and maintained pursuant to its supply chain due diligence with due regard to business confidentiality and other competitive concerns.*

3. *Any Union importer of minerals or metals within the scope of this Regulation shall publicly report as widely as possible, including on the internet and on an annual basis on its supply chain due diligence policies and practices for responsible sourcing. The report shall contain the steps taken by the responsible importer to implement the obligations as regards its management system, risk management set out in Article 4 and 5 respectively, as well as a summary report of the third-party audits, including the name of the auditor, with due regard to business confidentiality and other competitive concerns.*

4. *Where any Union importer can reasonably conclude that metals are derived only from recycled or scrap sources, it shall, with due regard to business confidentiality and competitive concerns:*
 - (a) *publicly disclose its determination; and*
 - (b) *describe in reasonable detail the supply chain due diligence measures it exercised in making that determination.*

Article 7b

Recognition of supply chain due diligence schemes

- 1. Governments, relevant industry associations, or other groupings of interested organisations may submit applications to the Commission to have supply chain due diligence schemes - as developed and overseen by them - recognised by the Commission. The application shall be supported by adequate evidence and information.*
- 1a. The Commission shall adopt delegated acts, supplementing this Regulation, in accordance with Article 15c setting out the methodology and criteria allowing the Commission to assess whether supply chain due diligence schemes facilitate the compliance of economic operators with the obligations of this Regulation and allowing the Commission to recognize schemes.*
- 2. Where on the basis of the evidence and information provided pursuant to paragraph 1 of this Article and according to the methodology and criteria for recognition established pursuant to paragraph 1a of this Article, the Commission determines that the supply chain due diligence scheme, when effectively implemented by a Union importer of minerals or metals within the scope of this Regulation, enables that economic operator to comply with the obligations under this Regulation, it shall adopt an implementing decision granting it a recognition of equivalence with the requirements of this Regulation. The OECD Secretariat shall as appropriate be consulted before adopting such implementing acts.*

The Commission's determination on the recognition of a scheme shall take into account the diverse industry practices covered by the schemes and shall also include the risk-based approach, method, and listed results used by the supply chain due diligence schemes to identify conflict-affected and high-risk areas, which shall be disclosed by the recognised scheme owner.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 13(2).

The Commission shall also, as appropriate, periodically verify, after the date of entry into application of the Regulation, that recognised supply chain due diligence schemes continue to fulfil the criteria that led to a recognition of decision adopted pursuant to paragraph 2.

3. *The recognised scheme owners shall inform the Commission without delay of any changes or updates made to their supply chain due diligence scheme for which recognition of equivalence was granted in accordance with paragraph 2.*
4. *If there is evidence of repeated or significant cases where importers implementing the scheme have failed to comply with their obligations under this Regulation, the Commission shall examine, in dialogue with the recognised scheme owner, whether those cases indicate deficiencies in the scheme.*
5. *Where failure to comply with the obligations under this Regulation and deficiencies in the supply chain due diligence scheme have been determined by the Commission, it may grant the scheme an appropriate period of time to remedy those deficiencies. In case the scheme owner fails or refuses to take the necessary remedial action, the Commission shall adopt an implementing decision in accordance with the advisory procedure referred to in Article 13(2), withdrawing the recognition of the scheme when it has determined that changes compromise the economic operator's ability to comply with the obligations under the Regulation or when repeated or significant cases of non-compliance by operators relate to deficiencies in the scheme.*

6. *The Commission shall establish and keep up-to-date an internet-based register of recognised supply chain due diligence schemes.*

Article 8

List of responsible smelters and refiners

1. *The Commission shall adopt and make publicly available **an implementing** decision listing the names and addresses of responsible smelters and refiners of minerals within the scope of this Regulation.*

This list shall be drawn up taking into account responsible global smelters and refiners covered by supply chain due diligence schemes recognised by the Commission pursuant to Article 7b of this Regulation and the information submitted by Member States pursuant to Article 15(1).

2. The Commission shall *use its best endeavours to* identify those smelters and refiners that source – at least partially – from conflict-affected and high-risk areas *on the list referred to in paragraph 1, notably by drawing upon information provided by recognized supply chain due diligence scheme owners.*

3. The Commission shall adopt the list **using** the template in Annex II and **in** accordance with the regulatory **advisory** procedure referred to in Article 13(2). The OECD Secretariat shall, **as appropriate**, be consulted.
4. The Commission shall update **and publish, including on the internet**, the information included in the list in a timely manner. The Commission shall remove **via an implementing act** from the list the names of the smelters and refiners that are no longer recognised as responsible **pursuant to Articles 7b, and 15(1)**. **That implementing act shall be adopted** in accordance with **the advisory procedure referred to in Article 13(2)**.

Article 9

Member State competent authorities

1. Each Member State shall designate one or more competent authorities in charge of the application of this Regulation.

Member States shall inform the Commission of the names and addresses of the competent authorities within **6** months after the entry into force of this Regulation. Member States shall inform the Commission of any changes to the names or addresses of the competent authorities.

2. The Commission shall publish, including on the internet, a list of competent authorities **using** the template in Annex III. The Commission shall update the list regularly.
3. Competent authorities shall **be responsible for ensuring** the effective and uniform implementation of this Regulation throughout the Union.

Article 10

Ex-post checks on Union importers

1. The **Member State** competent authorities shall **be responsible for carrying** out appropriate ex-post checks in order to ensure **that Union** importers of **the** minerals **or** metals within **the** scope of this Regulation comply with the obligations set out in Articles 4, 5, 6 and 7 **of this Regulation.**

2. The checks referred to in paragraph 1 shall be conducted by taking a risk-based approach, *as well as in cases* when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning the compliance by a *Union* importer with this Regulation.
3. The checks referred to in paragraph 1 shall include, inter alia:
 - (a) examination of the *Union* importer's implementation of supply chain due diligence obligations including the management system, risk management, independent third-party audit and disclosure;
 - (b) examination of documentation and records that demonstrate the proper compliance with the supply chain due diligence obligations;
 - (c) examination of audit obligations in accordance with the scope, objective and principles set out in Article 6;

The checks should include on-the-spot inspections, including at the importer's premises.

4. *Union* importers shall offer all assistance necessary to facilitate the performance of the checks referred to in paragraph 1, notably as regards access to premises and the presentation of documentation and records.
5. *In order to ensure clarity of tasks and consistency of action among Member States competent authorities, the Commission shall prepare non-binding guidelines in the form of a handbook detailing the steps for the competent authorities of the Member States to carry out ex-post checks and including, as appropriate, templates of documents facilitating the implementation of this Regulation.*

Article 11

Records of checks on Union importers

The competent authorities shall keep records of the checks referred to in Article 10(1), indicating in particular their nature and results, as well as records of any notice of remedial action issued under Article 14(2).

Records of the competent authorities' checks shall be kept for at least 5 years.

Article 12

Cooperation between authorities

1. Competent authorities shall exchange information, including with their respective customs authorities, on matters pertaining to *supply chain due diligence* and ex-post checks carried out.
2. Competent authorities shall exchange information on shortcomings detected through the ex-post checks referred to in Article 10 and on the rules applicable to infringement in accordance with Article 14 with the competent authorities of other Member States and with the Commission.
3. Cooperation between authorities shall be in full respect of the Directive 95/46/EC and Regulation (EC) No 45/2001 on data protection and the provisions of the Council Regulation (EC) No 952/2013 relating to the disclosure of confidential information.

Article 12a

Guidelines

In order to create clarity and certainty for and consistency among economic operators, in particular SMEs, the Commission, in consultation with the European External Action Service and the OECD, shall prepare non-binding guidelines in the form of a handbook for companies, explaining how best to apply the criteria for the identification of conflict-affected and high-risk areas. This handbook shall be based on the definition of conflict-affected and high-risk areas as laid down in Article 2(e) of this Regulation and take into account the OECD Due Diligence Guidance in this field, including other supply chain risks triggering red flags defined in its relevant Supplements.

The Commission shall call upon external expertise that will provide an indicative, non-exhaustive, regularly updated, list of conflict-affected and high-risk areas based on the external experts' analysis of the aforementioned handbook and existing information from, amongst others, academia and supply chain due diligence schemes. Union importers sourcing from areas which are not mentioned on the indicative list also maintain their responsibility to comply with the due diligence obligations under this Regulation.

Article 13

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.

Article 14

Rules applicable to infringement

1. Member States shall lay down the rules applicable to infringements of the provisions of this Regulation.

2. In case of an infringement of the provisions of this Regulation, the competent authorities of Member States shall issue a notice of remedial action to be taken by the *Union* importer.
3. *Member States shall notify the rules to the Commission and shall notify it without delay of any subsequent amendment thereto.*

Article 15

Reporting and review

1. Member States shall submit to the Commission by 30 June of each year at the latest, a report on the implementation of this Regulation *and, in particular, on notices of remedial action issued by their competent authorities and on the independent third party audits examined pursuant to Article 7.1.*

2. ***Two*** years after the ***date of*** entry into ***application*** pursuant to the date in Article 16(2) of this Regulation and every ***three*** years thereafter, the Commission shall review the functioning and effectiveness of this Regulation, ***and its latest impact 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 on Union's businesses including small and medium-sized enterprises also taking into account the accompanying measures outlined in JOIN(2014)8***. ***The Commission shall discuss the review report with the European Parliament and the Council. The review shall include an independent assessment of the proportion of total downstream operators in the EU with tin, tantalum, tungsten and gold in their supply chain, having due diligence systems in place. The review shall assess the adequacy and implementation of these due diligence systems and the latest impact of the scheme on the ground as well as the need for additional mandatory measures in order to ensure sufficient leverage of the total EU market on the responsible global supply chain of minerals.***

3. *Based on the findings of the review under paragraph 2, the Commission shall assess whether Member State competent authorities should have competence to impose penalties upon Union importers in the event of persistent failure to comply with the obligations set out in this Regulation. It may, if appropriate, make a legislative proposal to the European Parliament and the Council in this sense.*

Article 15b

Methodology for calculation of thresholds

Unless otherwise provided in this Regulation, on the basis of customs information that shall be provided upon request of the Commission by the Member States on the annual import volumes by importer and by Combined Nomenclature code listed in Annex I in their respective jurisdictions, the Commission shall select the highest annual import volume per Union importer and per Combined Nomenclature code corresponding to no less than 95% of the total annual volume of imports into the EU for that Combined Nomenclature code as the new threshold to be inserted in Annex I. The Commission shall rely in doing so on the import information per Union importer provided by the Member States for the two previous years.

Article 15c

Exercise of the Delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*
- 2. The power to adopt delegated acts referred to in Article 1.(2a) and Article 7b(1a) shall be conferred on the Commission for a period of five years from ...{date of entry into force of this Regulation}. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.*
- 3. The delegation of power referred to in Articles 1(2a) and 7b(1a) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.*

4. *Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.*
5. *As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*
6. *A delegated act adopted pursuant to Articles 1(2a) and 7b(1a) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and to the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.*

Article 16

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. *Articles 1(2a) second subparagraph, 1(2b), 1(2c), 3(1), 3(2), 4, 5, 6, 7, 7b(4), 7b(5), 9(3), 10(1), 10(2), 10(3), 10(4), 11, 12, 14(2), 15 shall apply from 1 January 2021.*
3. *Articles 1(1), 1(2), 1(2a) first subparagraph, 2, 3(3), 7b(1), 7b(1a), 7b(2), 7b(3), 7b(6), 8, 9(1), 9(2), 10(5), 12a, 13, 14(1), 14(3), 15b, 15c shall apply from ²*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President

² *OJ: Please insert the date: one month after the date of entry into force of this Regulation.*

ANNEX I

List of minerals and metals within the scope of the Regulation classified under the Combined Nomenclature

CN code	Product description
2609 00 00	Tin ores and concentrates
2611 00 00	Tungsten ores and concentrates
2615 90 00	Tantalum ores and concentrates
2616 90 00	Gold ores and concentrates
2825 90 40	Tungsten oxides and hydroxides
2849 90 30	Tungsten carbides
2849 90 50	Tantalum carbides
7108	Gold, unwrought or in semi-manufactured forms, or in powder form
8001	Tin, unwrought
8003 00 00	Tin bars, rods, profiles and wires
8007 00	Tin, other articles
8101 10 00	Tungsten, powder
8101 94 00	Tungsten, unwrought, including bars and rods obtained simply by sintering
8101 96 00	Tungsten wire
8101 99	Tungsten bars and rods, other than those obtained simply by sintering, profiles, plates, sheets, strip and foil, and other
8103 20 00	Tantalum, unwrought including bars and rods, obtained simply by sintering; powders
8103 90	Tantalum bars and rods, other than those obtained simply by sintering, profiles, wire, plates, sheets, strip and foil, and other

ANNEX II

List of responsible smelters and refiners' template referred to in Article 8

- Column A: Name of smelters or refiners in alphabetical order
- Column B: Address of the smelter or refiner
- Column C: (*) indicator, if the smelter or refiner sources minerals originating from conflict-affected and high-risk areas

A	B	C
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ANNEX III

List of Member State competent authorities template referred to in Article 9

- Column A: Name of Member States in alphabetical order
- Column B: Name of the competent authority
- Column C: Address of the competent authority

A	B	C
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Annex I

List of minerals and metals within the scope of the Regulation classified under the Combined Nomenclature

Part A: Minerals

Description of mineral	Combined Nomenclature code	TARIC sub-division	Volume threshold in KG
Tin ores and concentrates	2609 00 00		5000
Tungsten ores and concentrates	2611 00 00		250000
Tantalum or niobium ores and concentrates	ex 2615 90 00	10	to be determined in accordance with Article 1(2a) and 15b
Gold ores and concentrates	ex 2616 90 00	10	to be determined in accordance with Article 1(2a) and 15b
Gold, unwrought or in semi-manufactured forms, or in powder with a gold concentration lower than 99.5% that has not passed the refining stage	ex 7108 ³		100

³ Add footnote: For the purpose of amending this threshold, the imported volume obtained by applying the methodology and criteria of Article 15b shall be set as the threshold for both ex 7108 tariff lines included in Annex I.

Part B: Metals

Description	CN code	TARIC sub-division	Threshold (KG)
Tungsten oxides and hydroxides	2825 90 40		100000
Tin oxides and hydroxides	ex 2825 90 85	10	to be determined in accordance with Article 1(2a) and 15b
Tin chlorides	2827 39 10		10000
Tungstates	2841 80 00		100000
Tantalates	ex 2841 90 85	30	to be determined in accordance with Article 1(2a) and 15b
Carbides of tungsten	2849 90 30		10000
Carbides of tantalum	ex 2849 90 50	10	to be determined in accordance with Article 1(2a) and 15b
Gold, unwrought or in semi-manufactured forms, or in powder form with a gold concentration of 99.5% or higher that has passed the refining stage	ex 7108 ⁴		100

⁴ Add footnote: For the purpose of amending this threshold, the imported volume obtained by applying the methodology and criteria of Article 15b shall be set as the threshold for both ex 7108 tariff lines included in Annex I.

Ferrotungsten and ferro-silico-tungsten	7202 80 00		25000
Tin, unwrought	8001		100000
Tin bars, rods, profiles and wires	8003 00 00		1400
Tin, other articles	8007 00		2100
Tungsten, powders	8101 10 00		2500
Tungsten, unwrought, including bars and rods obtained simply by sintering	8101 94 00		500
Tungsten wire	8101 96 00		250
Tungsten bars and rods, other than those obtained simply by sintering, profiles, plates, sheets, strip and foil, and other	8101 99		350
Tantalum, unwrought including bars and rods, obtained simply by sintering; powders	8103 20 00		2500
Tantalum bars and rods, other than those obtained simply by sintering, profiles, wire, plates, sheets, strip and foil, and other	8103 90		150

Council declaration

The Council agrees, on an exceptional basis, to delegate to the Commission the power to adopt delegated acts to amend the thresholds of Annex I as set out in Article 1(2a) paragraphs 1 and 2, so as to ensure a timely adoption of the thresholds and to meet the objectives of this Regulation. Such agreement is without prejudice to future legislative proposals in the area of trade, as well as in the area of external relations as a whole.

***Political Understanding to be published at the time of the publication of the
EU Regulation on Conflict Minerals***

The European Parliament, the Council and the European Commission encourage all operators within the scope of the EU Conflict Minerals Regulation to start carrying out due diligence on their supply chains for 3T&G ahead of the entry into application (scheduled for 1/1/2021) of the Regulation as soon as they are ready to do so according to the EU Conflict Minerals Regulation.

Commission declaration

Written statement at the adoption in the European Parliament of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas

The Commission will consider making additional legislative proposals targeted at EU companies with products containing 3TG in their supply chain should it conclude that the aggregate efforts of the EU market on the responsible global supply chain of minerals are insufficient to leverage responsible supply behaviour in producer countries, or should it assess that the buy-in of downstream operators that have in place supply chain due diligence systems in line with the OECD guidance is insufficient.

Commission declaration

Written statement at the adoption in the European Parliament of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas

In response to the request of the European Parliament for specific guidelines, the Commission is willing to develop performance indicators specific to the responsible sourcing of conflict minerals. By means of such guidelines, relevant companies with more than 500 employees that are required to disclose non-financial information in conformity with Directive 2014/95/EU would be encouraged to disclose specific information in relation to products containing tin, tantalum, tungsten or gold.

Commission declaration

Written statement at the adoption in the European Parliament of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas

In the exercise of its empowerment to adopt delegated acts pursuant to article 1.2a second indent, the Commission will take due account of the objectives of this regulation notably as set out in recitals (1), (5a), (8) and (13a).

In doing so, the Commission will, in particular, consider the specific risks associated with the operation of upstream gold supply chains in conflict affected and high risk areas and taking into account the position of Union micro and small enterprises importing gold in the EU.
