

Ask the 3Expert

“What are the latest developments with the EU’s proposed conflict minerals law?”

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The European Union (EU) is growing closer to agreeing on a conflict minerals law. It appears likely that the law will contain mandatory due diligence on the largest importers of tin, tantalum, tungsten, and gold (3TG). The outstanding issue is how to deal with companies that import processed products that contain 3TG. The next trilogue negotiation on the proposal is expected to occur in June 2016.

The EU Presidency, represented by Lilianne Ploumen, Minister for Foreign Trade and Development Cooperation of the Netherlands, on 13 May 2016 briefed trade ministers on negotiations with EU Parliament and EU Commission, noting the "increasing convergence of views since negotiations started on February first." She said that the parties agree in principal on mandatory due diligence on the largest importers of tin, tantalum, tungsten, and gold (3TG) in line with OECD guidance. The outstanding issue is how to deal with companies that import processed products that contain these minerals and metals. According to the briefing, discussions will continue on the outstanding issues, with a fourth trilogue to be held possibly in early June.

On 14 July 2015, the Members of the European Parliament (MEPs) voted to initiate informal trilogue meetings with the European Council with the goal to reach an agreement on the proposed conflict minerals law. The European Parliament had voted on 20 May 2015 in favor of the law, which would impose requirements on any company using tin, tantalum, tungsten and gold (3TG or "conflict minerals") for manufacturing consumer products, as well as for any company importing 3TG into the EU. This draft served as the basis for the trilogue negotiations.

Like the U.S. conflict minerals law (Dodd Frank Section 1502), the EU proposal is based on the OECD due diligence guidance, and is limited to 3TG. Unlike the U.S. law, the EU legislation is not limited to the Congo region, but is proposed to apply to any "conflict affected or high risk area" in the world. The EU draft defines "conflict-affected and high-risk areas" as those in a state of armed conflict, with widespread violence, the collapse of civil infrastructure, fragile post-conflict areas and areas of weak or non-existent governance and security, characterized by widespread and systematic violations of human rights.

If the EU succeeds in passing a conflict minerals law, it will significantly impact not only affected EU businesses but also their suppliers around the world. These companies will be asked to establish due diligence programs to identify and mitigate risks in their supply chains related to sourcing

conflict minerals from conflict affected or high risk areas around the globe. Importers may have to undergo third party audits unless they are certified as a responsible importer.

Such an EU law will benefit companies subject to the U.S. conflict minerals law, as the EU companies' participation will help to increase pressure on smelters around the world to become conflict-free. However, U.S. and international companies that sell to the European Union or are in the supply chain of a European manufacturer may find that they have additional obligations imposed by their customers to provide information on the source and chain