



re-sourcing



Challenges in the Implementation of Conflict Minerals Regulation

Case Introduction: A discussion on the implementation of the Conflict Minerals Regulation by the EU Member States and lessons for future due diligence legislation.





Context of the Research of the Core Group on Conflict Minerals

- **First report** published in June 2021 on the first developments of the implementation of the 3TGold Regulations on a member state level. Participation of 15 MSCAs.
- **Follow up Report** will be published in the first semester 2023. Evaluation of the first implementation year to detect the good practices and challenges.
- **Review of the Regulation by the EC** will be effectuated in 2023. Conclusions and Recommendations within the framework of this review.



Promising Developments

- The national legislative and/or democratic procedures to implement the Regulation, have been completed in most member states or are in an advanced stage.
- Structural meetings between MSCAs, and the development of software to share EU customs data to detect multi-entry imports.
- Information exchange between MSCAs, (the consultants of) the EC and the CSO's.

Ideas to further strengthen these best practices

- Assess the different forms of implementation processes at the member state level.
- Share data on important trading hubs such as Switzerland, Dutch Antilles, Dubai and analyze this data to understand their role in the European import of 3TGold.
- Exchange on concrete upstream HR cases between MSCAs and CSOs, and explore the possibility of a subsequent joint field assessment.



Challenge: the thresholds

- Threshold is exceeded by a (small) minority of importers;
In the major importing countries of 3TGold 3-10% exceeds the threshold.
An exceptional percentage in one member state of more 30%.
- Relationship between the threshold and the total import.
Only data of two countries so far – import under Regulation represents 80-90 % of the total import volume.
- Detected difficulties among specific groups of importers:
 - agencies or intermediaries in countries with large ports.
 - Investors in the European investment market.
 - Companies that divide their Import over several countries
- Interesting differences between the EU member states regarding the percentages of the import of each specific mineral.



Challenge: the industry schemes and selection criteria for ex-post checks

- Many importing companies source from the industry schemes RMI or LBMA.
- MSCAs have different approaches regarding the concept of the recognized Industry Schemes and Whitelist.
- In view of the role of the recognized Industry Schemes it is necessary to get transparent data of the involved refineries and smelters on the origin of their minerals.
- This raises two questions regarding the recognitions process of the industry schemes:
 - To what level need industry schemes to assess and report on their supply chain?
 - What if their direct supplier is not the producing mining company or producing country?



Challenge: audit reporting

- The importers and the MSCAs generally see the period 2022-2023 as learning exercise in progress.
- Different approaches of the MSCAs on how to deal with the audit reporting.
The number of received report by MSCAs still varies a lot.
- Different approaches of the MSCAs regarding the disclosure of names, reports, etc.



The impact of the 3TGold Regulation – 2023 Review

- Is the impact of the 3TGold noticeable and visible at an upstream level?
- Risk at an upstream level: artisanal miners will be excluded from the large industry schemes.
- It is currently de facto impossible to trace down the traders, smelters, refiners and importers of known cases of conflict minerals.



Possible discussion points

- How can we align the different approaches of the MSCAs regarding the implementation of the Regulation?
- Is it worthwhile to invest in the discussion on the 3TGold Regulation with the mining companies in the producing countries to urge them to disclose their smelters and refiners?
- The smelters, refiners and industry schemes seem to have a key role in the improvement of the effectiveness of the Regulation. Disclosure of the origin of their minerals could lead to meaningful reporting.
- Recognized Industry schemes should allow formalized cooperations of artisanal miners to become member.
- Could a joint assessment of the role of trading hubs such as Switzerland, Dubai and the Dutch Antilles be useful?