

# REGULATION UPDATE

BY RACHEL HART, LAWYER, LBMA

In this Regulatory Update, Rachel Hart considers new and upcoming components of the 2020 regulatory framework governing the precious metals industry throughout Europe.

## UK Human Rights Sanctions Law

In July, the Global Human Rights Sanctions Regulations 2020 (GHRSR) came into force in the UK. The Act aims to deter and provide accountability for activities amounting to a serious violation of an individual's right to life, right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, and right to be free from slavery.

Under the GHRSR, for the first time, individuals can be sanctioned for human rights breaches. Similar to OFAC, the UK now maintains a list of sanctioned individuals and entities. An individual who commits an offence (e.g. financing a sanctioned individual or entity) can face a custodial sentence of seven years.

## EU Conflict Minerals Regulation

From 1 January 2021, the Conflict Minerals Regulation will require all companies importing over 100kg (including refiners, mints, banks, traders and retailers) of gold into the EU to formalise their management systems in line with the OECD's Five-Step Due Diligence Guidance. Rather than prohibiting gold imports from certain areas, the Regulation requires importers to deal with gold from only responsible and conflict-free sources. Enhanced due diligence by upstream parties will also help to distinguish between conflict-affected and conflict-free sources. By implementing these practices, parties can continue to engage with legitimate sources while disengaging from sources which perpetuate armed conflict, violence and human rights abuse.

As part of compliance with the OECD Guidance, the Regulation requires gold importers to provide the names and addresses of their suppliers. This is overseen by the designated local authority; for example, in the UK, the Office for Product Safety and Standards will be empowered to examine relevant documents and audit reports, and carry out on-the-spot inspections at an importer's premises.

Ahead of the implementation date, the European Commission will be publishing several important resources to help with importers' compliance efforts. The Commission will publish an indicative, non-exhaustive list of conflict-affected and high-risk areas, comprising areas that are currently or could be affected by conflict. A 'white list' of refiners whose sourcing practices are compliant with the Regulation will also help downstream parties report on their suppliers.

An additional 'white list' will set out supply chain due diligence schemes recognised by the Commission to mirror the OECD Guidance. LBMA has applied to the Commission for assessment of the Responsible Gold Guidance (RGG).



**Rachel Hart, Lawyer, LBMA.** Deals with legal and compliance matters affecting the precious metals market, including financial regulation and the Responsible Sourcing Programme. She has taken responsibility on a number of initiatives and helps to manage any relevant legal work on behalf of LPMCL, as well as support the market on the application of REACH and the Global Precious Metals Code.

Before joining the LBMA, Rachel worked as a Finance Knowledge Assistant at Freshfields Bruckhaus Deringer, specialising in structured finance and debt capital markets. She read law at University of York and University of Law, London.

This process builds on the alignment assessment undertaken in 2017 to close any gaps between the OECD Guidance and the RGG. Recognition by the Commission of the RGG will ensure that Good Delivery refiners' ongoing and future responsible sourcing efforts are recognised under the Regulation and can also be relied upon by upstream parties in their compliance efforts under the Regulation.

## Benchmarks

In July, the Commission announced several delegated regulations to support the EU Benchmarks Regulation on sustainable finance issues.

Since 2018, benchmark administrators have been required to publish a Benchmark Statement which sets out the rationale of the benchmark methodology, criteria for input data and governance procedures, amongst other things. As part of the European Green Deal, benchmarks administrators will now be required to report on how Environmental, Social and Governance (ESG) factors are reflected in their benchmarks. From August, the Benchmark Statement must consider whether and how the benchmark pursues ESG objectives and provide details on each element of these factors.

For commodity benchmarks (including LBMA precious metal prices), the degree of exposure the underlying commodity has on ESG factors must be considered. This includes an average rule of law score, based on the absence of corruption, respect for fundamental rights, and the state of civil and criminal justice.

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**THE CONFLICT  
MINERALS REGULATION  
WILL REQUIRE  
ALL COMPANIES  
IMPORTING OVER  
100kg  
OF GOLD INTO THE  
EU TO FORMALISE THEIR  
MANAGEMENT SYSTEMS  
IN LINE WITH THE  
OECD's Five-Step Due  
Diligence Guidance**

## DIGITAL FUTURE FOR FINANCIAL MARKETS

LBMA has co-signed a letter to policy makers promoting the development of a digital future for financial markets. Signed by LBMA, ISDA, ICMA, ISLA and other international market associations, the letter sets out a series of principles and objectives aimed at promoting the development of digital standards in order to increase efficiencies, reduce complexity and lower costs.

**LBMA DEMONSTRATES  
ITS COMMITMENT  
TO EXPLORING  
TECHNOLOGY'S  
ROLE IN THE  
FUTURE PRECIOUS  
METALS MARKET**

By co-signing this letter, LBMA demonstrates its commitment to exploring technology's role in the future precious metals market. For example, our Gold Bar Integrity project is considering how technology, such as digitisation and tokenisation, can benefit the physical and financial supply chains. Adoption of common standards, including LBMA's upcoming Security Feature specifications, can improve risk management, data integrity and operational efficiencies. Under the principles set out in the letter (Standardisation, Digitisation and Distribution), LBMA is committed to defining and promoting a digital future for financial markets.

