



Brussels, 25.6.2020
C(2020) 4164 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 25.6.2020

amending Annex I to Regulation (EU) 2017/821 of the European Parliament and of the Council by establishing volume thresholds for tantalum or niobium ores and concentrates, gold ores and concentrates, tin oxides and hydroxides, tantalates and carbides of tantalum

{SWD(2020) 116 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Annex I to Regulation (EU) 2017/821 (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; hereinafter “the Regulation”) provides a list of the minerals and metals that fall within the scope of the Regulation. Annex I also sets out certain annual import volume thresholds with regard to those minerals and metals and the Regulation only applies to EU importers that import one or more of the covered minerals and metals in annual volumes that exceed these thresholds.

As set out in Article 1(3) of the Regulation, the thresholds in Annex I are set at a level that ensures that no less than 95 % of the total volumes imported into the Union of each mineral and metal is subject to the obligations set out in the Regulation.

At the time the Regulation was adopted in 2017, there were no sufficiently disaggregated Combined Nomenclature codes with regard to five of the specific minerals and metals listed in Annex I (and hence within the scope of the Regulation). As a result, the import data with regard to those minerals and metals were not available and five volume thresholds in Annex I are therefore still to be established. These are the thresholds for i) tantalum or niobium ores and concentrates, ii) gold ores and concentrates, iii) tin oxides and hydroxides, iv) tantalates, and v) carbides of tantalum.

In order to complete Annex I to the Regulation, its Article 1(4) provides that the Commission is to adopt a delegated act, in accordance with Articles 18 and 19 of that Regulation, if feasible by 1 April 2020 but no later than 1 July 2020, to amend Annex I by establishing the volume thresholds of these minerals and metals. This Delegated Commission Regulation (hereinafter “the Delegated Regulation”) is the act referred to in Article 1(4) of the Regulation.

In order to ensure that the necessary import data become available for the calculation of the thresholds that are yet to be established, the Regulation created five new TARIC subdivisions (corresponding to the five minerals and metals the thresholds for which are not yet established), with respect to which the customs authorities of the Member States have collected customs data since the Regulation entered into force in June 2017.

Article 18 of the Regulation provides that the new thresholds shall be set on the basis of customs information provided upon request of the Commission by the Member States on the annual import volumes by Union importer and by Combined Nomenclature code as listed in Annex I in their respective territories. Article 18 also establishes that the same aforementioned 95 % principle shall apply to the calculation of the thresholds and that the Commission for this purpose shall rely on the import information for each Union importer provided by the Member States for the previous two years (hence for 2018 and 2019 for the purposes of this Delegated Regulation).

The specific thresholds set out in the Annex to this Delegated Regulation have been established based on import data provided by the Member States over December 2019 to March 2020, following a formal request from the Commission sent to the Council Working Party on Trade Questions in November 2019.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

This Delegated Commission Regulation was prepared based on information from and after consultations with Member States. The consultation of Member States on the general approach and the draft Delegated Regulation has been through the Expert Group for Responsible Sourcing of tin, tantalum, tungsten and gold; to which the experts from the European Parliament are also invited.

The Delegated Commission Regulation has been on the agenda of all meetings of the Expert Group throughout 2019. At the meeting on 19 February 2019, the Commission presented the context and basic approach of the initiative and asked for comments and feedback from the members of the Expert Group. In view of the meeting on 5 June 2019, the Commission shared a draft template for the data reporting with the members of the Expert Group for comments. A first draft of the Delegated Commission Regulation (that did not include the actual thresholds as the data was not yet available) was shared with the members of the Expert Group in view of the meeting on 26 November 2019. A second draft was shared with the members of the Expert Group for consultation on 22 April 2020. No comments on substance were received. A final draft was shared with Member States after finalisation of inter-service consultation and prior to the launch of the Commission's adoption procedure.

Given that import data underpinning the establishment of the five thresholds contains commercially sensitive information, the details of the underlying calculations could not be revealed to the Expert Group prior to the adoption of the Delegated Act. A detailed document on the Commission's approach to calculating the thresholds based on the data submitted by Member States was prepared and issued to ensure transparency and to facilitate the understanding of the way the Commission implemented the methodology.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 of the Delegated Regulation amends Annex I to Regulation (EU) 2017/821 in accordance with the Annex to the Delegated Regulation.

Article 2 of the Delegated Regulation sets out that it will enter into force 20 days after its publication in the Official Journal of the European Union and that it is binding in its entirety and directly applicable in all Member States.

The Annex to the Delegated Regulation sets out the details of the amendments of Annex I to the Regulation, by establishing volume thresholds for i) tantalum or niobium ores and concentrates, ii) gold ores and concentrates, iii) tin oxides and hydroxides, iv) tantalates, and v) carbides of tantalum. The volume thresholds for these five product categories were not included in Annex I to Regulation (EU) 2017/821.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 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 areas¹, and in particular Article 1(4) thereof,

Whereas:

- (1) Annex I to Regulation (EU) 2017/821 contains a list of minerals and metals within the scope of that Regulation and sets out certain annual import volume thresholds with regard to those minerals and metals.
- (2) In accordance with Article 1(3) of Regulation (EU) 2017/821, that Regulation does not apply to Union importers where their annual import volume of each of the minerals or metals concerned is below the thresholds set out in Annex I to that Regulation. Those thresholds are set at a level that ensures that no less than 95 % of the total volumes imported into the Union of each mineral and metal is subject to the obligations of Union importers set out in that Regulation.
- (3) At the time the Regulation was adopted in 2017, there were no sufficiently disaggregated Combined Nomenclature codes with regard to five of the specific minerals and metals listed in Annex I. As a result, the import data with regard to those minerals and metals were not available and five volume thresholds in Annex I are therefore still to be established.
- (4) Pursuant to Article 1(4) of Regulation (EU) 2017/821 the Commission is to establish the volume thresholds that remains to be set out in Annex I by adopting a delegated act, in accordance with Articles 18 and 19 of Regulation (EU) 2017/821 in order to amend Annex I. If feasible, the delegated act should be adopted by 1 April 2020 but no later than 1 July 2020.
- (5) Regulation (EU) 2017/821 created five new Integrated Tariff of the European Communities ('TARIC') subdivisions corresponding to the five minerals and metals with thresholds that are yet to be established, with respect to which the customs authorities of the Member States have collected customs data since the Regulation entered into force in June 2017.

¹ OJ L 130, 19.5.2017 , p. 1.

(6) Pursuant to Article 18 of Regulation (EU) 2017/821 the Commission is to rely on the import information for each Union importer provided by the Member States for the previous two years, hence for 2018 and 2019.

(7) Annex I to Regulation (EU) 2017/821 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) 2017/821 is amended in accordance with the Annex to this Delegated Regulation.

Article 2

This Delegated Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

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

Done at Brussels, 25.6.2020

For the Commission
The President
Ursula VON DER LEYEN