Provision of an indicative, non-exhaustive list of Conflict-Affected and High-Risk Areas (CAHRAs) under Regulation 2017/821

Updated methodology

Jacopo Bellasio, Victoria Jordan, Pauline Paille, Anna Knack & Ruth Harris
The European Union (EU) is committed to ensuring that minerals and metals that are used for European products are sourced responsibly and align with European policies on conflict prevention and the development of local communities. In 2017, 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 was adopted. This regulation requires EU importers to ensure that the minerals with which they work originate from responsible sources and that businesses comply with and report on supply chain due diligence obligations with special focus on so-called conflict-affected and high-risk areas (CAHRAs).

Regulation 2017/821 sets out in Article 14(2) that the European Commission (EC) shall call upon external expertise to provide an indicative, non-exhaustive, regularly updated list of CAHRAs. In 2019, RAND Europe was commissioned to develop and maintain a credible, indicative, non-exhaustive, regularly updated list of CAHRAs under Regulation 2017/821 to facilitate the calibration of due diligence efforts made by EU importers of relevant minerals (Contract: TRADE2018/G3/G11 (Revised)).

This document constitutes the project’s revised Task A report. It presents the updated methodology employed for the development and updating of the indicative, non-exhaustive, regularly updated list of CAHRAs under Regulation 2017/821 to be produced under this project. This report will be of interest to stakeholders working with Regulation 2017/821.

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Executive summary

Study context, scope and objective

In 2017, 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 was adopted. This regulation requires EU importers to ensure that the minerals with which they work originate from responsible sources and that businesses comply with and report on supply chain due diligence obligations with special focus on so-called conflict-affected and high-risk areas (CAHRAs). Regulation 2017/821 sets out in Article 14(2) that the European Commission (EC) shall call upon external expertise to provide an indicative, non-exhaustive, regularly updated list of CAHRAs.

In 2019, RAND Europe was commissioned to develop and maintain a credible, indicative, non-exhaustive, regularly updated list of CAHRAs under Regulation 2017/821 to facilitate the calibration of due diligence efforts made by EU importers of relevant minerals (Contract: TRADE2018/G3/G11 (Revised)).

Task A approach

This document comprises the project’s revised Task A report. It presents the updated methodology proposed for the development and updating of the indicative, non-exhaustive, regularly updated list of CAHRAs under Regulation 2017/821 to be produced under this project. This report has been drafted for stakeholders interested in Regulation 2017/821 and methodologies for identifying CAHRAs.

The project’s Task A objectives were to:

- Design and establish a methodology to be employed to produce and regularly update an indicative, non-exhaustive list of CAHRAs relevant to Regulation 2017/821.
- Produce a report presenting the activities conducted by the project team and the resulting methodology designed to produce an indicative, non-exhaustive list of CAHRAs relevant to Regulation 2017/821 during subsequent tasks of the project.

Figure ES.1 provides a visual overview of the overarching approach and methods employed by the project team for the delivery of Task A. This revolved around the following activities:

- Identification of factors, drivers and metrics characterising CAHRAs under Regulation 2017/821.
- Identification of data sources that could be leveraged to investigate CAHRAs under Regulation 2017/821.
- Development of a methodology workflow and analytical approach for the production of a regularly updated, indicative, non-exhaustive list of CAHRAs under Regulation 2017/821.

- Reporting of Task A activities and results.

**Figure ES.1: Overview of Task A approach and methods**

### Factors identification

First, Task A focused on identifying and mapping factors and drivers that should be monitored and analysed to make an evidence-based judgement as to whether a region or country should be considered a CAHRA in the context of Regulation 2017/821.

### Data sources identification

In parallel, the project team identified, reviewed and shortlisted data sources and databases that could be employed to collect and monitor data required to produce a robust assessment of CAHRAs relevant to Regulation 2017/821 across the globe.

### Workflow development and finalisation

Upon conclusion of data collection, the project team focused on designing the workflow and methodological approach to be adopted to produce an indicative, non-exhaustive list of CAHRAs relevant to Regulation 2017/821.

### Reporting and quality assurance

To conclude Task A, the project team produced a report summarising the activities conducted and their results, with particular emphasis on the methodology developed. The report was subject to peer review according to the RAND Europe Quality Assurance system.
Methodology requirements

The methodology to be developed as part of this project needed to meet a range of requirements articulated in the Commission’s tender specifications, as well as a range of needs and requirements emerging from an analysis of the texts of Regulation 2017/821 and Recommendation 2018/1149. Based on an analysis of key legislation, project documentation, as well as stakeholder and expert inputs, the methodology underpinning the provision of an indicative, non-exhaustive list of CAHRAs under Regulation 2017/821 should:

- Be fully in line with the definition of CAHRAs as set out in Regulation 2017/821.
- Be consistent and coherent with Recommendation 2018/1149.
- Be able to accommodate a global scope of analysis.
- Be able to identify CAHRAs on the basis of subnational assessments.
- Include in its assessment regions not only associated with production and extraction, but also with other parts of the supply and value chain.
- Include rather than exclude a CAHRA where faced with doubt, incomplete or contradictory information regarding its relevance to Regulation 2017/821.
- Be transparent and replicable.
- Build on existing resources and methods developed by recognised institutions and organisations.

To translate these requirements into an operational methodology, the project team endeavoured to apply the following design principles:

- Transparency and replicability
- Systematicity and objectiveness
- Data triangulation
- Data optimisation
- Scanning the scanners
- Flexibility and adaptability.

Methodology for providing an indicative, non-exhaustive list of CAHRAs under Regulation 2017/821

To ensure the production of an indicative, non-exhaustive list of CAHRAs under Regulation 2017/821, the project team devised a multistep process that would:

- Consider all countries outside of the EU
- Consider the main sub-national administrative entities within each country reviewed
- Verify whether a subnational administrative entity would qualify as a conflict-affected area
- Verify whether a subnational administrative entity would qualify as a high-risk area
- Verify whether identified CAHRAs are relevant to Regulation 2017/821.

To implement the methodology conceptual approach, the project team developed a series of research questions clustered in Boolean expressions to be answered at each step of the methodology. These served to determine for administrative regions in all non-EU countries whether they should be considered a CAHRA under Regulation 2017/821. For each methodological step developed, the team identified specific data sources to be leveraged to answer research questions envisioned. Box ES.1 presents a summary of research questions to be investigated under each step of the methodology developed.

**Box ES.1: Summary of methodology research questions**

<table>
<thead>
<tr>
<th>Step</th>
<th>Research Question</th>
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<tr>
<td>1.</td>
<td>Determine whether the subnational administrative entity of focus is in a state of armed conflict</td>
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<td></td>
<td>{ (Has the subnational entity of focus witnessed armed conflict leading to the death of more than 50 individuals over the previous 12 months for which data is available as reported by the Armed Conflict Location &amp; Event Data Project (ACLED) AND Uppsala Conflict Data Program (UCDP)) } OR { (Has the subnational entity of focus witnessed armed conflict leading to the death of more than 50 individuals over the previous 12 months for which data is available as reported by EITHER the Armed Conflict Location &amp; Event Data Project (ACLED) OR Uppsala Conflict Data Program (UCDP)) AND (Has it been identified as a limited war or war by the Heidelberg Conflict Barometer in its latest available assessment OR as being part of a country currently in international or non-international armed conflict by the Geneva Academy Rule of Law in Armed Conflicts) }</td>
</tr>
<tr>
<td>2.</td>
<td>Determine whether the subnational administrative entity of focus is a fragile post-conflict area or part of a failed state</td>
</tr>
<tr>
<td></td>
<td>{ (Has the subnational entity of focus experienced a status of armed conflict within the past three years identified retrospectively with the approach from the previous methodological step) OR (Is a peacekeeping operation under UN mandate deployed in the subnational entity of focus) OR (Is a foreign military occupation ongoing in the subnational entity of focus) AND (Are widespread international law and human rights violation currently being reported in the subnational entity of focus or in the country in which the subnational entity of focus is located) } OR { (Is the subnational entity of focus located in geographic proximity (i.e. shares one land border) and within the same country of a subnational entity affected by armed conflict (as defined under Step 2 of the methodology) OR Is the subnational entity of focus located in a country where overall it is possible to identify a state of high-intensity or medium-intensity conflict according to the</td>
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World Bank Classification of Fragility and Conflict Situations? OR (Is the subnational entity of focus located in a country where overall it is currently possible to identify a state of high institutional and social fragility according to the World Bank Classification of Fragility and Conflict Situations?) OR (Is the subnational entity of focus located in a country where overall average Worldwide Governance Indicators scores for Political Stability and Absence of Violence and for Government Effectiveness and for Voice and Accountability are in the global bottom octile?) OR (Is the subnational entity of focus located in a country whose composite assessment for the mining sector by the Natural Resource Governance Institute results is Poor or Failing?)

AND

(Are widespread human rights violation currently being reported in the subnational entity of focus or in the country in which the subnational entity of focus is located?)

3. Determine whether the subnational administrative entity of focus is relevant to the scope of Regulation 2017/821

{Is the subnational administrative entity of focus an area characterised by the presence of reserves or by the production, extraction or by exploration efforts for the commodities included under Regulation 2017/821? OR

Is the subnational administrative entity of focus located in geographic proximity and within the same country of a region characterised by the presence of reserves or by production, extraction or by exploration efforts for the commodities included under Regulation 2017/821? OR

Are there reports of widespread artisanal mining of commodities under Regulation 2017/821 in the subnational administrative entity of focus or broader country? OR

Is the region of focus located in a country that exports or re-exports commodities included under Regulation 2017/821?)

Finally, for each of the methodology’s steps, the project team identified data sources and repositories to be used to answer research questions developed. Figure ES.2 provides a visual overview of the methodology’s conceptual approach, linking it to the specific data sources that will be used to investigate the methodology’s research questions.
Consider in turn and within each country existing outside of the EU each of its main subnational administrative entities.

Determine whether the subnational administrative entity of focus is in a state of armed conflict.

Include subnational administrative entity in list of CAHRAs relevant to Regulation 2017/821.

Determine whether the subnational administrative entity of focus is a fragile post-conflict area.

Include subnational administrative entity in list of CAHRAs relevant to Regulation 2017/821.

Determine whether the subnational administrative entity of focus is relevant to the scope of Regulation 2017/821.

Include subnational administrative entity in list of CAHRAs relevant to Regulation 2017/821.

Determine whether the subnational administrative entity of focus is part of a failed state.

Include subnational administrative entity in list of CAHRAs relevant to Regulation 2017/821.

Determine whether the subnational administrative entity of focus is in a state of armed conflict.

Include subnational administrative entity in list of CAHRAs relevant to Regulation 2017/821.

Source: RAND Europe analysis.
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### Abbreviations

<table>
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<th>Description</th>
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<tr>
<td>ACLED</td>
<td>Armed Conflict Location &amp; Event Data Project</td>
</tr>
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<td>ASM</td>
<td>Artisanal and Small-scale Mining</td>
</tr>
<tr>
<td>BGS</td>
<td>British Geological Survey</td>
</tr>
<tr>
<td>CAHRAs</td>
<td>Conflict-affected and high-risk areas</td>
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<td>CAT</td>
<td>Committee Against Torture</td>
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<tr>
<td>CFS</td>
<td>Fragile and Conflict Situations</td>
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<tr>
<td>DG TRADE</td>
<td>Directorate General for Trade</td>
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<tr>
<td>EC</td>
<td>European Commission</td>
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<tr>
<td>EJAtlas</td>
<td>Environmental Justice Atlas</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>FSI</td>
<td>Fragile State Index</td>
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<tr>
<td>HFI</td>
<td>Cato Institute Human Freedom Index</td>
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<tr>
<td>GADM</td>
<td>Global Administrative Areas</td>
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<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for the Former Yugoslavia</td>
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<tr>
<td>ILAB</td>
<td>Bureau of International Labor Affairs</td>
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<tr>
<td>IPIS</td>
<td>International Peace Information Service</td>
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<tr>
<td>MAC</td>
<td>Mines and Communities</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
</tr>
<tr>
<td>OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
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<td>RGI</td>
<td>Resource Governance Index</td>
</tr>
<tr>
<td>RMIS</td>
<td>Raw Materials Information System</td>
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<tr>
<td>RULAC</td>
<td>Geneva Academy's Rule of Law in Armed Conflicts project</td>
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<tr>
<td>TESPRDD</td>
<td>Thematic Engagement, Special Procedures and Right to Development Division</td>
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<tr>
<td>UCDP</td>
<td>Uppsala Conflict Data Program</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>UPR</td>
<td>Universal Periodic Review</td>
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<td>WGI</td>
<td>Worldwide Governance Indicators</td>
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<td>WTO</td>
<td>World Trade Organisation</td>
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1. Introduction

The European Commission (EC) endeavours to make strategic use of the European Union’s (EU) trade policy as a vehicle to promote and sustain European values and development in its engagement with non-EU countries. In particular, the EC Directorate General for Trade (DG TRADE) aims to employ trade as a means of generating economic growth, jobs, investment and innovation for communities both within and beyond the EU, including in the poorest developing countries. DG TRADE works to achieve these goals while upholding and promoting the European social model and its principles.¹

DG TRADE recognises that trade policy can be a powerful policy lever that holds potential for significant negative or positive impact on a broad range of social issues. DG TRADE is therefore committed to the pursuit of a policy that benefits society as a whole, doing so in close coordination with the European Parliament and the Council of the European Union, as well as other bodies such as the World Trade Organisation (WTO) and the Organisation for Economic Co-operation and Development (OECD). As part of this mission, DG TRADE has in recent years turned to addressing the ethical and economic issue of conflict minerals.²

Natural mineral resources can support international development by generating income and employment that could, in turn, support the growth of local economies and sustain local livelihoods. In some mineral-rich regions of the world, mineral resources can also fuel the outbreak or continuation of protracted, violent conflicts (either inter- or intra-state) and the exploitation of labour and local communities by malicious actors seeking to extract mineral-generated income. The violence and human security risks triggered by mineral resources could further undermine endeavours towards development, good governance and rule of law in local communities, as well as affecting regional security. The EU is therefore committed to ensuring that minerals and metals that are used for European products are sourced responsibly and align with European policies on conflict prevention and the development of local communities.

1.1. Project rationale

In 2017, 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 (hereafter referred to as ‘Regulation 2017/821’) was adopted. This regulation requires EU importers to ensure that the minerals with which they work originate from responsible sources and that businesses comply with and

¹ DG TRADE (2017).
² DG TRADE (2017).
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report on supply chain due diligence obligations with special focus on so-called conflict-affected and high-risk areas (CAHRAs). Regulation 2017/821 sets out in Article 14(2) that the EC shall call upon external expertise to provide an indicative, non-exhaustive, regularly updated list of CAHRAs. In 2019, RAND Europe was commissioned to develop and maintain a credible, indicative, non-exhaustive, regularly updated list of CAHRAs under Regulation 2017/821 to facilitate the calibration of due diligence efforts made by EU importers of relevant minerals (Contract: TRADE2018/G3/G11 (Revised)).

1.2. Scope and objective

Overall, the project encompasses a total of four technical tasks pursuing complementary objectives:

- Task A – Establish a methodology to produce an indicative, non-exhaustive list of CAHRAs.
- Task B – Develop tools to make information concerning an indicative, non-exhaustive list of CAHRAs available online.
- Task C – Produce a first, indicative, non-exhaustive list of CAHRAs.
- Task D – Maintain the list, keeping it updated and relevant over time.

Throughout this project, the methodology has been reviewed on an annual basis to consider any updates or adjustments necessary, as well as to consider the inclusion of relevant additional data sources.

1.3. Task A approach

The project’s Task A objectives are to:

- Design and establish a methodology to be employed to produce and regularly update an indicative, non-exhaustive list of CAHRAs relevant to Regulation 2017/821.
- Produce a report presenting the activities conducted by the project team and the resulting methodology designed to produce an indicative, non-exhaustive list of CAHRAs relevant to Regulation 2017/821 during subsequent tasks of the project.

Figure 1.1 provides a visual overview of the overarching approach and methods employed by the project team for the delivery of Task A. This revolved around the following activities:

- Identification of factors, drivers and metrics characterising CAHRAs under Regulation 2017/821.
- Identification of data sources that could be leveraged to investigate CAHRAs under Regulation 2017/821.
- Development of a methodology workflow and analytical approach for the production of a regularly updated, indicative, non-exhaustive list of CAHRAs under Regulation 2017/821.
- Reporting of Task A activities and results.
Figure 1.1: Overview of Task A approach and methods

Limitations

Certain limitations, caveats and assumptions underpinning the research approach and the results of the work discussed in the report should be noted.

Literature review coverage. Task A research and development activities conducted were informed by literature review activities to determine the factors, data sources and approach upon which the methodology should be built. Given the project’s timeframe and resource constraints, the project team’s review was limited only to a sample of existing academic and grey literature and resources on widely researched topics such as those of conflict, security, human rights, human security and on the links between these phenomena and minerals. To ensure an adequate coverage of existing scholarly perspectives and resources in its analysis, the project team adopted a multipronged research approach employing targeted searches, a snowballing technique, and stakeholder elicitation activities to map established resources and products.

Stakeholder engagement. Stakeholder engagement activities represent a pivotal element of this project’s approach and methodology. Given the project’s timeframe and resource constraints, the team’s engagement was limited only to a sample of domain experts and stakeholders interested by Regulation 2017/821.

1.4. Document purpose and outline

This document constitutes the project’s revised Task A report. It presents the updated methodology established by RAND Europe for the development and updating of the indicative, non-exhaustive, regularly updated list of CAHRAs under Regulation 2017/821 to be produced as part of this project. Beyond this introductory chapter, the document is structured as follows:

- **Chapter 2 – Methodology requirements** provides an overview of the key needs and requirements that the project methodology should address and be cognisant of.

- **Chapter 3 – Methodology** presents the methodology developed by the project team for producing an indicative, non-exhaustive, regularly updated list of CAHRAs under Regulation 2017/821.

- **Chapter 4 – Subsequent project activities** provides an overview of the activities conducted beyond the completion of Task A.
2. Methodology requirements

This chapter provides an overview of the requirements that the project methodology should meet to adequately identify CAHRAs under Regulation 2017/821. The chapter opens with providing an overview of methodology requirements emerging from the project tender specifications, as well as from Regulation 2017/812, Recommendation 2018/1149 and stakeholder consultations (Section 2.1). The chapter then discusses principles underpinning the methodology developed by the project team (Section 2.2) and limitations to the methodology developed (Section 2.3).

2.1. Methodology requirements

The methodology developed as part of this project should meet a range of requirements articulated explicitly in project tender specifications, as well as a range of needs and requirements emerging from an analysis of the texts of Regulation 2017/821 and Recommendation 2018/1149. These are outlined below.

2.1.1. Tender specifications requirements

A review of project tender specifications indicates that the methodology should:

- **Be fully in line with the definition of CAHRAs as set out in Regulation 2017/821.** Regulation 2017/821 provides under Article 2 a definition of some of the key concepts underpinning the scope and objectives of the Regulation. Among others, the Regulation provides a definition for CAHRA that is analysed in further detail below. Project tender specifications emphasise the need for any CAHRA-identifying methodology to be developed to adhere closely to the scope and definitions set out by the EC in the relevant Regulation.

- **Be consistent and coherent with Recommendation 2018/1149.** As foreseen in Article 14 of Regulation 2017/821, in 2018 the EC, in consultation with the European External Action Service and the OECD, prepared a set of non-binding guidelines for the identification of CAHRAs under Regulation 2017/821. In its text, the Recommendation provides inter alia: (1) an explanation of the key elements of the definition of CAHRAs for the purposes of Regulation 2017/821; and (2) a list of open source information to help companies identify CAHRAs and other risks. The methodology needed to retain consistency and coherence with the explanations provided by the EC, and be cognisant and build on the list of sources indicated in the text of the Recommendation.

- **Be able to accommodate a global scope of analysis.** The geographical scope of the project methodology to be developed is inherently global, reflecting the scope of Regulation 2017/821.
This requires that the assessment of possible CAHRAs be done on a global scale to include in the project’s indicative, non-exhaustive list all relevant CAHRAs irrespective of their geographic location.

- **Be able to identify CAHRAs on the basis of subnational assessments.** The methodology needs to identify CAHRAs based on subnational assessments (i.e. focusing on subnational regions or areas). It is expected that only those subnational components of a country’s territory that should be considered a CAHRA based on the project methodology be labelled as such on the project’s indicative, non-exhaustive list. Entire countries should be labelled as CAHRAs only where the methodology determines that this status can reasonably be applied to their whole territory.

- **Include in its assessment regions not only associated with production and extraction, but also with other parts of the supply and value chain.** The methodology should be designed to identify CAHRAs linked to the metals and minerals within the scope of Regulation 2017/821. It should be noted that association of a CAHRA with these commodities is not limited to the production or extraction phase, but also to other parts of the supply and value chains. This includes for instance the processing, transportation, transit and trading of commodities covered by Regulation 2017/821.

- **Where faced with questionable, incomplete or contradictory information regarding relevance to Regulation 2017/821, include rather than exclude a CAHRA.** CAHRAs should be included in the indicative, non-exhaustive list only when their association with the production, supply and value chains of commodities under Regulation 2017/821 can be determined. CAHRAs that have no association with the metals and minerals covered by Regulation 2017/821 should not be included, but erring on the side of inclusion in the event of questionable, incomplete or contradictory information.

### 2.1.2. Regulation and Recommendation requirements

Building on and in addition to the points highlighted in project tender specifications, a review of the texts of Regulation 2017/821 and Recommendation 2018/1149 provides clarity on the scope of the definition of CAHRAs embedded in the spirit and the letter of these documents.

Regulation 2017/821 defines CAHRAs under Article 2 as: Areas in a state of armed conflict or 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.³

The definition included in Regulation 2017/821 broadly identifies two groups of conditions that may lead to the labelling of a region as a CAHRA:

1. A state of armed conflict, or a state of fragile post-conflict.
2. Weak or non-existent governance, as well as by the presence of widespread and systematic violations of international law, including human rights abuses.

Most notably, therefore, the definition put forward by the Regulation identifies issues of weak or non-existent governance and security as conditions necessary, but not sufficient, to identify CAHRAs outside of those areas characterised by the presence of armed conflict or recent post-conflict reconstruction.

The definition of CAHRAs put forward in Regulation 2017/821 is further elaborated upon and clarified in Recommendation 2018/1149. The Recommendation text notes that the definition of CAHRA included in Regulation 2017/821 follows key principles and concepts existing in international law (e.g. state of armed conflict, fragile post-conflict and failed states) and focuses on clarifying these with a view to facilitating their understanding and the operationalisation of due diligence efforts by relevant stakeholders.

Recommendation 2018/1149 clarifies that as regards the state of armed conflict:

Presence of armed conflict, widespread violence or other risks of harm to people as described under international humanitarian law, which regulates the conduct of armed conflict by combatants. Armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, civil wars, etc. Specific guidance on the ‘state of armed conflict’ is provided in the Geneva Conventions of 1949 and includes all cases of declared war or of any other armed conflict which may arise between two or more Parties, even if the state of war is not recognised by one of them; all cases of partial or total occupation of the territory of a Party, even if the said occupation meets with no armed resistance. Pursuant to Protocol II (1977) additional to the Geneva Conventions of 1949, they do not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.4

Most importantly, the definition provided emphasises that a state of armed conflict characterising a CAHRA may be recognised even in those situations where the state of war is not recognised by one of the parties involved, thus covering possible insurgencies, civil wars, wars of liberation and armed occupations. However, the definition clearly emphasises that issues of internal tensions, riots and sporadic acts of violence should not contribute to the identification of a region as a CAHRA.5

Recommendation 2018/1149 clarifies the following as regards fragile post-conflict areas and areas witnessing weak or non-existent governance and security, such as failed states: Fragile post-conflict areas are areas witnessing cessation of active hostilities and that are in a state of fragility, meaning that the region or state has a weak capacity to carry out basic governance functions and lacks the ability to develop mutually constructive relations within society due to the prior conflictual state. Such areas are more vulnerable to internal or external shocks such as economic crises or natural disasters. In such cases, as in cases covered by the subsequent paragraph of the definition (i.e. areas witnessing weak or non-existing governance and security), economic operators need to ascertain that there is either institutional weakness or lack of governance and widespread and systematic violations of international law and human rights abuses in order to make a

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determination that the area is a conflict-affected and high-risk area. Thus, the condition of the violations of international law is a cumulative one to the conditions of fragile post-conflict areas and areas witnessing weak or non-existing governance and security. On the latter, the absence of a formal mining licensing procedure would for instance constitute evidence of lack of governance (…).6

Most importantly, the text emphasises that for a region to be characterised as a high-risk area under Regulation 2018/1149, issues concerning being in fragile post-conflict state, or witnessing weak or non-existing governance and security are necessary but not sufficient. Rather, the Recommendation emphasises the cumulative condition required for a region to be deemed as high-risk entailing also the presence of ‘widespread and systematic violations of international law and human rights abuses’.7

2.1.3. Stakeholder and expert inputs on requirements

In addition to requirements for the methodology emerging from the project’s terms of reference and underpinning legislation, the stakeholders consulted by the project team also voiced a number of suggestions for consideration. Based on stakeholder inputs and feedback the methodology should:

- Adhere closely to the scope and spirit of Regulation 2017/821 and Recommendation 2018/1149. The stakeholders and experts consulted emphasised the importance for the methodology to adhere closely to the needs and requirements articulated by the EC through its legislation. Stakeholders noted in particular that the methodology should not be broadened to take into account any additional sociopolitical issue other than those clearly included within the scope of the definitions provided in the text of relevant EC regulations and recommendations.8 Similarly, stakeholders cautioned against any broadening of the indicative, non-exhaustive list to highlight and include regions and countries presenting risk factors that may lead to their being considered a CAHRA under Regulation 2017/821 in the future. The rationale for this being to avoid generating self-fulfilling prophecies and/or negatively affecting the investment and economic environment in fragile regions that however do not qualify as CAHRAs.9

- Be transparent and replicable. Stakeholders and experts voiced a desire for the methodology to be leveraged to produce the envisioned indicative, non-exhaustive list of CAHRAs to be transparent and replicable by third parties. Stakeholders noted that this could contribute to stronger buy-in and support for the list to be produced by all stakeholders involved.10

- Build on existing resources and methods developed by recognised institutions and organisations. The stakeholders and experts consulted emphasised that the methodology being developed to identify CAHRAs should build on pre-existing approaches and methods adopted by recognised institutions. Similarly, stakeholders noted the importance for the methodology to leverage data

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8 RAND Europe interviews (6) April–May 2020.
9 RAND Europe interviews (6) April–May 2020.
10 RAND Europe interviews (10) April–May 2020.
originating from recognised institutions and for the methodology to adhere to the extent possible to the list of sources proposed by the EC in Recommendation 2018/1149, particularly as regards the assessment of human rights and international law violations.

2.2. Underpinning principles

Bearing in mind the above requirements, the project team adopted a set of principles to guide and inform the development of the methodology to identify CAHRAs under Regulation 2017/821. These included:

- **Transparency and replicability.** The team endeavoured to design a methodology that is both transparent and replicable by third parties without compromising on the analytical complexity required for a task such as the provision of an indicative, non-exhaustive list of CAHRAs under Regulation 2017/821 on a global scale.

- **Systematicity and objectiveness.** The team endeavoured to design a methodology based on a systematic approach applicable on a global scale and leveraging a consistent set of data sources. Where possible, the team endeavoured to identify clear thresholds and precise guidance to minimise against any possible individual researcher’s bias in the development or updating of the list.

- **Data triangulation.** The team endeavoured to ensure that each factor and driver to be assessed to determine whether a region is a CAHRA be assessed from multiple data sources and perspectives with a view to guaranteeing maximum reliability of the data employed and of the resulting analysis.

- **Data optimisation.** The team endeavoured to ensure that available project resources are used in an effective and economic manner, reducing unnecessary duplication of data.

- **Scanning the scanners.** The team designed the methodology with a view to benefitting to the extent possible from analysis already being conducted by reputable institutions and organisations identified in Recommendation 2018/1149 and highlighted by experts and stakeholders consulted.

- **Flexibility and adaptability.** The team endeavoured to design a modular methodology that could retain a significant degree of flexibility and adaptability. This was done to ensure that the methodology could adapt over time in case of new developments, changes and adjustments to specific aspects of Regulation 2017/821, and if new data sources or repositories became available.

2.3. Summary

This chapter has provided an overview of key requirements for the methodology underpinning the provision of an indicative, non-exhaustive list of CAHRAs under Regulation 2017/821. Box 2.1 provides an overview of the key requirements and design principles considered by the project team.
Box 2.1: Key methodology requirements and design principles

Based on an analysis of key legislation, project documentation and stakeholder and expert inputs, the methodology underpinning the provision of an indicative, non-exhaustive list of CAHRAs under Regulation 2017/821 should:

- Be fully in line with the definition of CAHRAs as set out in Regulation 2017/821.
- Be consistent and coherent with Recommendation 2018/1149.
- Be able to accommodate a global scope of analysis.
- Be able to identify CAHRAs on the basis of subnational assessments.
- Include in its assessment regions not only associated with production and extraction, but also with other parts of the supply and value chain.
- Include rather than exclude a CAHRA where faced with questionable, incomplete or contradictory information regarding its relevance to Regulation 2017/821.
- Be transparent and replicable.
- Build on existing resources and methods developed by recognised institutions and organisations.

To translate these requirements into an operational methodology, the project team endeavoured to apply the following design principles:

- Transparency and replicability
- Systematicity and objectiveness
- Data triangulation
- Data optimisation
- Scanning the scanners
- Flexibility and adaptability.
3. Methodology

This chapter provides an overview of the methodology for the provision and regular updating of an indicative, non-exhaustive list of CAHRAs under Regulation 2017/821. The chapter opens with an overview of the methodology developed (Section 3.1). It then discusses the four steps characterising the methodological process (Section 3.2 to 3.5) and the sources underpinning them (Section 3.6), before concluding with an overview of limitations characterising the proposed methodology (Section 3.7).

3.1. Overall approach

To ensure the production of an indicative, non-exhaustive list of CAHRAs under Regulation 2017/821, the project team devised a multistep process to:

- Consider all countries outside of the EU
- Consider the main sub-national administrative entities within each country reviewed
- Verify whether a sub-national administrative entity would qualify as a conflict affected area
- Verify whether a sub-national administrative entity would qualify as a high-risk area.
- Verify whether identified conflict-affected and high-risk areas are relevant to Regulation 2017/821.

From a conceptual standpoint, the methodological flow is summarised in Box 3.1 and visually represented in Figure 3.1. To meet project requirements, it was envisioned that the methodology would be implemented on a quarterly basis and in its entirety, and that the datasets and sources proposed for use would be updated to the latest data available for each implementation iteration.

Box 3.1: Overview of methodology multistep approach

<table>
<thead>
<tr>
<th>Consider in turn and within each country existing outside of the EU each of its main subnational administrative entities to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Determine whether the subnational administrative entity of focus is in a state of armed conflict.</td>
</tr>
<tr>
<td>2. Determine whether the subnational administrative entity of focus is a fragile post-conflict area or part of a failed state.</td>
</tr>
<tr>
<td>3. Determine whether the subnational administrative entity of focus is relevant to the scope of Regulation 2017/821.</td>
</tr>
</tbody>
</table>
Figure 3.1: Visual overview of methodology workflow

Source: RAND Europe analysis.
3.2. Step 1 – Geographic focus

Consider in turn and within each country existing outside of the EU each of its main subnational administrative entities.

The first step in the methodology serves two purposes:

- First, the step articulates a requirement to implement subsequent methodological steps in an iterative manner until all non-EU countries globally have been assessed.
- Second, this step frames the focus of subsequent methodological steps not at the level of countries, but rather at the level of subnational administrative entities.

This approach ensures that the methodology meets two key methodological requirements previously identified in Chapter 4 of this report: namely, the need for global coverage, and the need for a focus and ability to identify CAHRAs at subnational levels.

To determine what subnational administrative entities should be considered in each country assessed, the project leverages data available in ISO 3166. This defines internationally recognised codes of letters and/or numbers that can be used to refer to countries and their subdivisions. ISO 3166 does not define the names of countries as this information is derived from United Nations sources and specifically resources curated by the United Nations Statistics Division. For the purpose of this project, the methodology refers to the highest level of administrative subdivisions adopted in each country considered. This ensures that the CAHRAs list produced is anchored to recognised and meaningful administrative entities within countries of focus while avoiding the adoption of an excessively granular approach that could:

1. Adopt entities of focus for which insufficient data is available to determine in a robust manner they are a CAHRA.
2. Produce an overtly granular and unmanageable list.

The project methodology also leverages data on geographic regions available through the Global Administrative Areas (GADM) database (https://gadm.org) to represent visually the subnational administrative entities of focus considered. GADM is a repository providing maps and spatial data for all countries and their administrative areas globally.

3.3. Step 2 – Conflict affected areas

Determine whether the subnational administrative entity of focus is in a state of armed conflict.

The second step in the methodology serves the purpose of verifying whether the subnational administrative entity of focus should be considered a conflict-affected area.

To this end, the project team devised a methodological approach building on an established approach employed by the World Bank to determine Fragile and Conflict Situations (CFS) for World Bank Group Engagement. This approach allows for the identification of countries affected by violent conflict by
leveraging two publicly accessible databases with a global focus: the Armed Conflict Location & Event Data Project (ACLED) and the Uppsala Conflict Data Program (UCDP). The methodology leveraged by the World Bank group has been adjusted to reflect the requirement for this project to consider subnational administrative entities, rather than countries as a whole. Furthermore, the methodology integrates the review and assessment of additional databases and sources not included in World Bank’s approach but recommended for consideration in Recommendation 2018/1149.

At a practical level, the methodology entails investigation of the Boolean expression presented in Box 3.2 and of the research questions underpinning it.

**Box 3.2: Step 2 research questions to determine whether a subnational administrative entity is a conflict affected area**

\[
\begin{align*}
\{ & \text{Has the subnational entity of focus witnessed armed conflict leading to the death of more than 50 individuals over the previous 12 months for which data is available as reported by the Armed Conflict Location & Event Data Project (ACLED) AND Uppsala Conflict Data Program (UCDP)?} \\
\text{OR} \\
\{ & \text{Has the subnational entity of focus witnessed armed conflict leading to the death of more than 50 individuals over the previous 12 months for which data is available as reported by EITHER the Armed Conflict Location & Event Data Project (ACLED) OR Uppsala Conflict Data Program (UCDP)?} \\
\text{AND} \\
\{ & \text{Has it been identified as a limited war or war by the Heidelberg Conflict Barometer in its latest available assessment OR as being part of a country currently in international or non-international armed conflict by the Geneva Academy Rule of Law in Armed Conflicts?}\}
\end{align*}
\]

As evidenced by Box 3.2, the methodology investigates for each subnational administrative entity of focus whether it meets any of the thresholds required for it to be considered a conflict area. These research questions leverage data available from four databases and repositories included among sources recommended for use by Recommendation 2018/1149:

- **The ACLED database**: ACLED collects real-time data on dates, actors, locations, fatalities and modalities of reported events of political violence and protests. The dataset covers over 100 countries in Africa, South Asia, Southeast Asia, the Middle East, Central Asia and the Caucasus, Latin America and the Caribbean, and South-eastern and Eastern Europe and the Balkans. According to its Codebook, ACLED provides data on daily events of political violence, categorised under six different types of events, themselves divided into 25 sub-events.

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11 World Bank (2020b).
13 A Boolean expression is a logical statement that is either true or false.
14 ACLED (2019a; 2019b).
• **UCDP**: UCDP is a programme of Uppsala University’s Department of Peace and Conflict Research that has collected data on organised violence worldwide since 1989. The dataset consists of reported events of organised violence globally. UCDP only records events for which it was possible to deduce fatality estimates.

• **Heidelberg Conflict Barometer**: The Heidelberg Institute for International Conflict Research (HIIK) produces an annual series of reports on political conflict dynamics and developments in the world. It is developed by an independent, non-profit organisation conducting research on political conflicts worldwide since 1991.

• **Rule of Law in Armed Conflicts project (RULAC)**: RULAC is a portal providing a classification of situations of armed conflicts globally. The portal is an initiative of the Geneva Academy of International Humanitarian Law and Human Rights and is supported by a law clinic at the Human Rights Centre at the University of Essex. Conflicts included in the RULAC projects have emerged since 2011 and are ongoing. RULAC only addresses situations of armed conflict as defined by international humanitarian law.

The rationale for including multiple databases and sources is to ensure that data on armed conflict is triangulated in a robust manner and that no conflicts are overlooked due to their being missing from a specific database or repository at a given point in time.

The Step 2 methodology approach also entails an intermediate expert analysis of results emerging from the implementation of the methodology presented above. Under this intermediate step, study team experts in conflict are required to conduct:

1. **An analysis of results for areas which recorded a number of fatalities within 20 per cent of the stated threshold for inclusion and/or that would be considered in conflict only based on data from quantitative datasets.** For areas meeting these criteria, conflict experts are required to validate Step 2 assessments by considering different criteria including the presence of long-standing instability and conflict in a region; the number of incidents recorded; and the type of actors involved in the violence observed and their degree of organisation. Based on these assessments, results of quantitative analysis may be confirmed or revised. For example, the presence of a long-standing conflict in the region of focus could lead to the inclusion among conflict-affected areas of regions where the number of identified victims at a given moment is below the fatalities threshold, but within a 20 per cent margin. Conversely, isolated events characterised by the presence of a large number of victims (e.g. an isolated terrorist attack) would not necessarily lead to the assessment of a region as being conflict affected. Similarly, the presence of violence associated with gangs or groups with limited to no ability to pose a significant threat to the security and sovereignty of a state would not necessarily lead to the inclusion of a region in the CAHRAs list as conflict-affected.

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15 Sundberg & Melander (2013); Högbladh (2019); UCDP (2020).
16 Heidelberg Institute for International Conflict Research (2020a; 2020b).
17 RULAC (2017a; 2017b; 2017c; 2019).
whereas the presence of armed groups with significant ability to infringe on the state monopoly on the use of violence could result in a region being considered a CAHRA.

2. An assessment of whether violence reported in areas meeting quantitative requirements of the methodology amounts to conflict. This assessment is grounded in two criteria, namely the intensity of the armed violence and the degree of organisation of the actors involved. These criteria have been similarly used for other conflicts by different institutions, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the aforementioned RULAC project. 18

Furthermore, for each subnational administrative entity of focus considered as being conflict-affected, the methodology also entails a review of country- and subnational entity-level reports from the following global and regional databases and repositories:

- **International Crisis Group – CrisisWatch** 19: CrisisWatch is a global conflict tracker designed by the International Crisis Group to help prevent deadly violence by identifying conflicts and crises and alerting about risks of escalation and opportunities for peace.

- **International Peace Information Service** 20: The International Peace Information Service (IPIS) is an independent research institute with a geographic focus on sub-Saharan Africa. IPIS provides information, analysis and capacity enhancement on natural resources, conflict mapping, arms trade and security, as well as business and human rights.

- **Environmental Justice Atlas (EJAtlas)** 21: EJAtlas provides data on social conflicts around environmental issues. EJAtlas defines conflicts covered as ‘mobilisations by local communities, social movements, which might also include support of national or international networks against particular economic activities, infrastructure construction or waste disposal/pollution whereby environmental impacts are a key element of their grievances’.

The purpose of reviewing these materials is to distil contextual knowledge and data about conflict areas identified to inform the development of one-page CAHRA reports produced and presented on the project’s online platform. Furthermore, the review of these materials contributes to identifying any available knowledge or data about links between the conflicts identified and 3TG minerals and the mining sector more broadly.

Overall, upon conclusion of Step 2, the methodology produces:

1. An intermediate list of conflict affected areas whose relevance to Regulation 2017/821 should be further assessed under Step 4 of the methodology.

2. A list of subnational administrative entities across different countries not considered as being in a status of armed conflict. All these subnational entities are then moved on to Step 3 where the methodology designed enables an assessment of whether these should be considered high-risk areas.

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18 RULAC (2017b; 2017c); ICTY (1997; 1995).
20 IPIS (2020).
21 EJAtlas (2020).
3.4. Step 3 – High-risk areas

The third step serves the purpose of verifying whether a subnational administrative entity of focus should be considered a high-risk area.

To this end, the project team devised a two-pronged methodological approach to determine whether the subnational administrative entity of focus should be considered either as a post-conflict area or as a fragile area or an area part of a failed state in line with the definitions and guidelines provided under Regulation 2017/821 and Recommendation 2018/1149. For both categories, the methodology entails review of:

- **Quantitative datasets and indicators** to pre-filter and identify relevant subnational administrative entities that may qualify as a post-conflict, fragile, or failed state area.
- **Qualitative databases and sources** to determine whether security, governance and institutional issues are accompanied by widespread and systematic violations of international law and human rights abuses.

This is done so that the methodology can take into account the cumulative aspect of the definition for high-risk areas set out in Regulation 2017/821 and Recommendation 2018/1149 (see Section 2.1).

3.4.1. Post-conflict areas

At a practical level, the methodology proposed for investigating whether a subnational administrative entity qualifies as a post-conflict area entails the investigation of the Boolean expression presented in Box 3.3 and of the research questions underpinning it.

**Box 3.3: Step 3 research questions to determine whether a subnational administrative entity is a post-conflict area**

\[
\{ \text{Has the subnational entity of focus experienced a status of armed conflict within the past three years identified retrospectively with the approach from the previous methodological step?} \} \quad \text{OR} \quad \{ \text{Is a peacekeeping operation under UN mandate deployed in the subnational entity of focus?} \} \quad \text{OR} \quad \{ \text{Is a foreign military occupation ongoing in the subnational entity of focus?} \} \\
\text{AND} \quad \{ \text{Are widespread international law and human rights violations currently being reported in the subnational entity of focus or in the country in which the subnational entity of focus is located?} \}
\]

As evidenced by Box 3.3, the methodology investigates for each subnational administrative entity different aspects that could lead to it being considered a post-conflict area before checking whether the cumulative condition pertaining to widespread human rights and internal law violations is also met. To answer research questions proposed, the project methodology leverages data available from different databases and repositories included among sources recommended for use by Recommendation 2018/1149.
The rationale for including this research question is to account for those areas and regions that currently may not be affected by armed conflict with a significant volume of victims, but where overall stability and security may be limited due to armed conflict having only recently concluded. To investigate this question, the methodology leverages the same approach presented under Step 2 of the methodology in a retrospective manner. In particular, it considers whether a state of armed conflict was observed at any point in the three years prior to the moment in which the assessment was undertaken. Given that Step 2 of the methodology covers retrospectively the twelve months preceding the assessment, Step 3 covers the period between 36 and 24 months prior to the assessment. For the first 24 months of methodology implementation, this was implemented compatibly with data availability in the key databases and sources underpinning the Step 2 approach. Following the first 24 months of provision of the indicative, non-exhaustive list, the project methodology instead relied directly on assessments generated during previous years of implementation. For a detailed discussion of the overall Step 2 approach, please refer to Section 3.3 of this document.

(Is a peacekeeping operation under UN mandate deployed in the subnational entity of focus?)

The rationale for including this research question was to account for those areas and regions that currently were not affected by armed conflict with a significant volume of victims, but where overall stability and security was limited, such that the presence of a UN peacekeeping mission is required to stabilise the country or region. To investigate this question, the methodology leverages the United Nations (UN) Peacekeeping website, which provides information on ongoing peacekeeping operations under a UN mandate.\(^\text{22}\)

(Is a foreign military occupation ongoing in the subnational entity of focus?)

The rationale for including this research question is to account for those areas and regions that currently were not affected by armed conflict with a significant volume of victims, but where overall stability and security is limited and is maintained by means of a foreign military occupation. To investigate this question, the methodology leverages data on military occupations provided by the RULAC Database presented in Section 3.3 of this report.\(^\text{23}\)

For those subnational administrative entities assessed as being post-conflict areas through one of the above research questions, the methodology entails a review of whether they are also characterised by widespread violations of human rights and international law, such that they would tentatively qualify as a post-conflict area under Regulation 2017/821 pending a verification of their connection to commodities covered by this legislation under Step 4 of the methodology.

(Are widespread international law and human rights violations currently being reported in the subnational entity of focus or in the country in which the subnational entity of focus is located?)

Issues pertaining to human rights and international law violations lend themselves poorly to assessments based on measurable, quantitative metrics in the same way that has been proposed under Step 2 of the methodology for assessing the presence of armed conflict. To address this issue, the methodology devised entails the conduct of a structured review and senior expert assessment of:

\(^{22}\) UN Peacekeeping (2020).

\(^{23}\) UN Peacekeeping (2020).
• Data from two global indexes tracking human rights issues.
• Reports published in the 24 months prior to the assessment by institutions and organisations listed in Recommendation 2018/1149.

In particular, the methodology entails a qualitative review and extraction of data from publications and assessments issued in the previous 24 months (unless otherwise noted below) by the following sources:

• **Fragile State Index (FSI)**: The FSI is an index produced by the Fund for Peace that measures the vulnerability of states. It is produced annually and covers 178 countries. The method for data collection and measuring these indicators is based on the Conflict Assessment System Tool (CAST) of the Fund for Peace. The CAST framework was developed in the 1990s for policymakers and practitioners to be able to measure conflict drivers and dynamics in complex environments. The project methodology will focus on the indicator ‘P3 – Human rights and rule of law’, which considers several issues relating to the relationship between the state and its population, from the protection of civil and political freedoms to abuse of legal, political and social rights. This indicator considers several factors, including denial of due process, emerging authoritarian rule threatening democratic institutions, the presence of independent media, etc. An overview of these factors is available in the FSI Methodology.

• **Cato Institute Human Freedom Index (HFI)**: The HFI provides an assessment of overall freedom in a given country, measuring all types of freedom under a single metric: human freedom. In the context of the HFI, human freedom is defined as ‘negative liberty or the absence of coercive constraint’. The HFI covers 162 countries and is based on several indicators measuring personal and economic freedom. These are weighted according to a specific methodology, where indicators of personal freedom and indicators of economic freedoms respectively add up to 50 per cent. Data for each indicator comes from dedicated external databases. The project methodology focuses on the ‘human freedom’ indicator.

• **Office of the United Nations High Commissioner for Human Rights, United Nations Committee Against Torture, and United Nations Human Rights Council – Universal Periodic Review (UPR)**: The Office of the United Nations High Commissioner for Human Rights (OHCHR) is the leading UN office regarding human rights, with a mandate to promote and protect human rights for all people. The Thematic Engagement, Special Procedures and Right to Development Division (TESPRDD) of the OHCHR develops policy, provides support on thematic human rights issue, notably in the form of publications, and supports the Human Rights Council’s special procedures. Additionally, the Committee Against Torture (CAT) is a body of independent experts monitoring the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. States submit regular reports to the CAT every four years (or one year

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27 OHCHR (2020a; 2020b); UNHRC (2020).
after acceding to the Convention). Finally, the Universal Periodic Review (UPR) is an initiative of the United Nations Human Rights Council (UNHRC) whereby UN Member States conduct a review of their human rights records. The final UPR reviews are the result of Member State reporting as well information from the OHCHR. Stakeholders such as NGOs, human rights defenders, research institutions and other civil society representatives also contribute to the UPR. For these sources the methodology expands the temporal window under which a report is considered to ensure that latest CAT and UPR reports and inputs are considered.

- **Amnesty International**: Amnesty International investigates and reports on human rights violations. Among other resources, Amnesty International regularly updates individual country profiles taking stock of human rights issues and reported abuses.

- **Human Rights Watch**: Human Rights Watch is an independent organisation investigating and reporting on human rights abuses globally. Human Right Watch publishes World Reports yearly as well as thematic reports regularly, providing access to several reports on national and regional human rights violations.

- **Global Witness**: Global Witness investigates and reports on corruption driving environmental and human rights abuses globally. Global Witness campaigns focus on oil, gas and mining, conflict resources, forests, land and environmental defenders, and corruption and money laundering.

- **Mines and Communities (MAC)**: MAC provides access to regular news and updates from NGOs, grassroots organisations and activists concerning global mining and its impacts.

- **United States Department of Labor – Bureau of International Labor Affairs (ILAB)**: ILAB is part of the United States Department of Labor. The Bureau’s mission is to fight international child labour, forced labour and human trafficking. ILAB publishes three reports yearly pertaining to *Findings on the Worst Forms of Child Labor*, *A List of Goods Produced by Child Labor or Forced Labor*, and a *List of Products Produced by Forced or Indentured Child Labor*.

Following data extraction activities, the methodology entails the analysis and assessment of evidence available by two senior researchers. Senior researchers undertaking the assessment are asked to analyse evidence available according to the analytical template presented in Table 3.1 below.

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29 Human Rights Watch (2020).
31 Mines and Communities (2020).
32 US Department of Labor (2020a; 2020b).
Table 3.1: Template for assessment of evidence on human rights and international law violations

<table>
<thead>
<tr>
<th>Research question</th>
<th>Yes/No</th>
<th>Summary of evidence and data available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does the country in which the subnational entity of focus is located record a score in the global top hexadecile for the Human Rights and Rule of Law indicator of the Fragile State Index OR in the global bottom hexadecile for the Human Freedom indicator of the Cato Institute Human Freedom Index?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are there two or more qualitative sources reporting in parallel of widespread and systematic violations of international law and human rights abuses in the subnational administrative entity of focus or in its country as a whole?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are there reports or data linking human rights abuses and international law violations to 3TG minerals and the mining sector or to relevant mineral supply and value chains more broadly?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Following the assessment, a subnational administrative entity would be tentatively considered a high-risk area (pending validation under Step 4 of its relevance to commodities included under Regulation 2017/821) if according to both senior assessments:

- The overall country meets proposed scoring criteria for either the Fragile State Index or the Cato Institute Human Freedom Index.
- It is possible to triangulate data and reports indicating that widespread and systematic violations of international law and human rights abuses are being committed in the specific subnational administrative entity or the country as a whole.

In case of diverging assessments, a consensus decision would be taken jointly by the senior experts and the Project Leader.

Overall, upon conclusion of the first section of Step 3, the methodology produces:

1. An intermediate list of conflict affected areas (emerging from Step 2 of the methodology) whose relevance to Regulation 2017/821 should be further assessed under Step 4 of the methodology.
2. An intermediate list of post-conflict areas whose relevance to Regulation 2017/821 should be further assessed under Step 4 of the methodology.
3. A list of subnational administrative entities across different countries not considered as being in a status of armed conflict, nor as in a post-conflict situation. All these subnational entities are then moved on to the second section of Step 3 where the methodology designed enables the assessment of whether these should be considered fragile areas or areas part of a failed state.
3.4.2. Fragile areas and areas part of a failed state

At a practical level, the methodology proposed for investigating whether a subnational administrative entity qualifies as a fragile area, or an area part of a failed state entails the investigation of the Boolean expression presented in Box 3.4 and of the research questions underpinning it.

**Box 3.4: Step 3 research questions to determine whether a subnational administrative entity is a fragile area or part of a failed state**

\[
\{ \text{(Is the subnational entity of focus located in geographic proximity (i.e. shares one land border) and within the same country of a subnational entity affected by armed conflict (as defined under Step 2 of the methodology)) OR (Is the subnational entity of focus located in a country where overall it is possible to identify a state of high-intensity or medium-intensity conflict according to the World Bank Classification of Fragility and Conflict Situations) OR (Is the subnational entity of focus located in a country where overall it is currently possible to identify a state of high institutional and social fragility according to the World Bank Classification of Fragility and Conflict Situations) OR (Is the subnational entity of focus located in a country where overall average Worldwide Governance Indicators scores for Political Stability and Absence of Violence and for Government Effectiveness and for Voice and Accountability are in the global bottom octile) OR (Is the subnational entity of focus located in a country whose composite assessment for the mining sector by the Natural Resource Governance Institute results is poor or failing)} \}
\]

AND

\{
\text{(Are widespread human rights violation currently being reported in the subnational entity of focus or in the country in which the subnational entity of focus is located?)}
\}

As evidenced by Box 3.4, the methodology investigates different aspects that could lead each subnational administrative entity to being considered a fragile area or part of a failed state, before checking whether the cumulative condition pertaining to widespread human rights and internal law violations is also met. To answer the research questions, the methodology leverages data available from different databases and repositories included among the sources recommended for use by Recommendation 2018/1149.

\[
\{ \text{(Is the subnational entity of focus located in geographic proximity (i.e. shares one land border) and within the same country of a subnational entity affected by armed conflict (as defined under Step 2 of the methodology))} \}
\]

The rationale for including this question is to account for possible spillover effects that could transfer from a conflict affected area to a nearby region within the same country. To investigate this question, the methodology leverages the internal digital platform developed under this study and refers to the list of conflict affected subnational entities identified under Step 2 of the methodology.

\[
\{ \text{(Is the subnational entity of focus located in a country where overall it is possible to identify a state of high-intensity or medium-intensity conflict according to the World Bank Classification of Fragility and Conflict Situations) OR (Is the subnational entity of focus located in a country where overall it is currently possible to identify a state of high institutional and social fragility according to the World Bank Classification of Fragility and Conflict Situations)} \}
\]

To investigate this research question, the methodology leverages the World Bank list of Classification of Fragile and Conflict-Affected Situations (FCS).\(^{33}\) The World Bank Group produces a list of fragile and

\(^{33}\) World Bank (2020a; 2020b).
conflict-affected situations annually. The list is based on publicly available global indicators and captures data on countries with high levels of institutional and social fragility, as well as countries affected by violent conflict. The rationale for including this research question is to account for those areas and regions that are currently recognised as being in a situation of institutional fragility. The analysis of regions and countries included in the World Bank FCS list also ensures a close investigation of any region located within a country considered as being in conflict overall, but whose specific regions may not be considered as such under the more targeted approach employed under Step 2 of the project’s methodology.

<table>
<thead>
<tr>
<th>Question</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the subnational entity of focus located in a country where overall average Worldwide Governance Indicators scores for Political Stability and Absence of Violence and for Government Effectiveness and for Voice and Accountability are in the global bottom octile?</td>
<td></td>
</tr>
<tr>
<td>The rationale for including this question is to account for those areas and regions that currently are not affected by armed conflict, but are characterised by weak institutions and governance arrangements. To investigate this question, the methodology leverages the Worldwide Governance Indicators (WGI). The WGI project provides indicators for over 200 countries for various dimensions of governance annually. Governance is defined as consisting of ‘the traditions and institutions by which authority in a country is exercised’, including ‘the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them’. The WGI projects report on indicators for six dimensions of governance. The project methodology would focus on: Political Stability and Absence of Violence; Government Effectiveness; Voice and Accountability; Regulatory Quality; and Rule of Law. Indicators included in the WGI are based on over 30 data sources produced by survey institutes, think tanks, NGOs, international organisations and firms from the private sector. 34</td>
<td></td>
</tr>
<tr>
<td>Is the subnational entity of focus located in a country whose composite assessment for the mining sector by the Natural Resource Governance Institute results is poor or failing?</td>
<td></td>
</tr>
<tr>
<td>The rationale for including this question is to account for those areas and regions that currently are not affected by armed conflict, but that are characterised by weak institutions and governance, specifically as regards their mining sector. To investigate this question, the methodology leverages the Natural Resource Governance Institute – 2017 Resource Governance Index (RGI). 35 The RGI measures the quality of resources governance in the oil, gas and mining sectors in 81 countries. The RGI defines resource governance as ‘the rules, disclosures, oversight procedures and enabling environment that allow citizens to hold their government to account for managing their extractive resource wealth’. The index was compiled by 150 researchers who carried out individual country assessments, relying on around 10,000 documents. The complete list of sources used is available for consultation on the RGI source library. The assessment relied on a set of 149 questions covering the presence and quality of rules, disclosures, oversight and the quality of the enabling environment for resource governance. 36</td>
<td></td>
</tr>
</tbody>
</table>

34 Worldwide Governance Indicators (2020); Kaufmann & Kraay (2019).
35 Worldwide Governance Indicators (2020); Kaufmann & Kraay (2019).
For those subnational administrative entities assessed as being fragile areas or part of a failed state through one of the above research questions, the methodology entails a review of whether they are also characterised by widespread violations of human rights and international law, such that they would tentatively qualify as a post-conflict area under Regulation 2017/821 pending a verification of their connection to commodities covered by this legislation under Step 4 of the methodology.

\{Are widespread international law and human rights violation currently being reported in the subnational entity of focus or in the country in which the subnational entity of focus is located?\}

The investigation and assessment of this question entails the adoption of the same methodology presented under Section 3.4.1 for the ‘post-conflict’ section of Step 3 of the methodology.

Overall, upon conclusion of Step 3, the proposed methodology will produce an intermediate list of CAHRAs whose relevance to Regulation 2017/821 should be further assessed under Step 4.

3.5. Step 4 – Relevance to Regulation 2017/821

Determine whether the subnational administrative entity of focus is relevant to the scope of Regulation 2017/821.

The fourth step serves the purpose of verifying whether regions tentatively identified as CAHRAs under Steps 1 to 3 of the methodology bear any relevance to the scope of Regulation 2017/821. To this end, the team devised a four-pronged approach to determine whether a CAHRA identified through Steps 1 to 3 should be considered as relevant to the scope of Regulation 2017/821. This aims to:

- Ensure inclusion to an evidence-based extent of relevant CAHRAs involved in the supply and value chain beyond the extraction and production stage.
- Mitigate issues of data scarcity concerning the transport, transfer and logistics of relevant commodities within the scope of Regulation 2017/821.

At a practical level, the methodology entails the investigation of the Boolean expression presented in Box 3.5 and of the research questions underpinning it.

Box 3.5: Step 4 research questions to determine whether a CAHRA is relevant to the scope of Regulation 2017/821

\{Is the subnational administrative entity of focus an area characterised by the presence of reserves or by the production, extraction or by exploration efforts for the commodities included under Regulation 2017/821?

OR

Is the subnational administrative entity of focus located in geographic proximity and within the same country of a region characterised by the presence of reserves or by production, extraction or by exploration efforts for the commodities included under Regulation 2017/821?

OR

Are there reports of widespread artisanal mining of commodities under Regulation 2017/821 in the subnational administrative entity of focus or broader country?

OR

Is the region of focus located in a country that exports or re-exports commodities included under Regulation 2017/821?\}
As evidenced by Box 3.5, the methodology investigates for each subnational administrative entity different aspects that could lead to it being considered as relevant to the scope of Regulation 2017/821. To answer the questions proposed, the project methodology leverages data available from different databases and repositories included among sources recommended for use by Recommendation 2018/1149.

Is the subnational administrative entity of focus an area characterised by the presence of reserves or by the production, extraction or by exploration efforts for the commodities included under Regulation 2017/821?

The rationale for including this research question is to account through the methodology for all CAHRAs that are directly involved in the production and extraction of commodities within the scope of Regulation 2017/821. To investigate this question, the methodology leverages the Opaxe dataset, and the British Geological Survey (BGS) – World Mineral Production database, the ITSCI Programme for Responsible Mineral Supply Chain, and the International Tin Association (ITA) website:

- **Opaxe**’s international team has a broad range of geological experience, knowledge and expertise. The Opaxe dataset comprises reports published by stock exchange listed companies. The reports are gathered using a mixture of methods including direct feeds from companies, and automatic and manual gathering and storage. Opaxe acquire all reports published by mining companies listed on the major stock exchanges and from other sources. These reports include exploration announcements and updates, resource and reserve estimations and quarterly and annual reports.

- **The BGS World Mineral Production** is an annual publication that provides mineral intelligence for: security of supply issues, economic analyses, environmental issues, sustainable development planning, regulation and policy issues, and commercial strategic planning. The dataset and resulting publications rely on a wide range of sources: government departments, national statistical offices, specialist commodity authorities, company reports, as well as a network of contacts throughout the world. For quality control purposes, researchers compiling the data participate in international specialist groups, maintaining links with other mineral statistics providers in Europe and North America.37

- **ITSCI** is an industry supply chain due diligence scheme for 3T minerals providing information on conflict, human rights, and governance risks in areas across four countries in the Africa Great Lakes Region. The [ITA website](https://www.itatrust.org/) provides information on areas producing tin globally. These two repositories are leveraged to confirm the presence of reserves, production, extraction or exploration efforts for commodities relevant to Regulation 2017/821.

Is the subnational administrative entity of focus located in geographic proximity and within the same country of a region characterised by the presence of reserves or by production, extraction, or by exploration efforts for the commodities included under Regulation 2017/821?

The rationale for including this question is to account for CAHRAs potentially involved in the transport, transfer or logistics of the supply and value chain of commodities under Regulation 2017/821 due to their geographic proximity to production sites. To investigate this question, the methodology leverages the internal digital platform developed under this project and in relation to the previous research question.

Are there reports of widespread artisanal mining of commodities under Regulation 2017/821 in the subnational administrative entity of focus or broader country?

The rationale for including this question is to account through the project methodology for all CAHRAs with a widespread presence of artisanal mining of commodities under Regulation 2017/821. To investigate this question, the methodology leverages the World Bank DELVE Database. This is a global online data platform on the sector of artisanal and small-scale mining (ASM). It is provided by the World Bank and Pact. Data available on DELVE concerns employment in ASM and production value and weight by mineral and by country. It should be noted that the platform does not yet include all data, countries and minerals as it reflects currently available data. DELVE relies on secondary sources data on the ASM sector, aggregating data available from governments, IGOs, NGOs, business and other stakeholders.38

Is the region of focus located in a country that exports or re-exports commodities included under Regulation 2017/821?

The rationale for including this question is to account through the project methodology for all CAHRAs located in a country that exports or re-exports commodities relevant to Regulation 2017/821. To investigate this question, the methodology leverages the EU Raw Materials Information System – Supply Chain Viewer, and the United Nations International Trade Statistics Database (UN Comtrade):

- **Supply Chain Viewer** is a tool for visualising the raw materials supply chains, developed for the European Commission’s Raw Materials Information System (RMIS).39 The tool allows for searching and visualising four categories of interest along the supply chain of a given raw material.

- **UN Comtrade** is a repository of official international trade statistics and analytical tables. The repository covers close to 200 countries and provides datasets on exports, re-exports and imports of all types of commodities, their values, weight and supplementary quantity, which is updated monthly. These are available in multiple formats, including a Trade Statistics Yearbook providing an overview of trends in goods and services as well as country and product profiles of international trade. Imports and exports statistics are reported by statistical authorities of each country.40

Overall, upon conclusion of Step 4, the methodology produces an indicative, non-exhaustive list of CAHRAs relevant to Regulation 2017/821.

### 3.6. Overview of sources

The study team produced a summary table outlining all data sources employed under the methodology. Table 3.2 provides an overview of sources, indicating their relevance to each methodology step, the granularity of data presented and the frequency of their updates.

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38 DELVE (2020).
40 UN Trade Statistics (2016).
<table>
<thead>
<tr>
<th>Data source name</th>
<th>Relevant methodology step</th>
<th>Data granularity</th>
<th>Frequency of updates</th>
</tr>
</thead>
<tbody>
<tr>
<td>GADM</td>
<td>Step 1</td>
<td>First level subnational administrative entity</td>
<td>Yearly</td>
</tr>
<tr>
<td>ISO</td>
<td>Step 1</td>
<td>First level subnational administrative entity</td>
<td>Yearly</td>
</tr>
<tr>
<td>ACLED</td>
<td>Step 2 &amp; Step 3</td>
<td>Georeferenced (linked to specific geographic coordinates for each event)</td>
<td>Continuous</td>
</tr>
<tr>
<td>UCDP</td>
<td>Step 2 &amp; Step 3</td>
<td>Georeferenced (linked to specific geographic coordinates for each event)</td>
<td>Quarterly</td>
</tr>
<tr>
<td>Heidelberg Conflict Barometer</td>
<td>Step 2 &amp; Step 3</td>
<td>First level subnational administrative entity</td>
<td>Yearly</td>
</tr>
<tr>
<td>RULAC</td>
<td>Step 2 &amp; Step 3</td>
<td>National (Qualitative reports also provide information specific to local areas)</td>
<td>Continuous</td>
</tr>
<tr>
<td>Crisis Watch</td>
<td>Step 2 (reporting)</td>
<td>National (Qualitative reports also provide information specific to local areas)</td>
<td>Monthly</td>
</tr>
<tr>
<td>IPIS</td>
<td>Step 2 (reporting)</td>
<td>National (Qualitative reports also provide information specific to local areas)</td>
<td>Monthly</td>
</tr>
<tr>
<td>EJAtlas</td>
<td>Step 2 (reporting)</td>
<td>Sub-national (state/province or local level when available)</td>
<td>Continuous</td>
</tr>
<tr>
<td>United Nations Peacekeeping</td>
<td>Step 3</td>
<td>Local (maps provide information on the exact location(s) of a given mission)</td>
<td>Continuous</td>
</tr>
<tr>
<td>FSI</td>
<td>Step 3</td>
<td>National</td>
<td>Yearly</td>
</tr>
<tr>
<td>HFI</td>
<td>Step 3</td>
<td>National</td>
<td>Yearly</td>
</tr>
<tr>
<td>FCS</td>
<td>Step 3</td>
<td>National</td>
<td>Yearly</td>
</tr>
<tr>
<td>WGI</td>
<td>Step 3</td>
<td>National</td>
<td>Yearly</td>
</tr>
<tr>
<td>RGI</td>
<td>Step 3</td>
<td>National</td>
<td>2021</td>
</tr>
<tr>
<td>MAC</td>
<td>Step 3 (expert assessment)</td>
<td>National or subnational, depending on thematic issue at hand</td>
<td>Continuous</td>
</tr>
<tr>
<td>OHCHR</td>
<td>Step 3 (expert assessment)</td>
<td>National (Qualitative reports also provide information specific to local areas)</td>
<td>Continuous</td>
</tr>
<tr>
<td>Amnesty International</td>
<td>Step 3 (expert assessment)</td>
<td>National (Qualitative reports also provide information specific to local areas)</td>
<td>Yearly</td>
</tr>
</tbody>
</table>
### Data Sources

<table>
<thead>
<tr>
<th>Data source name</th>
<th>Relevant methodology step</th>
<th>Data granularity</th>
<th>Frequency of updates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human Rights Watch</td>
<td>Step 3 (expert assessment)</td>
<td>National (Qualitative reports also provide information specific to local areas)</td>
<td>Yearly</td>
</tr>
<tr>
<td>Global Witness</td>
<td>Step 3 (expert assessment)</td>
<td>National (Qualitative reports also provide information specific to local areas)</td>
<td>Continuous</td>
</tr>
<tr>
<td>Bureau of International Labor Affairs (ILAB)</td>
<td>Step 3 (expert assessment)</td>
<td>National (Qualitative reports also provide information specific to local areas)</td>
<td>Yearly</td>
</tr>
<tr>
<td>UN CEDAW</td>
<td>Step 3 (expert assessment)</td>
<td>National (Qualitative reports also provide information specific to local areas)</td>
<td>Irregular</td>
</tr>
<tr>
<td>International Programme for Eradication of Child Labour</td>
<td>Step 3 (expert assessment)</td>
<td>National (Qualitative reports also provide information specific to local areas)</td>
<td>Irregular</td>
</tr>
<tr>
<td>Opaxe</td>
<td>Step 4</td>
<td>Georeferenced (linked to specific geographic coordinates for each event)</td>
<td>Quarterly</td>
</tr>
<tr>
<td>BGS – World Mineral Production</td>
<td>Step 4</td>
<td>National</td>
<td>2016-2020</td>
</tr>
<tr>
<td>DELVE Database</td>
<td>Step 4</td>
<td>National</td>
<td>Continuous</td>
</tr>
<tr>
<td>The Raw Materials Supply Chain Viewer</td>
<td>Step 4</td>
<td>National</td>
<td>Dataset from 2017</td>
</tr>
<tr>
<td>UN ComTrade</td>
<td>Step 4</td>
<td>National</td>
<td>Monthly</td>
</tr>
<tr>
<td>ITSCI (quarterly status reports)</td>
<td>Step 4</td>
<td>Sub-national (only in the Africa Great Lakes region)</td>
<td>Quarterly</td>
</tr>
<tr>
<td>ITA website</td>
<td>Step 4</td>
<td>National</td>
<td>Continuous</td>
</tr>
</tbody>
</table>

### 3.7. Limitations

Certain limitations, caveats and assumptions underpinning the methodology and its results should be noted:

- **Reliance on external data and assessments.** The methodology was designed to benefit from a scan-the-scanner approach (see Section 2.2), enabling it to provide a global assessment of CAHRAs under Regulation 2017/821 through an agile and resource-effective approach. Conversely, this also requires that the methodology rely on data and assessments produced externally. While the sources and databases included in the project methodology were selected based on their reputation, data quality and, in most cases, previous inclusion in Recommendation 2018/1149, the methodology cannot influence or independently quality assure individual datasets and sources. The project team regularly considers the sources and datasets underpinning the methodology with a view to ensuring they remain the best available and that their rigour and quality is adequate.
• **Composite indicators and proxies.** The methodology leverages an array of composite indicators as well as proxy indicators to mitigate issues of data scarcity. Composite indicators represent simplifications of reality. Similarly, the employment of proxy data points (e.g. geographic proximity to commodities’ production sites as an indicator of possible relevance to Regulation 2017/821) inevitably simplify more complex operational realities or policy phenomena. While the use of such approaches is consistent with the project mandate to generate an indicative, non-exhaustive list of CAHRAs under Regulation 2017/821, users of the project’s CAHRA list should be mindful of these limitations when considering how to draw conclusions as to the scope and reach of their due diligence efforts.

• **Feasibility of implementation according to available resources and timescale.** The methodology was designed with a view to ensuring the feasibility of its implementation in a systematic and transparent manner for the duration of the project on the basis of available time and resources. As a result, this entailed the exclusion of different research approaches and activities that could, from an ideal perspective, have contributed to the strengthening of the methodology (e.g. undertaking of fieldwork activities or widespread primary data collection efforts to investigate regions potentially considered as high-risk areas).

3.8. **Summary**

This chapter has provided an overview of the methodology for developing an indicative, non-exhaustive list of CAHRAs under Regulation 2017/821. As per tender requirements, the methodology is leveraged to produce such a list to be presented through a dedicated online platform centred around the concept of geographical maps. The list is updated on a quarterly basis through a rerunning of the methodology presented in this chapter. Figure 3.2 provides a visual summary of the methodology conceptual workflow developed, linking each of the methodology steps to the databases and sources employed. This methodology and the sources underpinning it are reviewed on an annual basis.
Updated methodology

Figure 3.2: Methodology process flow and data sources overview

Source: RAND Europe analysis.
This revised Task A report has provided an overview of the methodology and approach used by the project team for the provision and regular updating of an indicative, non-exhaustive list of CAHRAs under Regulation 2017/821.

Following Task A, the team delivered Task B activities, which focused on developing platforms and tools to make the information acquired through the methodology established in Task A available to external users. This culminated in the launch of the website through which the indicative, non-exhaustive list is published (http://www.cahraslist.net/).

Following this, in Task C, the team produced the first indicative, non-exhaustive list of CAHRAs relevant to Regulation (EU) 2017/82. The first indicative, non-exhaustive list of CAHRAs under Regulation 2017/821 was published in December 2020. Following this, at the time of writing this report, Task D is ongoing and the indicative, non-exhaustive list is updated on a quarterly basis.
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Updated methodology


