



Limiting environmental damage, human rights abuses and Indigenous Peoples' rights violations:

Civil society guidelines for the
implementation of the EU Critical Raw
Materials Regulation

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Introduction

The following guidelines have been collaboratively crafted by multiple civil society organizations comprising the Raw Materials Coalition. These guidelines offer an insightful overview of four primary subjects addressed within the Critical Raw Materials Regulation (CRMR).

Whilst we are greatly concerned with the overall aims of the CRMR and what it may mean in terms of driving greater extraction of primary raw materials, increasing harms to nature and people, we write these guidelines to urge EU and national decision makers to implement the Regulation in a way that can limit these harms.

These guidelines therefore offer practical recommendations for implementation of the CRMR in a way that can help limit environmental damage, human rights abuses and Indigenous Peoples' Rights violations based on the agreed-upon text. The first topic covered is the **Raw Materials Consumption Reduction (Moderation) and Circular Economy**. Secondly, these guidelines address **Strategic Partnerships and Raw Materials Diplomacy**, focusing on the external dimension of the CRMR's objective to secure Strategic Raw Materials abroad. Thirdly, the guidelines address **Free, Prior and Informed Consent (FPIC) and Indigenous Peoples Rights**, leveraging the provisions under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). This section focuses on the importance of respecting their rights according to the international instruments as well as securing proper information, access to justice and involvement from local communities affected by industrial activity in the raw materials supply chains. Lastly, the guidelines address **Certification and Industry Schemes**, examining the substantial limitations inherent in certification schemes as a tool for bolstering due diligence while providing guidance on how they might evolve into a more credible component of a comprehensive environmental, human rights, and Indigenous Peoples' rights risk assessment under the CRMR.

Raw material demand reduction is consequently highlighted as a key strategy to mitigate adverse impacts on local communities and Indigenous Peoples as well as the environment. While circularity measures are included in the CRMR, they require further development to go higher up the waste hierarchy. Emphasis is placed on operationalising moderation of demand through sufficiency measures, vital not only for increasing strategic autonomy but also for mitigating their impacts on people and the planet.



► Strategic partnerships are recognized as crucial elements within the CRMR, yet they require a sustainable development approach that considers the unique needs of partner countries. Furthermore, it is imperative to establish clear definitions of value addition and implement robust mechanisms to ensure the active involvement of civil society and indigenous peoples, both within the EU and partner countries. These partnerships must transcend mere economic analysis and encompass human rights, Indigenous Peoples' rights and environmental frameworks on an international scale.

The CRMR recognizes the need to ensure indigenous peoples' rights under the United Nations Declaration on the Rights of Indigenous Peoples. However, the inclusion of instruments such as Free, Prior, and Informed Consent is essential for respecting indigenous peoples' rights within a legally binding framework, safeguarding their right to self-determination.

Certification and industry schemes are viewed as important tools for ensuring environmental and social compliance and adhering to due diligence standards. However, their effectiveness and necessity depend on how they are structured and monitored. They cannot replace existing environmental and social safeguards, and outsourcing assessments of human and environmental standards poses risks that must be addressed. The guidelines express concerns about over-reliance on certification and industry schemes, particularly in projects outside the EU where the EU has limited oversight.

As a civil society movement, following closely the EU's raw materials policies and their impacts inside the EU and abroad, we urge the Commission and Member States to address these concerns and that these guidelines are considered during the implementation process of the CRMR. Moreover, additional measures for human rights and environmental protection and the reduction of raw materials consumption urgently are needed.

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Website of the [EU Raw Materials Coalition](#). 

Raw Material Demand Reduction and Circular Economy

Introduction

The extraction of raw materials has significant and increasing environmental and social impacts worldwide. By designing policies to reduce EU raw materials demand and wasteful consumption combining [sufficiency and efficiency principles](#), the EU can ensure a “secure” and “sustainable” supply for Europe’s industry in the future.

The CRMR missed the opportunity to set benchmarks and specific binding targets for reducing raw material demand. It does, however, acknowledge in several recitals and articles that there is a need to reduce demand.

Reducing demand will enable the EU to increase its resilience to potential future shocks by reducing dependencies on imported raw materials; reducing risks of harming human, workers’ and Indigenous Peoples’ rights; reducing harmful environmental impacts such as deforestation; helping achieve EU’s climate goals under the Paris Agreement; foster innovation by encouraging the design of components and goods that require fewer resources to provide similar services; lastly, increase the well-being amongst all EU citizens and beyond.

Below the Raw Materials Coalition outlines several ways in which this can be done by the European Commission and Member States. But first, we have a look what the regulation says on the matter

Recital 3: Firstly, that framework should define those raw materials that are considered strategic and critical and strengthen the resilience of supply chains for those materials in the Union, including by identifying and supporting Strategic Projects, and by undertaking efforts to incentivise technological progress and resource efficiency in order to moderate the expected increase in Union consumption of critical raw materials.

Recital 6: The Commission and Member States should also incentivise technological progress and resource efficiency in order to moderate the expected increase in Union consumption of critical raw materials below appropriate reference projections.

Recital 8: To ensure that the benchmarks are met in time, the Commission, with the help of the European Critical Raw Materials Board ('the Board') should track and report progress towards the benchmarks and towards the demand moderation. In case the reported progress towards the benchmarks and towards the demand moderation is generally insufficient, the Commission should assess the feasibility and proportionality of additional measures. A lack of progress only on a single or small set of strategic raw material should in principle not trigger the need for additional Union efforts.

Article 1.2: To achieve the general objective referred to in paragraph 1, this Regulation lays down measures aimed at: (a) lowering the risk of supply disruptions related to critical raw materials likely to distort competition and fragment the internal market, in particular by identifying and supporting strategic projects that contribute to lowering dependencies and diversifying imports and by undertaking efforts to incentivise technological progress and resource efficiency in order to moderate the expected increase in Union consumption of critical raw materials;

Article 4a.2: The Commission and Member States shall undertake efforts to incentivise technological progress and resource efficiency in order to moderate the expected increase in Union consumption of critical raw materials below the reference projection referred to in Article 42(-1) through the relevant measures set out in this Section and Section 1 of Chapter V

Article 42.1: The Commission shall, taking into account the advice of the Board, monitor progress towards the benchmarks set out in Article 4a(1), as well as the moderation of the expected increase in Union consumption of critical raw materials referred in Article 4a(2) and publish, at least every 3 years, a report detailing the Union's progress towards achieving those benchmarks and that moderation. [...]

Article 42.2. The report referred to in paragraph 1 shall include:

- quantitative information on the extent of the Union's progress towards the benchmarks and the moderation set out in Article 4a;

“Reducing demand will enable the EU to increase its resilience to potential future shocks by reducing dependencies on imported raw materials; reducing risks of harming human, workers’ and Indigenous Peoples’ rights; reducing harmful environmental impacts such as deforestation; helping achieve EU’s climate goals under the Paris Agreement; foster innovation by encouraging the design of components and goods that require fewer resources to provide similar services; lastly, increase the well-being amongst all EU citizens and beyond.”

It is repeatedly mentioned throughout the CRMR that the EU and Member States must make efforts to “incentivise technological progress and resource efficiency in order to moderate the expected increase in Union consumption of critical raw materials.” (Articles 25.1(-a); 1.2; 4a.2 & 42; Recitals 1, 3 & 6).

The EU Raw Materials Coalition recommends that the European Commission should:

“Publish, within 1 year of the CRMR’s adoption, a strategy and plan for achieving this “moderation in demand”. This strategy and plan must act on three levels: “sufficiency”, “efficiency”, and “substitution”:”

- **Sufficiency:** Focusing solely on “resource efficiency” won’t be enough to moderate CRM demand and supply risk for CRMs, and in particular to reduce the expected gap between supply and demand over the next few years. Numerous publications have pointed out¹ that increasing productivity and efficiency in the coming years will not lead to an overall reduction in resource consumption.

Levers of sufficiency need to be activated quickly if the EU is to truly moderate demand. These levers are (examples are for lithium²):

- **dimensional sufficiency** - concerning the correct sizing of equipment in relation to its conditions of use (e.g. limiting the size of vehicles and batteries);
- **usage sufficiency** - regarding the proper use of equipment to reduce consumption: (e.g. reducing the frequency of use of the car, reducing the speed limit, etc.);
- **collaborative sufficiency** - based upon a logic of pooling equipment and their use (e.g. increasing carpooling and carsharing);
- **organisational sufficiency** - consisting of creating the conditions for moderating our travel needs (e.g. land-use planning to reduce the distances of our daily travels, teleworking, and developing soft modes of transport).

- **Efficiency:** production efficiency must be improved as much as possible from an industrial, environmental and social perspective. Among other issues, efficiency is crucial to tackling climate change, as the International Energy Agency has stressed³. This involves reducing losses along the production process (extraction and recycling), as well as making processes less energy-intensive, less water- and resource-hungry, and less polluting.

- **Substitution:** substitution can also reduce CRM demand. However, the European Commission should provide specific guarantees to ensure that substitution will be sustainable. It should promote substitution by renewable resources whenever possible, or raw materials with significantly less impacts in terms of environmental and/or social impacts.

¹OECD. 2019. Global Material Resources Outlook to 2060: Economic Drivers and Environmental Consequences. doi: [10.1787/9789264307452-en](https://doi.org/10.1787/9789264307452-en); Watari, Takuma, Keisuke Nansai, Damien Giurco, Kenichi Nakajima, Benjamin McLellan, et Christoph Helbig. 2020. « Global Metal Use Targets in Line with Climate Goals ». Environmental Science & Technology 54(19):12476-83. doi: [10.1021/acs.est.0c02471](https://doi.org/10.1021/acs.est.0c02471).

²[Alina Racu. 2023. Clean and Lean: Battery Metals Demand from Electrifying Passenger Transport. Transport & Environment. Association négaWatt. 2023. Lithium: towards a necessary sufficiency. Briefing note.](#) WWF France. 2023. Métaux critiques : l'impasse des SUV, quel scénario pour réussir la transition de nos mobilités ?

³International Energy Agency. 2019. Material Efficiency in Clean Energy Transitions. IEA. doi: [10.1787/aeaaccd8-en](https://doi.org/10.1787/aeaaccd8-en).

Define binding targets to reduce EU critical raw materials consumption by 2030, 2040 and 2050, compared to 2020 levels, and outline a plan on how these can be achieved. This would complement potential new and incoming legislation on EU sustainable resource management⁴.

Break down the reduction targets for each CRM, and target first the reduction of CRMs having the highest environmental and/or social impacts. The initial focus should be on the sectors where reductions are possible without jeopardising the energy transition or decent living standards⁵.

Mandate Eurostat to publish annually the raw material consumption (RMC) for each CRM at the EU, national and industry sectors' levels. This would allow further analysis of where the largest consumption of various critical raw materials is happening and identify bottlenecks to help pinpoint where to reduce demand.

Mandate the JRC's foresight modelling of CRMs to reflect more ambitious demand reduction scenarios, based on science (planetary boundaries), fair share principles, and sufficiency levers. The JRC already models a low demand scenario, however it is based on low technology deployment, differing market shares, differing material intensities and reduction in annual sales. The development of more ambitious demand reduction scenarios should include more than just technological advances and encompass a broader variety of measures including economic, structural and behavioural changes through the incorporation of sufficiency levers.

⁴ [EU Sustainable Resource Management Whitepaper](#)

⁵ IRP., 2019. Global Resources Outlook 2019: Natural Resources for the Future We Want. doi: 10.18356/689a1a17-en. See p.76.

Develop a list of actionable sufficiency and efficiency measures and policies that should be developed at sectoral levels, as part of this plan. It is also necessary to identify with which other Commission DGs etc. will be required to lead or jointly work with. Sectors include but are not limited to:

- **Road Transport** – binding targets and plans to reduce the number of private cars in the EU⁶; reducing road building and space available for private cars; limiting the size and weight of cars and of their batteries (including less resource-intensive battery chemistries), limiting speeds and the range of vehicles; clear plans, targets and funding for more public transport and active travel - rethinking urban planning.
- **Digital economy** – regulations to prohibit or limit certain data use and storage, for example, data use of online films, videos, games etc., trade in personal data, personalised advertisements, and untargeted interception of telecommunications – all as a way to significantly reduce the storage, transmission, and processing of personal data, thus reducing the energy and materials required.
- **Electronic products** - phasing out of single-use products containing CRMs, for example portable batteries and disposable single-use vaporisers or toothbrushes.
- **Buildings and infrastructure** – shifting towards lighter buildings and reducing demand for floor space; improving recycling and use of recycled materials in buildings and other infrastructure; extending the lifespan of renewable energy infrastructures.

Article 1.2 states that a particular way to meet the CRMA's objectives is by "identifying and supporting strategic projects that contribute to lowering dependencies". The Raw Materials Coalition stresses that there should be a binding target ensuring that 30% of the strategic projects involve secondary raw materials, such as re-mining waste, recycling of CRMs, or urban mining.

⁶The Green European Foundation found that if one electric car were enough to replace five fossil-fuel cars, the EU would only need half as much lithium and cobalt as currently projected

Given that a primary objective of the CRMA is to secure a 25% domestic recycling capacity of strategic raw materials (SRMs) the Raw Materials Coalition recommends that the European Commission⁷:

1 Develops delegating/implementing acts to ensure product design for circularity

Article 32 calls for implementation and alignment with Union harmonisation legislation and aligns with the (proposed) Ecodesign for Sustainable Products Regulation (ESPR), emphasising coherence by connecting Ecodesign requirements with the CRMR's goal to produce 25% of the EU's annual SRMs. While this alignment enhances policy coherence, fulfilling ecodesign requirements requires the development of delegated or implementing acts. These acts should promote product design that supports CRM circularity and considers the recovery potential of CRM requirements. It is crucial to address how to meet ecodesign requirements while embracing technological developments as enablers of circularity.

2 Improves and extends labelling provisions for products containing CRMs

Article 27 enhances permanent magnet circularity by mandating information provision for accessing and removing these magnets in applicable products. Clear product labelling, preferably included in product passports when necessary, is underscored for facilitating circularity. This requirement should extend to all products containing recoverable CRMs, ensuring they either carry a label or possess a product passport to promote transparency and circular practices.

3 Separates recycling targets for individual strategic raw materials

breaking down the overall 25% recycling target into individual targets for specific SRMs, which would provide greater clarity on where particular efforts are needed to improve circularity.

⁷ This section is in big parts a summary of the following analysis: [Circularity gaps of the European Critical Raw Materials Regulation - IEEP AISBL](#)

4

Ensures coherency in dealing with the recovery of extractive/mining waste for recycling

Article 25 requires Member States to adopt measures to promote CRM recovery from extractive/mining wastes, to identify the quantities of CRM containing components removed and the quantities of CRMs recovered from them. For products and wastes already subject to EU legislation, the CRMR only requires that Member State programmes should be “coherent” with that legislation. This could potentially allow Member States to be less ambitious regarding the latter, which could limit the potential for the collection and recycling of CRMs from those products and wastes. The Commission should ensure a coherent approach across all CRM-containing products and waste streams, to maximise collection and recycling potential and not allow the “existing legislation clause” to result in those waste streams lagging on CRM recovery.

5

Boosts recycling facilities, technologies and economic viability:

- The Commission should assess whether the funds available under EU programmes are adequate to provide the necessary financial support to the Member States to achieve the CRMR’s recycling objectives. Conversely, Member States should assess whether existing funds will be adequate to address circularity, particularly in the realm of R&I.
- The Commission aims to establish European standards for the recycling of CRMs where the development of technical criteria for handling CRMs, encompassing recovery, recycling, and preparing for reuse, would be supported. This would ensure the uniform application of technical regulations throughout the European Union. To achieve this, the exploration and development of Best Available Techniques reference documents (BREFs) or other EU-level guidance on CRM recycling technologies should also be actively pursued to continually enhance industry practices.
- **Article 25** mandates EU Member States to develop national programs enhancing the technological maturity of recycling for CRMs. The Commission can also promote market-based instruments to incentivise recycling and promote the use of secondary CRMs. Strategies such as Extended Producer Responsibility (EPR) schemes, where producers pay fees for placing products on the market, can fund end-of-life product collection and waste treatment. Eco-modulation of fees, adjusting them based on material content, recyclability, or recoverability, offers an intriguing approach for CRM-containing products. Product or material taxes, potentially applied at import or market placement, could favour recycled materials over virgin ones.

Strategic Partnerships and Raw Materials Diplomacy

Introduction

The EU's Critical Raw Materials Regulation mandates the diversification of raw materials to meet the Union's consumption needs⁸. By 2030, the Act aims to ensure that no more than 65% of any strategically important raw material is sourced from a single third country. To reach this objective, raw materials diplomacy is foreseen to be strengthened through so-called Strategic Partnerships with resource-rich countries. The EU has already concluded nine Strategic Partnerships, including with Canada, Ukraine, Namibia, Kazakhstan and Argentina, whereas other partnerships with Australia and Norway are in the pipeline⁹.

Regrettably, the EU overlooked the opportunity to fully integrate and concretize a robust sustainable development approach along the lines of the framework of the 2030 Agenda for Sustainable Development, with clear criteria for partnerships, value addition concretization and attention to the local contexts. Nevertheless, these Partnerships must adhere strictly to Sustainable Development principles. Partnerships should actively contribute to local development in producing countries, uphold environmental sustainability, safeguard the rights of local communities and Indigenous Peoples, and implement rigorous transparency and anti-corruption measures. Moreover, central to this approach should be the concerted effort to decrease the EU's consumption of minerals. This initiative would not only aim to reduce dependency on primary raw material extraction, which often yields low value-added for producing countries, but also seek to propel producing countries forward along the value chain through innovation, research and development, and bolstering their recycling capacity¹⁰.

Despite the EU's pledge to foster mutually beneficial win-win partnerships with advantages for both the EU and producing countries, the CRMR primarily prioritizes securing access to critical raw materials for the EU seemingly at all costs. The CRMR addresses the 'win-win' aspects only ambiguously while lacking binding commitments. Without legal enforcement mechanisms, future partnerships run the risk of exacerbating human rights abuses and environmental degradation in producing countries, ultimately undermining the EU's objectives for supply security.

⁸ This section is in big parts a summary of the following analysis: Fern et al. (2023): A partnership of equals. How to strengthen the EU's raw materials strategic partnerships? See online (27.01.2024): <https://eurmc.org/publication/how-to-strengthen-the-eus-critical-raw-materials-strategic-partnerships/>

⁹ Raw materials diplomacy. European Commission Internal Market, Industry, Entrepreneurship and SMEs. https://single-market-economy.ec.europa.eu/sectors/raw-materials/areas-specific-interest/raw-materials-diplomacy_en

¹⁰ [EEB Report, 2023 - Impacts of EU Circular Economy Policies in Third Countries](#)

Sustainable development approach for the definitions within the CRMR of “value addition” and “mutually beneficial” are urgently needed -

Despite the positive narrative, the CRMR remains vague and lacks a proper definition of what “value addition” and “beneficial for both partners” actually means. The EU’s narrow economic perspective does not capture the entirety of value, which needs to extend beyond monetary measures and include considerations such as safe and fair working conditions, a healthy environment, and broader societal values¹¹. Evidence demonstrates that mineral processing frequently presents significant health hazards to local populations, while the economic benefits remain uncertain. Furthermore, identifying best practices in this context has proven exceedingly challenging.

Measures of value addition within the Strategic Partnerships’

Memoranda of Understanding (MoU) are limited to skill and capacity development, job creation and training in the sector, and in some cases economic diversification and knowledge transfer (within the realm of research and development). While these would be welcome, explicit plans for achieving these ambitions and for further crucial measures such as support for a domestic energy transition and green industrialisation, the sharing of knowledge, technology, patents, and capital, and willingness to import finished goods, are needed.

Specific needs of each country must be taken into account. This entails not solely involving governments but also engaging in meaningful dialogue with civil society, local communities, and Indigenous Peoples¹², while considering their unique needs and priorities. A uniform approach will prove inadequate in addressing the complexities of these diverse stakeholders¹³.

¹¹ Böll (2023) [Value Addition in the Context of Mineral Processing](#)

¹² See also Chapter 3 of Fern et al (2023).

¹³ This section is in big parts a summary of the following analysis: Fern et al. (2023): A partnership of equals. How to strengthen the EU’s raw materials strategic partnerships? See online (27.01.2024): <https://eurmc.org/publication/how-to-strengthen-the-eus-critical-raw-materials-strategic-partnerships/>

Criteria for strategic partnerships

Article 37: International cooperation and Strategic Partnerships

1. The board shall periodically discuss:

(a) the extent to which Strategic Partnerships concluded by the Union contribute towards:

(i) improving the Union's security of supply including the benchmarks set out in Article 4a point (b);

(ii) improving cooperation along the critical raw materials value chain between the Union and partner countries, including capacity building and technology transfer programs to promote circularity and responsible recycling of critical raw materials in producing countries; 15686/23 RGP/FDC/ae 129 ANNEX COMPET.1 EN

(iii) **the economic and social development of partner countries**, including by promoting sustainable and circular economy practices, decent working conditions and **respect for human rights along their raw material value chains**; [...]

(ii) whether a cooperation between the Union and a third country could improve a third country's ability to ensure the **monitoring, prevention and minimisation of adverse environmental impacts through its regulatory framework and the implementation thereof, the use of socially responsible practices** including respect of human and labour rights, notably on forced and child labour, meaningful engagement with local communities, including indigenous peoples, the use of transparent and responsible business practices, the prevention of adverse impacts on the proper functioning of public administration and the rule of law; [...]

(iv) for emerging markets and developing economies, whether and how a partnership could **contribute to local value addition**, including downstream activities, and would be mutually beneficial for the partner country and the Union. [...]

3. Member States:

(a) shall inform the Commission on their bilateral cooperation with relevant third countries, when its scope includes critical raw materials value chain;

(b) may support the Commission in the implementation of the cooperation measures set out in Strategic Partnerships along the raw materials value chain.

3a. Once a year, the Commission shall inform the European Parliament and the Council on the content and outcome of the discussion referred to in the precedent paragraphs

Formally, Strategic Partnerships are non-binding agreements centred on collaboration within critical raw material (CRM) value chains, typically established through a Memorandum of Understanding (MoU) and the development of a roadmap. However, the CRMR lacks provisions for the implementation of crucial international instruments safeguarding human and Indigenous Peoples' rights, as well as environmental and labour standards, which should be mandatory for the conclusion of these partnerships. Additionally, the CRMR remains ambiguous regarding the approach to engaging with local communities in this context.

To mitigate potential adverse effects and prevent undermining the energy transition of the third country involved, the EU Raw Materials Coalition suggests that the EU adhere to the following criteria:

■ **Include clear, specific measures to tackle illegal and irresponsible mining.**

Include measures for meaningful engagement with Indigenous Peoples and local affected communities (see also Chapter 3: Free, Prior and Informed Consent and Indigenous Peoples rights)

■ **Respect and support producer countries' own transition.** Specific language on added value, tailored to the needs of each partner's country and communities should include support for a domestic energy transition, and green industrialisation, ensuring local clean energy access and the sharing of knowledge, technology, patents, and capital. Ensure integrity and transparency in the mining sector: Strategic Partnerships should reference key international anti-corruption instruments such as the UN Convention Against Corruption and the Organisation for Economic Cooperation and Development (OECD) Anti-Bribery Convention.

■ **Support the implementation of the regulatory frameworks of the partner country.**

It is positive that **Article 35** states that the CRM Board should at least periodically discuss "whether a cooperation between the Union and a third country could improve a third country's ability to ensure the monitoring, prevention and minimisation of adverse environmental impacts through its regulatory framework and the implementation thereof [...]". It is crucial to note that some partnerships merely acknowledge the importance of implementing the Agenda 2030 for Sustainable Development and assessing the environmental and social impacts of joint projects under domestic legislation in their Memoranda of Understanding (MoUs). However, to date, these partnerships have overlooked the significant challenges related to weaknesses, gaps and shortcomings in the coverage and enforcement of domestic legislation in many producer countries.

Developing and monitoring Strategic Partnerships

The process for developing and monitoring Strategic Partnerships:

- **Should be inclusive, transparent, robust and effective.** Representatives of impacted communities and Indigenous Peoples, trade unions and civil society should have a seat at the table.
- **Documents such as MOUs, roadmaps and impact assessments should be made publicly available.** Roadmaps should set time-bound and measurable priorities.
- **The mechanisms for providing financial support for Strategic Partnerships should be people-centred and transparent.** Possible bilateral contracts and investments, often involving significant commitments by industrial actors beyond the initial scope of the Strategic Partnerships, should also be accessible to the public. While the MoU and roadmap phase is managed within a clearly defined framework, the subsequent deals and agreements—focused on heavy investment and industrial cooperation—operate within a broader, less formalised context and are hence a lot more difficult but equally important to monitor by the public.

“While the MoU and roadmap phase is managed within a clearly defined framework, the subsequent deals and agreements—focused on heavy investment and industrial cooperation—operate within a broader, less formalised context and are hence a lot more difficult but equally important to monitor by the public.”

Assessment of economic and social development needs a just transition approach

When evaluating the economic and social implications of Strategic Partnerships on partner countries, the EU must not only consider the positive effects on the development of the mining sector and associated industries but also recognize its potential adverse impact on other economic activities that may compete with mining for access to land and water. These activities, such as small-scale farming, hunting, or fishing, are crucial for local communities and Indigenous Peoples but often remain unaccounted for without proper social impact assessments. Additionally, Strategic Partnerships could inadvertently hinder a Just Transition to renewable energy in countries rich in renewable resources, exacerbating energy poverty. Therefore, a comprehensive impact assessment is imperative, encompassing the effects of a just transition domestically, and must involve the participation of affected communities.

Funding

Export Credit Agencies (ECAs) are mentioned as key finance instruments for Strategic Partnerships. However, ECAs as trade instruments are not fit for purpose when it comes to several key goals mentioned in those diplomatic agreements. How ECAs currently operate often contradicts and even undermines sustainable development goals (SDGs) and key human rights standards, as well as the just transition potential in the countries where ECA-backed projects are implemented.

Using ECAs as a trading instrument for the CRMR produces a real risk of deepening inequalities. ECAs are notorious for lacking transparency and accountability and even though they are public finance instruments providing high volumes of support, there is a lack of public oversight. Crucial information such as on environmental and social impacts is rarely available, nor timely shared, including with the people and communities (potentially) directly affected by the projects. A significant shortfall exists in the evaluation of how ECAs influence transitions in the countries where their projects are executed. Essential information, such as transaction volumes or breakdowns by sector and recipient country, is frequently unavailable, significantly undermining accountability.

ECAs, as entities entrusted with a public mandate, must uphold public transparency standards and maintain consistent reporting practices to effectively engage with stakeholders. Lastly, ECAs as a finance instrument need complete reform to be aligned better with the SDGs and the development policy objectives of the EU, before they can be mobilised for the transition, including SDG7¹⁴ - how they impact the transition in the country where the project is implemented.

¹⁴SDG 7 - "Ensure access to affordable, reliable, sustainable, and modern energy for all."

Free, Prior and Informed Consent and Indigenous Peoples Rights

Introduction

There is a strong and direct connection between the European green and digital transitions, the defence and aerospace sector and Indigenous Peoples and local affected communities. *Fifty-four per cent* of the transition minerals on the planet are found on or near Indigenous Peoples territories¹⁵. If peasant communities are included, (many of which are Indigenous Peoples though not recognised as such) this figure rises to 70%. The CRMR sets the rules for how mining for the EU green and digital transition will occur, which in turn will determine the extent to which mining will be accepted and granted a Social License to Operate (SLO).

For Indigenous Peoples and local communities, SLO cannot be separated from their right to give or withhold their Free Prior and Informed Consent (FPIC) on a government or private-sector activity that might affect their land, territories and natural resources. FPIC is a right protected by international law and a crucial safeguard for the protection and realisation of their collective autonomies and self-determination. FPIC is also a best practice standard for affected local communities that do not fit the definitions of rights-holding Indigenous entities under international law.

¹⁵ See Owen et al., 2022. Energy transition minerals and their intersection with land-connected peoples. <https://www.nature.com/articles/s41893-022-00994-6>

Meaningful consultation with Indigenous Peoples, what is it and what does it take?

The CRMR demands that projects “ensure engagement in good faith, comprehensible and equitable consultations with Indigenous Peoples” (Rec 11). To be considered in “good faith”, it should occur in a transparent process and before all the details of that project are defined and decided.

The CRMR also demands that projects with the potential to affect Indigenous Peoples prepare “a plan containing measures dedicated to the meaningful consultation of affected indigenous peoples, the prevention and minimisation of adverse impacts on indigenous peoples, and, where appropriate, fair compensation” (Rec 2a, Art 6.1).

Furthermore, the CRMR states that these demands should be implemented according to national and International guidelines, principles and agreements, including, but not limited to, the [UN Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#), the [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#) and the [OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#) (Annex III).

Although the CRMR does not provide a clear definition of how “meaningful consultation”, “preventions of adverse effects” or “fair compensation” should be understood, these definitions are clearly stated in the referenced guidelines. The EU Raw Materials Coalition recommends that the European Commission specify these definitions when developing the specific guidelines for projects that fall under the CRMR and its communication to inform Member States:

Meaningful consultation with Indigenous Peoples includes:

- **The identification of whether or not there are Indigenous Peoples in the location of a proposed project or activity with actual or potential impacts.** This should be done via consultation with stakeholders, including Indigenous Peoples¹⁶.
- **A dedicated consultation with Indigenous Peoples’ representatives considering that:**
 - **Indigenous Peoples have the right to determine and develop priorities and strategies** for the development or use of their lands, territories and other resources¹⁷.
 - **States are required to consult and cooperate in good faith with the Indigenous Peoples** through their own representative institutions in order to obtain their Free and Informed Consent prior to the approval of any project¹⁸.
 - **Businesses should consult with Indigenous Peoples to verify whether and how States have fulfilled their consultation and consent requirements.** If States have not complied with Article 32 of UNDRIP, **business shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions** in order to obtain their Free, Prior and Informed Consent.

¹⁶ UNGPs 18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

(a) Draw on internal and/or independent external human rights expertise;

(b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

¹⁷ UNDRIP Article 32 (1)

¹⁸ UNDRIP Article 32 (2)(3)

Prevention of Adverse Impacts

- The UNGP Principle 13 states that **businesses should avoid causing or contributing to adverse impacts, and seek to prevent and mitigate those that they are directly linked to by their business relationships.**
- UNDRIP Article 18 sets out that **Indigenous Peoples have a right to participate in decisions affecting them, through representatives chosen by themselves in accordance with their own procedures.** As such, where companies seek to mitigate and prevent adverse impacts that affect Indigenous Peoples, they should ensure Indigenous People can participate in such decisions, and cooperate with their chosen representatives to prevent any impacts.
- UNDRIP Article 32(3) **requires states to take appropriate measures to mitigate adverse impacts of any activity on their territories.**
- **Particular attention shall be paid to the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities (UNDRIP Article 21).**
- **Specific impacts that may be prioritised include, but are not limited to:**
 - Impacts on the right to own, use, develop and control, their lands, territories and resources (UNDRIP Article 26).
 - Impacts that deprive them of their cultural integrity as a distinct people, or which dispossess them of their lands (UNDRIP Article 8).
 - Impacts on spiritual and religious sites and objects, and the right to have access in privacy to such sites and objects (UNDRIP Article 12)
 - Impacts on the rights to life, physical and mental integrity, liberty and security of person (UNDRIP Article 17).
- **Resettlement of Indigenous communities must be strictly avoided and their Free, Prior and Informed Consent is required (Article 10 UNDRIP, Article 16(2) ILO C 169, IFC-PFS7).**

Fair compensation:

- UNDRIP article 10 recognises the importance of **protecting Indigenous Peoples from forced removal** and emphasises the need for their consent, fair compensation, and the option of return when considering any relocation from their lands or territories.
- Additionally, UNDRIP Article 28 states that **Indigenous Peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their Free, Prior and Informed Consent.**
- Moreover, UNDRIP Article 28 states that “**unless otherwise freely agreed upon by the Peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.**”

- The interpretation of “Equal in quality, size and legal status, or of monetary compensation,” in this regard, should consider that **Indigenous Peoples’ relationship to their lands, territories and resources may not just encompass economic value and property, but also cultural and spiritual uses and values, and serve as the basis of their cultural survival, dignity, and wellbeing, as reflected throughout UNDRIP.**
- The UNGP Principle 22 sets out that **businesses should provide for or cooperate in remediation through legitimate processes where they have caused an adverse impact.**

What happens when Indigenous Peoples are not engaged in good faith?

When Indigenous Peoples are not engaged and their rights are not respected, especially their right to Free, Prior and Informed Consent (FPIC), mounting evidence suggests:

- increasing risk of local conflicts around planned mining sites.
- increasing risk of litigation leading to delays or in some cases the closures of mines.

Some recent examples include:

- the decision by the Inter-American Court on Human Rights (IACHR) in the case of a large nickel mine in Guatemala, ordering the country to stop mining due to lack of compliance with the American Convention on Human Rights, including inadequate protection of lands rights and inadequate consultation processes
- the revokement of the environmental licence of a large copper project in Ecuador due to the violations of Indigenous peoples right to consultation, among others¹⁹.
- El Abra Copper mine in Chile, where the Indigenous community of Conchi Viejo has won its first battle before the Court of Appeal²⁰.

Mining companies are not equipped with sufficient policy frameworks to ensure the respect of Indigenous Peoples’ rights. A recent analysis of OXFAM found that out of 43 companies engaged in the exploration and production of five transition minerals used in rechargeable batteries only two have clear and unequivocal public commitments to respect FPIC²¹. Only 13 companies make explicit reference to FPIC mostly in terms of “seek to achieve” or “aim to achieve,” leaving open the possibility that if consent is not provided, they will simply move ahead with their projects regardless. Furthermore, this analysis is at the policy level, not the implementation level. There is ample evidence on the ground that FPIC is not respected unless clear and binding frameworks, such as ILO C169, are effectively enforced.

Companies need to be guided to depart from business-as-usual approaches, to respect Indigenous Peoples’ rights and to look into ways to align with Indigenous Peoples’ own development priorities. The process of building Consent can be innovated through increasing access to governance and shared prosperity business models, including through co-ownership, among others²².

¹⁹ [“Ecuador: Court Revokes Environmental Licence of the Llurimagua Mining Project after Confirming Violations of the Right to Consultation and Environmental Rights.”](#)

²⁰ [Corte de Antofagasta ordena a empresa minera El Abra abstenerse de realizar trabajos que afecten a comunidad atacameña de Conchi Viejo. - Diario Constitucional](#)

²¹ [“Recharging Community Consent: Mining Companies, Battery Minerals, and the Battle to Break from the Past.” Sellwood, Scott A.; Hodgkins, Chelsea; Hirschel-Burns, Tim. Oxfam. 2023.](#)

²² [“Shared Prosperity Models & Indigenous Leadership for a Just Transition.” n.d. Business & Human Rights Resource Centre.](#)

Key Takeaways

The European green and digital transition intersects strongly with Indigenous Peoples, requiring mining projects to respect their rights. The Social License to Operate (SLO) is inseparable from Indigenous Peoples' right to Free, Prior and Informed Consent (FPIC), crucial for their autonomy. The CRMR mandates meaningful consultation, prevention of adverse impacts, and fair compensation, aligning with international guidelines. Specific definitions and guidelines are found in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), UN Guiding Principles on Business and Human Rights (UNGPs) and OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.

Failure to engage Indigenous Peoples in good faith, particularly regarding FPIC, leads to conflicts and legal issues, causing delays, reputational and economic losses for companies and irreparable human losses, as seen in recent cases. Recognising and respecting Indigenous Peoples' rights is not just a moral and legal obligation for the EU and its Member States, but the way for the EU to fulfil its objective to achieve a "secure" and "sustainable" supply of raw materials for its green and digital transition.

Certification and Industry Schemes

Introduction

Certification schemes and participation in industry and multistakeholder initiatives have been increasingly used by companies to support the implementation of parts of their due diligence obligations. In equal measure, regulators are increasingly wanting to rely on them (exclusively or as part of a wider assessment), as seen in the Conflict Minerals and the Battery Regulations.

On the ground, however, there is growing criticism and concern about these tools. Significant incidents over the past years have shown the weaknesses of certification schemes in preventing human rights violations or environmental catastrophes. A prominent example is the dam break of the iron ore mine in Brumadinho where a false certificate (allegedly due to corruption) by a subsidiary of TÜV Süd led to 272 deaths and a huge environmental disaster²³. Another example is the case of ITSCI, a due diligence scheme for conflict minerals, which has laundered large amounts of minerals linked to conflict and human rights abuses over the years²⁴ and most recently the case of a cobalt mine in Bou Azzer, Morocco, where an incredibly high concentration of arsenic have been found in water samples in the area²⁵, all the while the operator was certified by the Responsible Minerals Initiative (RMI)²⁶.

Multiple studies show that certification schemes in the mining sector have systemic shortcomings and are to a large extent not able to measure the implementation of their criteria and lack the inclusion of experience of stakeholders and right holders and transparency²⁷. Though certifications can provide useful information about a given site, certifications cannot replace a fuller dynamic assessment of a company's performance on all social, human rights, Indigenous Peoples rights, and environmental dimensions²⁸.

The excessive reliance placed on certification schemes by the Critical Raw Materials Regulation in determining the "strategic project" status has raised major concerns within civil society. A point of contention for civil society is the likelihood that the EU Commission and the newly established raw materials Board will outsource the assessment of human rights and environmental standards compliance to certification schemes. This risk is further increased and concerning when strategic projects are located outside of the EU borders, where the EU has no direct oversight.

²³ [Lieferketteninitiative \(2023\) Das Geschäft mit der Sicherheit.](#)

²⁴ Global Witness (2022) The Itsci Laundromat, accessible [here](#).

²⁵ [BMW und die Mär vom sauberen Kobalt aus Marokko - SZ.de \(sueddeutsche.de\)](#)

²⁶ [BMW geht Vorwürfen gegen marokkanischen Kobalt-Zulieferer nach - BMW-Aktie etwas höher | 13.11.23 | finanzen.at](#)

²⁷ GermanWatch study, (2022) accessible here, Lead the Charge study, (2024) accessible [here](#)

²⁸ [EU's Flawed Reliance on Audits, Certifications for Raw Materials Rules | Human Rights Watch \(hrw.org\)](#)

Role of certification schemes in the CRMR text

Recital 11: To provide project promoters with a clear and efficient way of complying with this criterion, compliance with relevant Union or national legislation, international standards, guidelines and principles, as relevant, or participation in a certification scheme recognised under this Regulation should be considered sufficient.

Recital 49: Critical raw materials sold on the Union market are often certified regarding the sustainability of their production and supply chain. Certification can be obtained in the context of a broad range of public and private certification schemes available with varying scopes and stringency, creating the potential for confusion regarding the nature and veracity of claims made about the relative sustainability of critical raw materials placed on the Union market based on such certification. **The Commission should be empowered to adopt implementing acts recognising certification schemes that should be considered trustworthy, providing a common basis for authorities and market participants for assessing the sustainability of critical raw materials. Recognition should be given only to certification schemes which contain provisions for independent third-party verification and monitoring of compliance. As regards environmental protection, certifications schemes should cover risks related to, for example, air, water, soil, biodiversity, and waste management.** The requirements on all sustainability dimensions should ensure a high level of social and environmental protection and be in line with Union legislation or the international instruments listed in Annex III. [...]

Article 5.2. The fulfilment of the recognition criteria set out in paragraph 1 shall be assessed by the Commission in accordance with the elements and evidence set out in Annex III. The Commission is empowered to adopt delegated acts in accordance with Article 36 to amend Annex III in order to adapt the elements and evidence to be taken into account when assessing the fulfilment of the recognition criteria [...].

Article 28.2.c: where third party involvement is mandatory, the need for the manufacturer to have a choice between quality assurance and product certification modules set out in Annex II of Decision No 768/2008/EC.

Schemes can apply to the commission to be recognised

Article 29: Recognised schemes

1. Governments, industry associations and groupings of interested organisations that have developed and oversee certification schemes related to the sustainability of critical raw materials (“scheme owners”) may apply to have their schemes recognised by the Commission. Applications referred in the first subparagraph shall contain any relevant evidence related to the fulfilment of the criteria laid down in Annex IV. The Commission shall adopt an implementing act by [OP please insert: three years after the entry into force of the Regulation] specifying the information that applications shall at least contain. [...]

2. Where, on the basis of the evidence provided pursuant to the paragraph 1, the Commission determines that a certification scheme meets the criteria laid down in Annex IV, or a subset thereof, it shall adopt an implementing act granting that scheme a recognition, specifying the recognised coverage of the scheme. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3). 2a. The recognised coverage for each scheme shall be specified along the following dimensions: (a) the stages of the value chain covered by the scheme; (b) the stages of the life cycle of a project, including before, during and after closure, that are covered by the scheme; and (c) the sustainability dimensions and environmental risk categories listed in Annex IV point (b) that are addressed by the scheme.

3. The Commission shall verify at least every three years that recognised schemes continue to fulfil the criteria laid down in Annex IV, or of the recognised subset of those criteria. [...]

5. If there is evidence of repeated or significant cases where economic operators implementing a recognised scheme have failed to fulfil the requirements of that scheme, the Commission shall examine, in consultation with the owner of the recognised scheme, whether those cases indicate deficiencies in the scheme affecting the basis for the recognition and take appropriate action.

6. Where the Commission identifies deficiencies in a recognised scheme affecting the basis for the recognition, it may grant the scheme owner an appropriate period of time to take remedial action, which shall not be longer than 12 months.

7. Where the scheme owner fails or refuses to take the necessary remedial action and where the Commission has determined that the deficiencies referred to in paragraph 6 mean that the scheme no longer fulfils the criteria laid down in Annex IV, or of the recognised subset of those criteria, the Commission shall adopt an implementing act withdrawing the recognition of the scheme. [...]

Reliance on Certification schemes is not sufficient to comply with human rights, Indigenous Peoples' rights, and environmental standards

Projects need to fulfil a sustainability criterion to be recognised as a strategic project. For projects in the Union, the assessment is made based on the project's compliance with the Union or national legislation in addition to supplementary relevant evidence. Projects in third countries have to be assessed based on compliance with international instruments (including the UNGPs, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals, and OECD Guidelines for MNE) and applicable national legislation.

Compliance with the law as part of the assessment of sustainability makes sense under the principle of the rule of law. However, according to the text of the CRMR, project promoters “may also attest compliance” with the sustainability criterion by providing evidence that the project is certified by a recognized scheme or even by committing to obtain certification. This seems to indicate that by obtaining certification, projects risk no longer being assessed based on compliance with the law which is unacceptable from a legal perspective.

As the legislators also highlighted during the co-decision process of the CRMR, no certification scheme can provide an exception to a company with the obligation to comply with Union and international law or to circumvent the principle of legality and rule of law. Certification of a specific strategic project doesn't exempt the project promoter or the companies sourcing from the strategic project, from complying with the law. . or the sourcing from a strategic project. Moreover, certification of a project doesn't relieve project promoters of their obligations to comply with international and national law, including the obligation to conduct ongoing and comprehensive human rights and environmental due diligence assessments of their operations and supply chains, in line with the requirements outlined in the UNGPs and OECD guidelines. Such international instruments have also been incorporated into legally binding instruments such as the Conflict Minerals Regulation. Therefore, compliance with international legal instruments and Union or national law can't be substituted by obtaining a certification of a project.

Criteria certification schemes have to meet to be accepted with an implementing act to “prove” compliance of strategic projects

Annex IV CRITERIA FOR CERTIFICATION SCHEMES

A recognised certification scheme shall meet the following criteria:

(a) it is open under transparent, fair and non-discriminatory terms to all economic operators willing and able to comply with the scheme’s requirements and it is of multi-stakeholder governance;

(b) the requirements for certification shall include at least:

(i) requirements ensuring environmentally sustainable practices, including requirements ensuring environmental management and impact mitigation in the following environmental risk categories:

(ia) air, including air pollution such as greenhouse gas emissions;

(ib) water, including seabed and marine environment, and water pollution, water use, water quantities (flooding or droughts) and access to water;

(ic) soil, including soil pollution, soil erosion, land use and land degradation;

(id) biodiversity, including damage to habitats, wildlife, flora and ecosystems, including ecosystem services;

(ie) hazardous substances;

(if) noise and vibration;

(ig) plant safety;

(ih) energy use;

(ii) waste and residues;

(ii) requirements for ensuring socially responsible practices, including respect for human rights and labour rights including the community life of indigenous peoples;

(iii) requirements for ensuring business integrity and transparency including requirements to apply sound management of financial, environmental and **social matters and anti-corruption and anti-bribery policies;**

(c) verification and monitoring of compliance is objective, based on international, Union or national standards, requirements and procedures and carried out independently from the relevant economic operator;

(d) it includes sufficient requirements and procedures to ensure **the competence and independence of responsible verifiers.**

(da) it includes requirements to ensure an **audit-report established at the site level.**

Definition of Multi-Stakeholder Governance

Article 2. 62: multi-stakeholder governance' means a formal, meaningful, and substantive role of multiple types of stakeholders, including at least civil society, in the decision-making of the scheme, documented by way of a mandate, terms of reference or other evidence, which confirms or supports the involvement of the multi-stakeholder representatives of the scheme.

Criteria for certification schemes:

For certification schemes to be a credible tool as part of broader environmental, human rights and Indigenous Peoples rights risks assessment the CRMR requires minimum “fitness” criteria for the schemes themselves, as follows:

1 Multi-stakeholder governance

Multi-stakeholder governance is a necessary corrective to the self-regulatory approach of industry. It can help to reduce the conflicts of interest of certification schemes by giving a voice to those negatively impacted by the extractive industry and providing credibility to the quality of the scheme itself and its implementation. Multi-stakeholder governance models should guarantee equal and fair representation of rights holders and their allies. Crucially, multi-stakeholder governance goes beyond multi-stakeholder participation. Beyond equal representation, multi-stakeholder governance includes equal voting rights and decision-making powers for civil society representatives, including CSOs, labour unions, affected Indigenous Peoples and non-indigenous communities alongside industry. Positive examples of initiatives with multi-stakeholder governance models are the “Extractive Industries Transparency Initiative” and the “Initiative for Responsible Mining Assurance”. The latter goes about having a veto right for the different groups.

A multistakeholder approach does not only mean that in certification schemes decisions are taken collectively but their standards, the way they are assessed and the way the scheme is functioning have been developed with a multistakeholder governance approach as opposed to an industry association setting up a certification scheme and bringing in civil society representatives when the scheme is being implemented. Schemes must also ensure stakeholders’ and rights-holders representation is truly independent of the industry, i.e., those groups are not directly funded by the mining industry.

2 Ensuring environmental management and impact mitigation in the following environmental risk categories:

- Project promoters have to show that they comply with environmental risk categories and can get help for this from one or more certification schemes, beyond showing compliance with the applicable local, regional or national law. The environmental risk categories are equivalent to the ones mentioned in the batteries regulation. The new OECD [Handbook on Environmental Due Diligence in Mineral Supply Chains](#) can guide companies, certification schemes and the Commission on how to address these risk categories. In this specific instance, it is ever more important that the scheme is not a tick-box exercise.

3 Requirements for ensuring socially responsible practices, including respect for human rights and labour rights including the community life of indigenous peoples:

- Companies have to ensure that all rights holders and stakeholders in the EU and resource-rich countries are involved in a full and meaningful way. Furthermore, project developers need to respect human rights, Indigenous Peoples rights, and labour rights and adhere to international human and environmental rights legislation, agreements, and standards, including the UN Guiding Principles on Business and Human Rights, United Nations Declaration on the Rights of Indigenous Peoples, ILO Conventions as well as the full Aarhus convention, the Escazú agreement as well as the EU Corporate Sustainability Reporting Directive²⁹.

4 Social matters and anti-corruption and anti-bribery policies:

- The mining sector has a woeful track record when it comes to corruption³⁰. This corruption diverts public money towards private hands, jeopardises crucial environmental and social safeguards, and delays and disrupts production, as also recently highlighted by an IEA report³¹. The CRMR mustn't enable further injustices.
- Certification schemes are an imperfect tool for addressing corruption and bribery concerns, and cannot replace proper due diligence or the effective implementation of anti-corruption and anti-bribery laws. Nonetheless certification schemes should - at a minimum - ensure that economic operators publicly disclose project-level payments and taxes to the host country government, adhere to international accounting standards, publicly disclose information on their beneficial owners, publicly disclose contracts and licenses, and publish an anti-corruption policy setting out how the company manages corruption risk and due diligence.

As civil society, we welcome the fact that the CRMR makes clear that certification schemes can not replace due diligence obligations for economic operators.

Our recommendation to policymakers is:

- Not only rely on the results of certification schemes for the evaluation of the human rights and environmental criteria of strategic projects
- Ensure that the certification bodies that are recognised truly hold an equal multi-stakeholder governance system, where the scheme was co-created by stakeholders and rights holders
- Clearly spell out for companies the obligations according to international standards.

Our recommendation to companies is:

- Not rely exclusively on the results of a certification scheme, but follow a continuous environmental and human rights risk assessment
- To purchasing companies, to work with their suppliers to help identify risks

²⁹ [Stakeholders and rights holders open Letter to the European Union demanding the EU to make the CRMR just and sustainable](#)

³⁰ [Preventing Corruption in Energy Transition Mineral Supply Chains | Natural Resource Governance Institute](#)

³¹ [Sustainable and Responsible Critical Mineral Supply Chains – Analysis - IEA](#)

Signatures for the Guidelines for the Implementation of the Critical Raw Materials Regulation



European Environmental Bureau
Diego Marin



**PUBLISH WHAT
YOU PAY**

Publish What You Pay
Luc Tezenas



EURMC
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PowerShift

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ANNEX

Excerpts from the Critical Raw Materials Regulation



Citations with regards to Raw Material Demand Moderation and Reduction

Recital 3: Firstly, that framework should define those raw materials that are considered strategic and critical and strengthen the resilience of supply chains for those materials in the Union, including by identifying and supporting Strategic Projects, and by undertaking efforts to incentivise technological progress and resource efficiency in order to moderate the expected increase in Union consumption of critical raw materials.

Recital 6: The Commission and Member States should also incentivise technological progress and resource efficiency in order to moderate the expected increase in Union consumption of critical raw materials below appropriate reference projections.

Recital 8: To ensure that the benchmarks are met in time, the Commission, with the help of the European Critical Raw Materials Board ('the Board') should track and report progress towards the benchmarks and towards the demand moderation. In case the reported progress towards the benchmarks and towards the demand moderation is generally insufficient, the Commission should assess the feasibility and proportionality of additional measures. A lack of progress only on a single or small set of strategic raw material should in principle not trigger the need for additional Union efforts.

Recital 10: Therefore, Union recycling capacity should be able to produce at least 25% of the Union's annual consumption of strategic raw materials and is able to recycle significantly increasing amounts of each strategic raw material in waste. For waste streams and strategic raw materials for which sufficient information is available to estimate the Union's recycling capacity as a share of the strategic raw materials contained in those waste streams, an additional waste-based benchmark should be set. Accompanying efforts to improve resource efficiency through research and innovation, substitution, awareness-raising and other relevant measures will also facilitate the attainment of these benchmarks.

Recital 36: In addition, the Recovery and Resilience Facility, particularly its RePowerEU chapter which focuses on energy security and diversification of energy supply, can be mobilised to support projects involved, for instance, in the recycling or recovery of raw materials. The Innovation Fund, whose objective is notably to drive clean and innovative technologies towards the market, may provide grants, for instance, to enable the development of recycling capacity of raw materials related to low carbon technologies.

Recital 50: Most critical raw materials are metals, which can be in principle endlessly

recycled, albeit with sometimes deteriorating qualities. This offers the potential to move to a truly circular economy in the context of the green transition while increasing the availability of critical raw materials and thereby contributing to ensure security of supply. After an initial phase of rapid growth of demand for critical raw material for new technologies, where primary extraction and processing will still constitute the predominant source, recycling should increasingly reduce the need for primary extraction and its associated impacts. This should be done while maintaining a high level of recycling capacity in the Union via a strong market for secondary critical raw materials. Today, however, recycling rates of most critical raw materials are low, with waste streams such as batteries, electrical and electronic equipment and vehicles being shipped outside of the Union for recycling. Recycling systems and technologies are often not adapted to the specificities of these raw materials. Innovation plays an important role in reducing the need for critical raw materials, reducing the risks of shortage of supply and for the development of recycling technologies to properly and safely extract materials from waste. Prompt action addressing the different factors holding back the circularity potential is thus required.

Article 1.2: To achieve the general objective referred to in paragraph 1, this Regulation lays down measures aimed at: (a) lowering the risk of supply disruptions related to critical raw materials likely to distort competition and fragment the internal market, in particular by identifying and supporting strategic projects that contribute to lowering dependencies and diversifying imports and by undertaking efforts to incentivise technological progress and resource efficiency in order to moderate the expected increase in Union consumption of critical raw materials;

Article 4a.2: The Commission and Member States shall undertake efforts to incentivise technological progress and resource efficiency in order to moderate the expected increase in Union consumption of critical raw materials below the reference projection referred to in Article 42(-1) through the relevant measures set out in this Section and Section 1 of Chapter V

Article 5.1.a.III: Union recycling capacity, including for all intermediate recycling steps, is able to produce at least 25% of the Union's annual consumption of strategic raw materials and is able to recycle significantly increasing amounts of each strategic raw material in waste.

Article 5.3: By 1 January 2027, the Commission shall adopt a delegated act in accordance with Article 38 to supplement this Regulation by providing for Union recycling capacity benchmarks expressed as a share of the strategic raw materials available in relevant waste streams.

Article 25: National measures on circularity 1. Each Member State shall by 2 years after the date of entry into force of the implementing act referred to in paragraph 7 adopt and implement, or include in, national programmes containing measures designed to: (-a) incentivise technological progress and resource efficiency in order to moderate the expected increase in Union consumption of critical raw materials;

Article 25.1.c.: increase the collection, sorting and processing of waste with high critical raw materials recovery potential, including metal scraps, and ensure their introduction into the appropriate recycling system, with a view to maximising the availability and quality of recyclable material as an input to critical raw material recycling facilities;

Article 25.1.d.: increase the use of secondary critical raw materials, including through measures such as taking recycled content into account in award criteria related to public procurement or financial incentives for the use of secondary critical raw materials;

Article 25.1.e.: increase the technological maturity of recycling technologies for critical raw materials and promote circular design, materials efficiency and substitution of

critical raw materials in products and applications, at least by including support actions to that effect under national research & innovation programmes;

Article 26.1: Operators obliged to draw up waste management plans in accordance with Article 5 of Directive 2006/21/EC shall provide to the competent authority as defined in Article 3(27) of Directive 2006/21/EC a preliminary economic assessment study regarding the potential recovery of critical raw materials, from: (a) the extractive waste stored in the facility; b) the extractive waste being generated or, where considered more effective, from the extracted volume prior to it becoming waste.

Article 28.3: After the entry into force of the delegated act under paragraph 2 and no later than 31 December 2031, the Commission shall adopt delegated acts supplementing this Regulation by laying down minimum shares for neodymium, dysprosium, praseodymium, terbium, boron, samarium, nickel and cobalt recovered from post-consumer waste that must be present in the permanent magnet incorporated in the products referred to in paragraph 1.

The delegated act may apply different minimum shares for different products and exclude certain products from this obligation.

Article 42.1: The Commission shall, taking into account the advice of the Board, monitor progress towards the benchmarks set out in Article 4a(1), as well as the moderation of the expected increase in Union consumption of critical raw materials referred in Article 4a(2) and publish, at least every 3 years, a report detailing the Union's progress towards achieving those benchmarks and that moderation. [...]

The first report shall be drawn up by [OP please insert: 3 years after the date of entry into force of this Regulation].

Article 42.2. The report referred to in paragraph 1 shall include:

- quantitative information on the extent of the Union's progress towards the benchmarks and the moderation set out in Article 4a;

Citations with Regards to Strategic Partnerships

Recital 54: The Union has concluded Strategic Partnerships covering raw materials with third countries in order to implement the 2020 Action Plan on Critical Raw Materials. In order to diversify supply, these efforts should continue. To develop and ensure a coherent framework for the conclusion of future partnerships, the Member States and the Commission should, as part of their interaction on the Board, discuss, inter alia, whether existing partnerships achieve the intended aims, the prioritisation of third countries for new partnerships, the content of such partnerships and their coherence and potential synergies between Member States' bilateral cooperation with relevant third countries. This should be done without prejudice to the prerogatives of the Council in accordance with the Treaties. **The Union should seek mutually beneficial partnerships with emerging market and developing economies, in coherence with its Global Gateway strategy, which contribute to the diversification of its raw materials supply chain as well as add value in the production in these countries.**

Article 2.62: 'Strategic Partnership' means a commitment between the Union and a third country, or Overseas Countries and Territories (OCT) to increase cooperation related to the raw materials value chain that is established through **a non-binding instrument setting out concrete actions of mutual interest, which facilitate beneficial outcomes for both partners**

Article 37: International cooperation and Strategic Partnerships

1. *The board shall periodically discuss:*

(a) the extent to which Strategic Partnerships concluded by the Union contribute towards:

(i) improving the Union's security of supply including the benchmarks set out in Article 4a point (b);

(ii) improving cooperation along the critical raw materials value chain between the Union and partner countries, including capacity building and technology transfer programs to promote circularity and responsible recycling of critical raw materials in producing countries; 15686/23 RGP/FDC/ae 129 ANNEX COMPET.1 EN

(iii) **the economic and social development of partner countries**, including by promoting sustainable and circular economy practices, decent working conditions and **respect for human rights along their raw material value chains**; [...]

(ii) whether a cooperation between the Union and a third country could improve a third country's ability to ensure the **monitoring, prevention and minimisation of adverse environmental impacts through its regulatory framework and the implementation thereof, the use of socially responsible practices** including respect of human and labour rights, notably on forced and child labour, meaningful engagement with local communities, including indigenous peoples, the use of transparent and responsible business practices, the prevention of adverse impacts on the proper functioning of public administration and the rule of law; [...]

(iv) for emerging markets and developing economies, whether and how a partnership could **contribute to local value addition**, including downstream activities, and would be mutually beneficial for the partner country and the Union. [...]

3. *Member States:*

(a) shall inform the Commission on their bilateral cooperation with relevant third countries, when its scope includes critical raw materials value chain;

(b) may support the Commission in the implementation of the cooperation measures set out in Strategic Partnerships along the raw materials value chain.

3a. Once a year, the Commission shall inform the European Parliament and the Council on the content and outcome of the discussion referred to in the precedent paragraphs

Citations with regards to securing Indigenous Peoples Rights, Free, Prior and Informed Consent and UNDRIP.

Recital 11: Projects should also ensure engagement in good faith as well as comprehensive and equitable consultations with relevant stakeholders such as local communities and indigenous peoples. Special attention should be paid to respect for human rights where a project involves potential resettlement.

Recital 12a: Additionally, for projects with the potential to affect indigenous peoples, the application should also include a plan containing measures dedicated to the meaningful consultation of affected indigenous peoples, the prevention and minimisation of adverse impacts on indigenous peoples, and, where appropriate, fair compensation. If these concepts are addressed by the national law applicable to the project, the plan might describe these measures instead. For projects in third countries involving extraction, which are not covered by Directive 2006/21/EC, the project promoter should also provide a plan to improve the environmental state of the affected sites after the end of extraction. If the project is located in a protected area, the project promoter should assess technically appropriate alternative locations and describe them in a plan, including why they are not considered appropriate for the location of the project.

Article 5.1.c: the project would be implemented sustainably, in particular as regards

the monitoring, prevention and minimisation of environmental impacts, the prevention and minimisation of socially adverse impacts through the use of socially responsible practices including respect of human, indigenous peoples' and labour rights, in particular in case of involuntary resettlement, quality jobs potential and meaningful engagement with local communities and relevant social partners, and the use of transparent business practices with adequate compliance policies to prevent and minimise risks of adverse impacts on the proper functioning of public administration, including corruption and bribery;

Article 6.1.da: for projects with the potential to affect indigenous peoples, a plan containing measures dedicated to the meaningful consultation of the affected indigenous peoples about the prevention and minimisation of the adverse impacts on indigenous rights and, where appropriate, fair compensation of those peoples, as well as measures to address the outcomes of the consultation. If the national law of the country whose territory is concerned by the project contains provisions for the aforementioned consultation and provided that the consultation covers all those aims, the plan may be adjusted accordingly;

Article 35a.1.c.ii: whether a cooperation between the Union and a third country could improve a third country's ability to ensure the monitoring, prevention and minimisation of adverse environmental impacts through its regulatory framework and the implementation thereof, the use of socially responsible practices including respect of human and labour rights, notably on forced and child labour, meaningful engagement with local communities, including indigenous peoples, the use of transparent and responsible business practices, the prevention of adverse impacts on the proper functioning of public administration and the rule of law;

Annex III.4.f: OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, including where referring to the principles set out in the **United Nations Declaration on the Rights of Indigenous Peoples;**

Annex IV.b.ii: requirements for ensuring socially responsible practices, including respect for human rights and labour rights including the community life of indigenous peoples;

Citations with regards to Certification and Industry Schemes

Recital 11: To provide project promoters with a clear and efficient way of complying with this criterion, compliance with relevant Union or national legislation, international standards, guidelines and principles, as relevant, or participation in a certification scheme recognised under this Regulation should be considered sufficient.

Recital 49: Critical raw materials sold on the Union market are often certified regarding the sustainability of their production and supply chain. Certification can be obtained in the context of a broad range of public and private certification schemes available with varying scopes and stringency, creating the potential for confusion regarding the nature and veracity of claims made about the relative sustainability of critical raw materials placed on the Union market based on such certification. **The Commission should be empowered to adopt implementing acts recognising certification schemes that should be considered trustworthy, providing a common basis for authorities and market participants for assessing the sustainability of critical raw materials.**

Recognition should be given only to certification schemes which contain provisions for independent third-party verification and monitoring of compliance. As regards environmental protection, certifications schemes should cover risks related to, for example, air, water, soil, biodiversity, and waste management.

The requirements on all sustainability dimensions should ensure a high level of social and environmental protection and be in line with Union legislation or the international instruments listed in Annex III. To ensure efficient procedures, promoters of projects applying to be recognised as Strategic Projects should be allowed to rely on participation in a recognised scheme as relevant evidence to show that their project is implemented sustainably, thereby contributing to a safe and sustainable supply of critical raw materials. When making use of that option, the schemes referred to should cover all sustainability dimensions. In recognising such certification schemes, the Commission should take into account experience gained in assessing certification schemes in the context of other Union legislation, in particular regarding the assessment of similar schemes in the context of Regulation (EU) 2017/821 and [OP please insert reference to Battery Regulation].

Definition of Multi-Stakeholder Governance

Article 2.62: multi-stakeholder governance' means a formal, meaningful, and substantive role of multiple types of stakeholders, including at least civil society, in the decision-making of the scheme, documented by way of a mandate, terms of reference or other evidence, which confirms or supports the involvement of the multi-stakeholder representatives of the scheme.

Article 5.2. The fulfilment of the recognition criteria set out in paragraph 1 shall be assessed by the Commission in accordance with the elements and evidence set out in Annex III. The Commission is empowered to adopt delegated acts in accordance with Article 36 to amend Annex III in order to adapt the elements and evidence to be taken into account when assessing the fulfilment of the recognition criteria set out in paragraph 1 to technical and scientific progress or to take into account changes to the Union legislation or international instruments listed in Annex III, point 4, or the adoption of additional Union legislation or international instruments relevant for the fulfilment of the criterion referred to in paragraph 1, point (c).

Article 28.2.c: where third party involvement is mandatory, the need for the manufacturer to have a choice between quality assurance and product certification modules set out in Annex II of Decision No 768/2008/EC.

Section 2 Certification and Environmental Footprint.

Article 29: Recognised schemes

1. Governments, industry associations and groupings of interested organisations that have developed and oversee certification schemes related to the sustainability of critical raw materials ("scheme owners") may apply to have their schemes recognised by the Commission. Applications referred in the first subparagraph shall contain any relevant evidence related to the fulfilment of the criteria laid down in Annex IV. The Commission shall adopt an implementing act by [OP please insert: three years after the entry into force of the Regulation] specifying the information that applications shall at least contain. [...]

2. Where, on the basis of the evidence provided pursuant to the paragraph 1, the Commission determines that a certification scheme meets the criteria laid down in Annex IV, or a subset thereof, it shall adopt an implementing act granting that scheme a recognition, specifying the recognised coverage of the scheme. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3). 2a. The recognised coverage for each scheme shall be specified along the following dimensions: (a) the stages of the value chain covered by the scheme; (b) the stages of the life cycle of a project, including before, during and after closure, that are covered by the scheme; and (c) the sustainability dimensions and environmental risk categories listed in Annex IV point (b) that are addressed by the scheme.

3. The Commission shall verify at least every three years that recognised schemes

continue to fulfil the criteria laid down in Annex IV, or of the recognised subset of those criteria.

4. Owners of recognised schemes shall inform the Commission without delay of any changes or updates related to the fulfilment of the criteria laid down in Annex IV, or of the recognised subset of those criteria, made to those schemes. The Commission shall assess whether such changes or updates affect the basis for the recognition and take appropriate action.

5. If there is evidence of repeated or significant cases where economic operators implementing a recognised scheme have failed to fulfil the requirements of that scheme, the Commission shall examine, in consultation with the owner of the recognised scheme, whether those cases indicate deficiencies in the scheme affecting the basis for the recognition and take appropriate action.

6. Where the Commission identifies deficiencies in a recognised scheme affecting the basis for the recognition, it may grant the scheme owner an appropriate period of time to take remedial action, which shall not be longer than 12 months.

7. Where the scheme owner fails or refuses to take the necessary remedial action and where the Commission has determined that the deficiencies referred to in paragraph 6 mean that the scheme no longer fulfils the criteria laid down in Annex IV, or of the recognised subset of those criteria, the Commission shall adopt an implementing act withdrawing the recognition of the scheme. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3). 8. The Commission shall establish and keep up-to-date a register of recognised schemes. That register shall be made publicly available on a free access website. That website shall also allow for the collection of feedback from all relevant stakeholders concerning the implementation of recognised schemes. Such feedback shall be forwarded to the respective scheme owners for consideration.

Annex III. 4. [...]Project promoters may also attest compliance with the criterion referred to in Article 5(1),

point (c) by:

(a) providing evidence that the project concerned is individually certified by one or more schemes recognised according to Article 29(2) that jointly cover all requirements listed in Annex IV point (b) ; or

(b) committing to obtain certification for the project concerned as part of by one or more schemes recognised according to Article 29(2) that jointly cover all requirements listed in Annex IV point (b) , and providing sufficient evidence that when implemented the project concerned will be able to meet the criteria for such Certification.

Annex IV CRITERIA FOR CERTIFICATION SCHEMES

A recognised certification scheme shall meet the following criteria:

(a) it is open under transparent, fair and non-discriminatory terms to all economic operators willing and **able to comply with the scheme's requirements and it is of multi-stakeholder governance;**

(b) the requirements for certification shall include at least:

(i) requirements ensuring environmentally sustainable practices, including requirements ensuring environmental management and impact mitigation in the following environmental risk categories:

(ia) air, including air pollution such as greenhouse gas emissions;

(ib) water, including seabed and marine environment, and water pollution, water use, water quantities (flooding or droughts) and access to water;

(ic) soil, including soil pollution, soil erosion, land use and land degradation;

(id) biodiversity, including damage to habitats, wildlife, flora and ecosystems, including ecosystem services;

(ie) hazardous substances;

(if) noise and vibration;

(ig) plant safety;

(ih) energy use;

(ii) waste and residues;

(ii) requirements for ensuring socially responsible practices, including respect for human rights and labour rights including the community life of indigenous peoples;

(iii) requirements for ensuring business integrity and transparency including requirements to apply sound management of financial, environmental and **social matters and anti-corruption and anti-bribery policies;**

(c) verification and monitoring of compliance is objective, based on international, Union or national standards, requirements and procedures and carried out independently from the relevant economic operator;

(d) it includes sufficient requirements and procedures to ensure **the competence and independence of responsible verifiers.**

(da) it includes requirements to ensure an **audit-report established at the site level.**



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