

Civil Society Demands to Strategic Projects in the Critical Raw Materials Regulation (CRMA)



1. The EU regulation 2024/1252 for ensuring a secure and sustainable supply of critical raw materials

In December 2023, the European Parliament voted in favour of the Critical Raw Materials Regulation (formerly the *Critical Raw Materials Act*, CRMA), which came into force on 23 May 2024.¹ The central objective of the representatives of the European Union is the security of supply of raw materials for industry. European politicians fear that the Russian war of aggression against Ukraine, the conflicts with China and the reorientation of the USA (including the *Inflation Reduction Act*) will damage the European economy. At the same time, the CRMA, together with the electricity market reform, is one of the legal flagship initiatives of the Green Deal, which in turn aims

to make the EU climate-neutral by 2050 and fulfil its obligations under the Paris Agreement. Most of the 34 critical and 17 strategic raw materials currently listed by the EU are imported from outside the EU, often from countries that are considered geostrategic rivals. In order to reduce dependencies on strategic raw materials, the EU wants to use Strategic Projects to provide political support for extraction and further processing both in EU Member State and internationally. Authorisation procedures are to be accelerated for this purpose, while maintaining the same high environmental and social standards. In addition, partner countries are selected in which strategic raw materials are to be extracted in a targeted manner. The share of domestic, i.e. intra-European mining, is to increase to ten per cent by 2030, the processing of strategic raw materials in the EU is to double to 40 per cent, dependencies on individual countries for specific raw materials are to be reduced to a maximum of 65 per cent and recovered raw materials from the circular

¹ The Regulation can be found in the Official Journal of the EU: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401252&qid=1728044632034

economy are to contribute at least 25 per cent to the supply of raw materials

These so-called *benchmarks* harbour certain risks: On the one hand, the intensification of mining in Europe threatens to cause new conflicts; on the other hand, global injustices in connection with the exploitation of raw materials in the Global South could be perpetuated. Politicians emphasise the higher standards in Europe and the potential role model effect for other countries. However, there is a lack of comparative studies on the extent to which standards in Europe are actually higher. The situation is similar with the promise that higher standards will be maintained in the Strategic Projects. It is equally unclear to what extent Strategic Projects and the European benchmarks stand in the way of local value creation in the countries of the Global South.

This short paper provides an initial overview of the minimum requirements that apply to Strategic Projects under the CRMA, the gaps that exist and the risks and opportunities that arise.

2. Current status of the Strategic Projects

The CRMA specifies the conditions under which a project in the area of strategic raw materials can receive the status of a Strategic Project. This means that the projects are categorised as being of public interest and therefore prioritised. As a result, they enjoy political and possible financial support. According to the CRMA, it is important that the selected projects increase the EU's supply of critical and strategic raw materials **by contributing to the diversification of raw material imports, technological progress and resource**

efficiency. The Strategic Projects should also bring **cross-border benefits**, for example by strengthening different stages of the value chain in different EU countries. A Strategic Project does not necessarily have to be a primary mining project but can also serve the 'processing or recycling of strategic raw materials, or the production and scale-up of materials that can substitute strategic raw materials in strategic technologies' in addition to mining.²

As civil society organisations, we see a great danger that instead of optimising the long-term use and recycling of raw materials, more mining will be promoted unilaterally inside and outside the EU. Although the CRMA recognises the **need to '[moderate] the expected increase in Union consumption of critical raw materials'**³ and obliges the EU Commission to present a report on 'that moderation'⁴ every three years, most of the regulation is aimed at expanding mining within and outside the EU with Strategic Projects.

In addition, the EU wants to negotiate strategic partnerships (*Critical Raw Materials Partnerships*). These partnerships are 'a non-binding instrument setting out actions of mutual interest, which facilitate beneficial outcomes for both the Union and the relevant third country or overseas countries or territories'⁵. These partnerships are already being critically monitored by civil society. Important prerequisites for **fair, socio-ecological and sustainable partnerships** include support for the partner countries' own green transformation, an end to irresponsible extraction and – where appropriate – sufficiency efforts by both partners.⁶ Additional free trade agreements concluded in this context and mentioned in the EU's accompanying communication also need to be critically reviewed regarding their human rights and environmental implications. This includes, for example, the exclusion of international arbitration proceedings, as these unilaterally

² Recital 14

³ Article 44 Paragraph 2

⁴ Article 44 Paragraph 2

⁵ Article 2 Paragraph 63

⁶ See: <https://power-shift.de/wp-content/uploads/2023/11/RMC-A-Partnership-of-equals.pdf>

give companies the right to sue states if, for example, they pass and tighten laws to protect human rights, the environment or the climate.⁷

There is currently no critical debate on Strategic Projects. In summer 2024, the first phase of the application and recognition of Strategic Projects will be launched by the European Commission and the European Critical Raw Materials Board (hereinafter referred to as 'the Board'). To be recognised as such a project, project promoters submit the documents listed in the CRMA using an electronic form.⁸ These documents are used by the Commission and additional experts to assess the projects against the criteria for Strategic Projects. The criteria include feasibility and financing studies, ore content and chemical formulas of the expected elements, as well as so-called ESG standards (Environmental Social Governance). Projects are initially categorised according to the UNFC grid (United Nations Framework Classification for Resources)⁹. After being assessed by experts, the applications are forwarded to the Board and the country in whose territory the project is located. EU countries can lodge an objection for each project. In the case of third countries and overseas countries and territories (OCTs), the explicit authorisation of the respective state is required before the project is awarded the title of Strategic Project¹⁰. The application will be processed within 90 days; in the case of projects requiring particularly extensive scrutiny, the processing period can be extended by another 90 days¹¹.

The EU Commission has announced that new application phases with respective deadlines will be announced on a regular basis. The first deadline was on 22 August 2024, after which

the projects are currently reviewed by experts. The Board will decide on the projects, initially this was planned in November 2024. The first list of Strategic Projects was expected to be published in December 2024, but there are some reports that the decision making proves is facing some delays. To check compliance with the criteria, the project organisers will submit a report to the Board and the EU Commission every two years. If the report shows that the criteria are no longer fully met, the Strategic Project status can be subsequently withdrawn¹².

3. Expectations and risks

Promoting the recycling economy

According to the CRMA, all projects that have either the extraction, processing or recycling of strategic raw materials as their objective are eligible for the status of Strategic Projects¹³. **Recycling should primarily be promoted in order to moderate the consumption of primary resources** and thus ensure the EU's supply of critical raw materials. Regrettably, the CRMA did not set any concrete benchmarks for the absolute reduction of raw material demand.¹⁴ Nevertheless, progress in moderating consumption must be reported regularly¹⁵ and ambitious recycling targets set. Therefore, **the rapid expansion of the circular economy should be prioritised when assigning Strategic Projects, followed by projects that carry out the recovery of critical raw materials from extractive waste**¹⁶. According to the CRMA, these metals can be in

⁷ See: <https://power-shift.de/wp-content/uploads/2020/05/Alternatives-for-the-%E2%80%98Raw-materials-and-Energy-Chapters%E2%80%99-in-EU-trade-agreements-web.pdf>

⁸ https://single-market-economy.ec.europa.eu/sec-tors/raw-materials/areas-specific-interest/critical-raw-materials/strategic-projects-under-crma_en

⁹ <https://unece.org/sustainable-energy/sustainable-resource-management/united-nations-framework-classification>

¹⁰ Article 7 Paragraphs 7 and 8

¹¹ Article 7 Paragraphs 9 and 10

¹² Article 7 Paragraph 11

¹³ Recital 14

¹⁴ See: https://power-shift.de/wp-content/uploads/2024/03/Hintergrundpapier_Metallverbrauch-senken_PowerShift.pdf

¹⁵ Article 44 Paragraph 2

¹⁶ Article 27

principle endlessly recycled, albeit sometimes subject to deteriorating quality¹⁷. Although this ignores the physical (thermodynamics), technical (metallurgy) and economic limits (competitiveness with primary metals; costs of collection, sorting, etc.) of recycling metals, the recycling industry can make a significant and sustainable contribution to greater security of supply.¹⁸

One of the benchmarks for 2030 is therefore to increase recycling capacities in such a way that it is possible to '[produce] at least 25 % of the Union's annual consumption of strategic raw materials and [be] capable of recycling significantly increasing amounts of each strategic raw material from waste'¹⁹. **In the long term, however, the recycling capacity rate must be increased significantly further.** The fact that this is already possible is shown by the significantly higher figures for copper, aluminium and tungsten. Given the frequently documented environmental and social risks associated with primary mining, we as civil society believe that **recycling projects should be prioritised for funding in Strategic Projects.** The Member States have important levers at their disposal for this prioritisation: firstly, according to the CRMA, they are responsible for '[incentivizing] technological progress and resource efficiency'²⁰ and retain 'important competences in the field of circularity'²¹. Secondly, Member States have the **right to object to Strategic Projects on their territory**²² - this offers **important opportunities to control** which types of projects are designated as Strategic Projects. In order not to jeopardise the high level of approval for the recycling economy, these recycling projects must comply with high ESG standards and should not, for example, take place in ecologically sensitive areas (such as Natura 2000 protected areas)²³.

Strengthening partner countries in Partnerships

The Strategic Projects in partner countries should not only serve to secure raw materials for the Green Deal but, according to the CRMA, should also be **'mutually beneficial** for the Union and the third country concerned by adding value in that third country'²⁴. However, there is a lack of concrete measures and instruments for achieving and monitoring these goals. In order to strengthen mutual benefit and avoid the further perpetuation of existing North-South divides, it is important to **consistently consider local value creation in mining projects in third countries.** In concrete terms, this means that **technology transfer and thus the use of the best possible techniques and technologies, as well as local sourcing and local processing** - embedded in a national or regional industrialisation strategy - are incorporated into these projects. **Recultivation and renaturalisation**, in Germany for example in accordance with the German Nature Conservation and Landscape Management Act (BNatSchG), must also be planned for after mining activities when providing infrastructure. As mining is always a finite investment, **the circular economy must also be established or expanded in partner countries.** Technology partnerships and support in establishing a functioning circular economy can be positive examples of partnerships.

Pushing social standards

Due to the high human rights and environmental risks of mining projects, the highest social standards must be observed. These include, for example, the **core labour standards of the International Labour Organization (ILO)** as well as **extensive human rights and environmental due diligence obligations** for funded companies. The CRMA contradicts the Battery Regulation here. This is

¹⁷ Recital 51

¹⁸ Id.

¹⁹ Article 5 Paragraph 1 Letter a

²⁰ Article 5 Paragraph 2

²¹ Recital 51

²² Article 7 Paragraph 8

²³ Article 7 Paragraph 1 Letter i

²⁴ Article 6 Paragraph 1 letter e

because the chapter ‘Obligations of economic operators as regards battery due diligence policies’ of the Battery Regulation describes in great detail the due diligence obligations of companies in the battery supply chain.²⁵ With regard to social standards, the CRMA only formulates the criterion that Strategic Projects should aim at the ‘prevention and minimisation of socially adverse impacts through the use of socially responsible practices including respect for human rights, indigenous peoples and labour rights’²⁶. The EU Commission and the Critical Raw Materials Board are required to make measurable use of this criterion when nominating Strategic Projects.

UNFC is insufficient for assessments

The United Nations Framework Classification for Resources (UNFC) is used to assess the Strategic Projects submitted. This is an international system for the classification, management and reporting of raw materials projects.²⁷ The classification comprises three criteria with a respective axis. E: Environmental-socio-economic viability. F: Technical feasibility. G: Degree of confidence in the estimate. The E axis in particular is highly problematic in the evaluation, as there are opposing evaluation criteria on the same axis. For example, a very economically lucrative project with very low ecological viability (very high environmental risks) could be equated with a project that has very high ecological viability (low environmental risks) with very low economic viability. The evaluation results of the E-axis by the UNFC criteria thus become imprecise, and contrary evaluations may even neutralise each other. This risk is exacerbated by the fact that the UNFC criteria leave a great deal of room for interpretation by the respective experts as to how the respective axes are assessed. On the one hand, this can lead to ‘required or expected results’ in favour of applying companies, as one

business representative criticised in a webinar held by the German Mineral Resources Agency (Deutsche Rohstoffagentur), while on the other hand it also significantly increases the risk of corruption and other forms of influence on individual experts. The EU Commission and the Board must ensure **high transparency criteria and disclosure of how the UNFC assessments are made.**

Protecting Indigenous Rights

In the scenario where a Strategic Project is located on indigenous territory, it is particularly important to ensure that indigenous rights are respected. According to the regulation, this includes ‘comprehensive and equitable consultations of [...] indigenous peoples’²⁸. This free, prior and informed consent (FPIC) is laid down in the ILO Indigenous and Tribal Peoples Convention (ILO 169) and in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), among others. **No mining project should be considered a Strategic Project without the FPIC of (potentially) affected indigenous communities.** In Europe, this primarily concerns the Scandinavian countries and the rights of the Sámi. The EU Commission and the Board are called upon to monitor compliance with this.

For ‘for projects with the potential to affect indigenous peoples’²⁹ a plan with measures for consultation and, where appropriate, fair compensation, as well as measures to take account of the results of the consultation³⁰, must be attached to the project application. Germany was the fifth EU Member State to ratify ILO Convention 169 in 2021, after Denmark, Luxembourg, the Netherlands and Spain. Companies from these countries that mine, process or use the raw materials from Strategic Projects, as well as the governments that support Strategic Projects politically

²⁵ Chapter VII: <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32023R1542&qid=1728043848292>

²⁶ Article 6 Paragraph 1 letter c

²⁷ See: Guide for applicants – Strategic CRMA Projects, p. 16: <https://ec.europa.eu/docsroom/docu->

[ments/59594](https://unece.org/DAM/energy/se/pdfs/UNFC/publ/UNFC_ES61_Update_2019.pdf); UNFC: https://unece.org/DAM/energy/se/pdfs/UNFC/publ/UNFC_ES61_Update_2019.pdf

²⁸ Recital 17

²⁹ Article 7 Paragraph 1 letter j

³⁰ Id.

and/or financially, are once again under a special obligation to ensure that indigenous rights are respected along the entire value chain.

Public acceptance needs local participation rights

Just like indigenous peoples, other local communities must be involved in consultations³¹. Without the involvement of those (potentially) affected by mining, there will be no public acceptance of mining projects. **All processes (be it the selection, approval or withdrawal of Strategic Projects) must be transparent and enable local participation.** In the case of projects that require resettlement, special care must be taken to ensure that no human rights are violated in the process³². In this case, according to the CRMA, the criteria from the IFC's Performance Standard 5 on Land Acquisition and Involuntary Resettlement³³ must be applied³⁴. These states, among other things, that alternative project designs must be examined in order to **avoid forced resettlement**. This may not result in forced or involuntary displacement. It is important that **the (potentially) affected communities are informed early and comprehensively of impending resettlements and are actively involved early and comprehensively in the decision-making and resolution processes.** In addition, the needs of vulnerable groups should be considered, a selection of different resettlement areas should be offered, and housing should be made available. **The affected communities must receive at least equivalent compensation.**

Maintaining the highest ecological standards

On a positive note, **the strict European environmental law remains unaffected by the CRMA**, regardless of whether projects are of 'overriding public interest' or not. This is particularly important for water extraction, as the extraction of strategic raw materials can severely disrupt the regional water balance. With increasing water scarcity and droughts, **the extraction of critical raw materials must not take precedence over access to public drinking water.** In Germany, the priority of public water supply enshrined in German law continues to apply³⁵. The CRMA also defines which regulations³⁶ and associated environmental impact assessments are required for Strategic Projects and how these must be submitted³⁷. The obligation to carry out environmental impact assessments arises from several EU directives, first and foremost from Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

Compliance with the highest environmental standards, such as the European directives listed in the CRMA, applies to all Strategic Projects, regardless of their location: 'Both Strategic Projects in the Union and Strategic Projects in third countries or in OCTs should comply with the same level of social and environmental sustainability'³⁸. We therefore expect Strategic Projects carried out in partner countries to be implemented either to the **highest EU standards or to the possibly higher local standards.**

³¹ Recital 17

³² Id.

³³ <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standards-en.pdf>

³⁴ Annex III Paragraph 5 letter h

³⁵ §§ 6 and 50 WHG; see also UBA Ensuring a secure AND sustainable supply of critical raw materials.

<https://www.umweltbundesamt.de/publikationen/ensuring-a-secure-sustainable-supply-of-critical>

³⁶ 92/43/EEC on the conservation of natural habitats and of wild fauna and flora; 2000/60/EC establishing a framework for Community action in the field of water policy; 2008/98/EC on waste and repealing certain Directives; 2009/147/EC on the conservation of wild birds; 2010/75/EU on industrial emissions

³⁷ Article 12

³⁸ Recital 16

In this context, it is also important to emphasise that, according to the CRMA, **no deep sea mining project can be recognised as a Strategic Project**³⁹.

Certification schemes cannot replace corporate responsibility

In order to provide evidence of compliance with social and environmental standards for Strategic Projects, the CRMA enables the use of certification schemes. These are intended to serve as an indicator of whether a project is sustainable or not. At the beginning of a Strategic Project, it is, regarding the CRMA, sufficient to promise to be certified by a recognised certification scheme in the future. The EU Commission is thus outsourcing the assessment of responsibility to certification schemes. This is particularly relevant when it comes to third countries. In the Battery Regulation, however, the EU has emphasised that ‘without prejudice to the individual responsibility of economic operators for their battery due diligence policies, economic operators [...] may [...] collaborate with other actors, including through due diligence schemes recognised under this Regulation’⁴⁰. This means that **the use of certification schemes or membership in industry initiatives alone is not sufficient to fulfil the necessary human rights and environmental due diligence obligations**. Under the CRMA, the European Commission is required to ‘adopt implementing acts recognising certification schemes that should be considered to be trustworthy, providing a common basis for relevant authorities and market participants for assessing the sustainability of critical raw materials’⁴¹. It is important that the European Commission actively involves the European Parliament, Member States, civil society and industry in the assessment of the sustainability

of the extraction and processing of critical raw materials so that international standards are not undermined. **This recognition of schemes should not lead to a weakening of the UN Guiding Principles on Business and Human Rights** or the OECD standards and should set the standard so high that companies that source the raw materials can act in accordance with the aforementioned international standards. Although the CRMA emphasises that ‘Recognition should be given only to certification schemes which contain provisions for independent third-party verification and monitoring of compliance’⁴², it is less specific than the European Battery Regulation⁴³, for example. The certification 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 should be consistent with Union law or the international instruments listed in an annex’⁴⁴.

As civil society, we are very critical of certifications of any kind⁴⁵. Too many ‘certified’ mining projects⁴⁶ have contributed to massive human rights violations and environmental destruction in the last years. **Legally, therefore, certification(s) can in no way replace the personal responsibility of companies**. Questions of liability and responsibility cannot be transferred to certifications.

Creating democratic Multi-Stakeholder Governance

The governance of certification schemes is of central importance. The EU defines that the schemes must be ‘**open under transparent, fair and non-discriminatory terms** to all economic operators willing and able to comply with the scheme’s requirements’ and **have multi-stakeholder governance**.⁴⁷ This multi-

³⁹ Recital 17

⁴⁰ Article 48 Paragraph 4 of the Battery Regulation: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R1542&qid=1728988927570>

⁴¹ Recital 59

⁴² Id.

⁴³ Annex X of the Battery Regulation

⁴⁴ Recital 59

⁴⁵ See: <https://www.germanwatch.org/en/85063>

⁴⁶ E.g. Cobalt mining in Bou Azzer (Morocco), iron mining in Brumadinho (Brazil)

⁴⁷ Annex IV

stakeholder governance must ensure equal and fair representation of rights holders and their allies. It is crucial that 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, trade unions, (potentially) affected indigenous peoples and non-indigenous communities.⁴⁸

Ensuring independent and transparent audits

The certification schemes must also ensure that compliance with international norms and standards is 'and carried out independently from the relevant economic operator'⁴⁹. The audits must be carried out by independent third parties and be publicly accessible. The schemes '[include] sufficient requirements and procedures to ensure the competence and independence of the verifiers responsible'⁵⁰. Annex IV of the CRMA sets out the specific requirements for certifications, which should, among other things, '[ensure] environmentally sustainable practices, including requirements ensuring environmental management and impact mitigation'⁵¹.

In addition, **effective grievance mechanisms are also needed under certification schemes** in accordance with the UN Guiding Principles on Business and Human Rights (Guiding Principle 31)⁵². The EU Commission and the Board must ensure that there is an independent complaints office for Strategic Projects which those affected can refer their concerns to.

Accelerating processes should not be at the expense of people and the environment

Whether the Strategic Projects within the EU are implemented in an environmentally and socially sustainable manner is assessed by the EU Commission, the Board and the appointed experts on the basis of Union or national law and additional evidence, taking into account the location. For projects in third countries or OCTs, '[the] assessment of whether [they] fulfil the criteria [...] shall take into account compliance with the applicable national law where that national law provides sufficient assurance of compliance with the criterion or aspects of it', as well as international instruments.⁵³ As the same social and environmental standards should apply to Strategic Projects regardless of their location, this must also apply to due diligence obligations. The Commission still has to define guidelines for these due diligence obligations. From a civil society perspective, these should fulfil the following criteria⁵⁴: First, they should be specific; second, review bodies must be sufficiently independent and have the necessary qualifications, powers and resources; third, they must have effective grievance mechanisms in accordance with the effectiveness criteria of the UN Guiding Principles on Business and Human Rights (see Guiding Principle 31); fourth, they must include sanction mechanisms; fifth, they must take into account power dynamics on various dimensions. These power dynamics concern those in the supply chains, for example between companies and their suppliers; however, they also exist between the EU and the country of production. When evaluating

⁴⁸ EU Raw Materials Coalition: Limiting environmental damage, human rights abuses and Indigenous Peoples' rights violations: Civil society guidelines for the implementation of the EU Critical Raw Materials Regulation; page 34 <https://eurmc.org/publication/limiting-environmental-damage-human-rights-abuses-and-indigenous-peoples-rights-violations-civil-society-guidelines-for-the-implementation-of-the-eu-critical-raw-materials-regulation/>

⁴⁹ Annex IV

⁵⁰ Id.

⁵¹ Id.

⁵² <https://www.auswaertiges-amt.de/blob/266624/b51c16fab1b3424d7efa060e8aa8130/un-leitprinzipien-de-data.pdf>

⁵³ Annex III, Paragraph 5

⁵⁴ See: Fern 2024: Mining in the spotlight. Using due diligence to protect forests and peoples from mineral extraction

each due diligence obligation, attention must therefore be paid to who is empowered by it and who is not.

No overriding interest for contested projects

The status of Strategic Projects is accompanied by a priority status. As the Strategic Projects aim to support European security of supply, they are assessed in the CRMA as projects of 'overriding public interest'⁵⁵. With regard to the European directives that set environmental standards, this assessment does allow for exceptions, but only under very specific conditions. It is therefore important to emphasise that even if Strategic Projects are defined as 'serving public health and safety'⁵⁶, **the listed environmental standards and European environmental law must be verifiably complied with.** Strategic Projects **must not jeopardise the health or safety of the local population.** Furthermore, the priority status and the resulting timeframes for approval procedures⁵⁷ must not mean that Strategic Projects are approved too quickly and that transparency, local participation, human rights and indigenous rights are neglected in the process. Local involvement is not only central to the observance of indigenous rights, it is also in everyone's interest: if a project is approved too quickly without local participation, it runs the risk of being challenged in court and the approval process threatens to take longer. According to the CRMA, the Aarhus Convention, which is primarily intended to strengthen transparency in environmental matters, remains unaffected by the length of the authorisation procedures stipulated therein⁵⁸.

No acceleration of the implementation of Strategic Projects at the expense of participation

The CRMA emphasises that 'Member States should be able to provide for support in national permit-granting processes to speed up the realisation of Strategic Projects in accordance with Union law'⁵⁹. At the same time, Article 6 of the CRMA emphasises that '[the] recognition of a project as a Strategic Project pursuant to this Article shall not affect the requirements applicable to the relevant project or project promoter under Union, national or international law'.⁶⁰ This means that a Strategic Project **cannot circumvent international, European or national standards and rules.** For the Member States, this clearly means that it remains the responsibility of the state, for example, to obtain the free, prior and informed consent of (potentially) affected indigenous communities. The same applies to extensive obligations arising from environmental and social impact assessments as well as participation procedures whose implementation and proper execution must be ensured by the respective state(s).

Tie funding to socio-ecological criteria

The EU announces in the CRMA that 'Member States and the Commission should assist in access to finance and administrative support'⁶¹. For example, at the 'request of a project promoter of a Strategic Project'⁶², the relevant subgroup of the Board can offer assistance in financing the project. This support may come from 'resources from the European Investment Bank Group or other international financial institutions including the European Bank for Reconstruction and Development'⁶³, from 'existing Member State instruments and programmes, including from export credit agencies, national promotional banks and

⁵⁵ Article 10, Paragraph 10

⁵⁶ Article 10, Paragraph 10

⁵⁷ See Article 11

⁵⁸ Artikel 14 Paragraph 1

⁵⁹ Recital 24

⁶⁰ Article 6, Paragraph 3

⁶¹ Recital 36

⁶² Article 16

⁶³ Article 16, Paragraph 1 letter b

institutions⁶⁴ or from 'relevant Union funding and financing programmes, with a particular focus on the Global Gateway Initiative for Strategic Projects in third countries or in OCTs'⁶⁵.

As the financing of projects appears to be a major challenge, the Commission has committed to report by 24 May 2026 on what 'obstacles' exist and how they should be removed.⁶⁶

As the financial sector has so far been excluded from European due diligence legislation, the EU Commission and the Board have an **obligation not to contribute to human rights violations by financing Strategic Projects**. Both state funds and development banks must implement the due diligence obligations in accordance with the OECD Responsible Business Conduct for Institutional Investors⁶⁷. In addition, state loan guarantees within the framework of the respective foreign trade promotion programme may only be open to project financing for which the financing banks comply with the OECD Responsible Business Conduct for Project and Asset Finance Transactions⁶⁸. This includes ensuring that all contracts contain agreements that provide positive incentives in the form of interest rate advantages, for example, in the event of proven compliance with human rights due diligence obligations. In addition, sanctions are needed in the form of negative contractual consequences for breaches of due diligence obligations, ensured by conditionalised tranche payments. The sub-group of the Board and the EU Commission must report transparently on the steps they take in this regard.

Ensuring democratic participation in the Board

The European Critical Raw Materials Board is responsible for reviewing and discussing applications for the status of Strategic Projects together with the European Commission⁶⁹. From a civil society perspective, it is important that **the Board communicates and acts publicly, transparently and with the involvement of (potentially) affected parties, civil society and trade unions**. It must therefore be possible to see who sits in the Board, what is discussed and how decisions are reached. In its current composition, the Board does not provide for the participation of (potentially) affected parties – it is therefore all the more important to ensure through transparent processes that they can follow the Strategic Projects and also contest them with the help of effective grievance mechanisms in the event of environmental destruction or human rights violations. It would be possible to set up an independent complaints office within the Board. Corruption should also be prevented through a transparent Board.

In addition, the Board should endeavour to prioritise projects for the circular economy and the processing of extractive waste, for example from former mining waste or tailing dams.

Establish reporting obligations for project promoters

In order to verify compliance with the criteria, project promoters must submit a report every two years after the date of recognition as a Strategic Project⁷⁰. This report documents the changes to the project with regard to the criteria for Strategic Projects and the

⁶⁴ Article 16, Paragraph 1 letter c

⁶⁵ Article 16, Paragraph 1 letter d

⁶⁶ Article 16, Paragraph 2

⁶⁷ <https://mneguidelines.oecd.org//RBC-for-Institutional-Investors.pdf>

⁶⁸

<https://www.oecd.org/content/dam/oecd/en/public>

ations/reports/2022/10/responsible-business-conduct-due-diligence-for-project-and-asset-finance-transactions_5533ba19/952805e9-en.pdf

⁶⁹ Article 7 Paragraphs 5 and 6

⁷⁰ Article 8

monitoring of compliance with indigenous rights⁷¹. At the same time, a freely accessible website with information on environmental, social and economic impacts is to be created. According to the CRMA, the website 'shall be available in a language or languages that can be easily understood by the local population'⁷². It is important to ensure that the local population is fully informed about the activities in their neighbourhood. It is important to note that the languages easily understood by the local population are not necessarily the official languages, but in many cases indigenous languages or local dialects must be used. In addition, the website should be translated into English so that the European public as well as international observers and experts who could be consulted by the local population can monitor the project.

Enable revocation of status

If a Strategic Project no longer fulfils the criteria, or if its recognition was based on incorrect or insufficient information, the project's status can be withdrawn and it loses all associated rights⁷³. This process should also be open to public scrutiny. In addition, not only the project organisers should be involved in the withdrawal of status⁷⁴, but also the people whose rights have been violated. Possible financial reclaims should also be considered.

4. Conclusion

The CRMA marks the first piece of specific legislation on the mining sector in the EU. This regulation in favour of the industry's security of supply undermines other regulations or civil society's expectations of the EU in terms of respecting human rights, protecting the environment and climate as well as in matters of raw material consumption. The Strategic Projects are central to this CRMA, as they are

intended to achieve the benchmarks. The EU has announced that it wants to invest in environmentally and socially responsible mining. It will have to be assessed against these announcements. With this paper, we as civil society actors are providing specific indications of both opportunities and risks. Ultimately, the success of the CRMA and the acceptance of the Strategic Projects will be determined by the framework conditions and implementation.

It is therefore crucial that European environmental law remains unaffected by the Strategic Projects in the CRMA. The Member States and the Critical Raw Materials Board must use their influence in the Strategic Projects to exclude projects with high human rights and environmental risks. In principle, projects involving the recycling of metals or mining waste should be clearly favoured over the extraction of primary raw materials. The participation of (potentially) affected parties and indigenous communities must be guaranteed and effective grievance mechanisms must be established.

The recycling of metals and local value creation should also be included in Strategic Projects in third countries. Here, too, human rights and environmental risks must be minimised, the rights of indigenous communities and local populations must be respected and, if necessary, technology transfer must be used to enable catch-up development. All Strategic Projects must not jeopardise health or water use and renaturation and recultivation must be included in the project proposal from the very start.

⁷¹ Article 8 Paragraph 3

⁷² Article 8 Paragraph 5

⁷³ Article 7 Paragraphs 11 and 12

⁷⁴ Article 7 Paragraphs 11

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