



A RESPONSIBLE EUROPEAN CRITICAL RAW MATERIALS ACT

The proposed Critical Raw Materials (CRM) act put forth by the European Commission in 2023 represents an endeavor aimed at guaranteeing the sustainable and secure supply of critical raw materials essential for high-tech industries such as electric vehicles, renewable energy systems, and digital technologies. However, the historical association between mining, conflict, and exploitation is complex and extensive. The mining sector always carries the potential for conflict, depending on its impact on communities, economies, and the environment.

To effectively protect and ensure an energy-independent and environmentally friendly future for all, the CRM act must take into account the social, economic, political, and environmental ramifications associated with the increased demand for critical materials, including cobalt. Furthermore, given the European Union's heavy reliance on the production of these materials from other countries, it is imperative that the CRM act promotes and establishes partnerships with third countries that uphold good governance practices and responsible sourcing policies.

Of all hazardous forms of labor, mining is unequivocally the most perilous for children. Unfortunately, hundreds of thousands of children are engaged in this sector, working under life-threatening conditions and enduring violence, exploitation, and intimidation. Their roles range from digging, sorting, transporting, screening to washing ores, selling snacks, water, sweet juices and more. All of these activities fall under the category of the worst forms of child labor as defined by the International Labour Organization's Convention 182.

Therefore, we strongly recommend that the CRM regulation should:

1. Ensure a coherent overall approach with coordinated policies:

The CRM regulation must strive for a cohesive and well-coordinated approach, explicitly delineating its relationship with other relevant initiatives such as the battery regulation. It is crucial to address any inconsistencies or incoherencies that exist among the various legislative frameworks related to critical raw materials, including but not limited to the Industrial Emissions Directive, ELV Directive, REACH Revision, Waste Framework Directive, Waste Shipments Regulation, and forthcoming CRM package.

Promoting consistency in regulation will help create a level playing field for all stakeholders in the mining industry, thereby ensuring that the regulation's objectives are achieved without compromising environmental sustainability. Additionally, it will foster trust among stakeholders, stimulate investments, and facilitate sustainable development.

2. Uphold international standards and sustainable practices:

It is essential to ensure that access to critical raw materials, whether sourced domestically, externally, or through recycling methods, adheres to international standards and incorporates sustainable practices that fully respect all human rights.

3. Avoid blurred regulation:

The CRM regulation should not create an impression of different standards for third states, as this could undermine its objectives. Implementation of the regulation should exclude third states that do not readily conform to European standards. Otherwise, it is possible to set a dangerous precedent, instrumentalizing raw materials to advance geopolitical interests. This strategy not only erodes trust between the European Union and third states but also hampers the supply of critical raw materials vital for the growing global demand for digital and greener technologies.

Moreover, when considering a strategic project, it is essential for any business to incorporate sustainability criteria that explicitly encompass transparent business practices and robust compliance policies. This is crucial in order to prevent and minimize the risks of negative impacts on public administration, such as corruption and bribery. Unfortunately, the current methods for

evaluating compliance are alarmingly inadequate, primarily relying on inconsistent and unreliable third-party certification systems or internal mechanisms within companies. This approach allows companies potentially engaged in human rights violations to self-validate their own diligence and compliance, which is not adequately addressed in the proposed legislation. Instead, it is imperative that certification schemes only be utilized when they have multi-stakeholder governance and independent audits, and they should not be the sole determinant of compliance. In other words, the inability of an auditor or initiative to discover or prevent an adverse impact should not mean that it is not the fault of the company.

Finally, the act acknowledges the importance of supporting good governance capacity and transparent business practices in non-EU countries. However, the language used suggests that corruption is perpetuated solely by undesirable actors in mineral-rich countries, disregarding the significant role played by extractive companies based in high-income jurisdictions, including the EU. Rather, we consider it essential to consider all these aspects, and to impose monitoring and evaluation taking into account all layers.

4. Mitigate social impact on third countries and prevent instrumentalization of development funds:

The notion of strategic projects is a particularly worrisome aspect of the draft regulation, as it states that such projects should be considered in the public interest due to their significance in ensuring the security of raw material supply. This status brings about a series of facilitations that streamline authorization, processing, and financing procedures, potentially jeopardizing the proper allocation of development funds in third countries.

Additionally, the risk of instrumentalizing development funds may hinder the overall effectiveness of the regulation. Diverting funds for other purposes or misusing them for non-objective objectives would inevitably impact the sustainability and security of the supply chain.

Lastly, it is disconcerting that local stakeholders have limited involvement and voice in the approval process of strategic projects, despite Member States being granted the authority to refuse their approval. In particular, in the

mining sector diligence processes, stakeholder engagement is particularly relevant given the close proximity to and impact on local communities through the use of resources such as water, energy, and land. Engaging local stakeholders throughout the due diligence process is essential for comprehensive risk assessment, informed decision-making, sustainable development, and maintaining positive relationships with the communities in which companies operate. It promotes a more holistic approach to due diligence, integrating local perspectives and fostering shared value creation. This is precisely why it should be mandatory for companies to explicitly include the participation of affected communities and environmental groups in the expedited permitting procedures and dispute resolution mechanisms and make sure they are granted with enough time to prepare and raise concerns and objections. Consultations and environmental impact assessments should give the general public and all stakeholders enough time to meaningfully participate and, when applicable, give or withhold their consent.

In conclusion, while the proposed Critical Raw Materials act represents a stride toward achieving the sustainable sourcing of critical raw materials, its success relies on consistent regulation, equitable treatment of third states, and responsible utilization of the development fund. The European Commission must, therefore, give careful attention to these aspects and others to ensure that the objectives of the Critical Raw Materials regulation are successfully met.