Many critical raw materials are located on or near the lands of Indigenous or rural peoples. Photo: Deforestation of rainforest in Sumatra, Indonesia, by Rich Carey/Shutterstock

What does the EU's Critical Raw Materials Regulation mean for people and forests?

April 2024

Introduction

The motivations behind the Critical Raw Materials Regulation

In 2020, the EU set out its strategy to achieve a green and digital transition.[1] Its success depends on supporting industries that require vast amounts of what are deemed Critical Raw Materials (CRM). But sourcing these materials is not a simple ask as their supply chains are highly dependent on imports, and many are primarily sourced from just one or two countries. Furthermore, global competition is growing as many countries have similar industrial strategies.

The Critical Raw Materials Regulation (CRMR) was developed to respond to these risks with the aim of ensuring 'secure, resilient and sustainable' CRM supply chains.[2]

The CRMR makes a distinction between Strategic Raw Materials (SRM) and Critical Raw Materials. The former correspond to those raw materials considered to be strategic due to their relevance for green, digital, aerospace and defence sectors, while the latter include all the SRM and other raw materials that are considered as critical based on the 'criticality assessment methodology' established by the Commission over the past decade. Most of the provisions in CRMR target SRM, in particular those related to strategic projects and the benchmarks for extraction, processing and recycling. But some aspects of the Regulation concern the CRM list. The CRMR thus aims to increase domestic SRM production thanks to strategic projects in the EU, but also to diversify imports and reduce dependence on a small number of countries via strategic projects in and Strategic Partnerships with third countries. Thanks to non-governmental organisation (NGO) advocacy, the CRMR also hopes to enhance sustainability and to minimise supply chains' social and environmental impacts. This will be mainly achieved by increasing circularity and resource efficiency, not only for SRM, but for all CRM.

1 https://ec.europa.eu/commission/presscorner/detail/en/ip_20_416

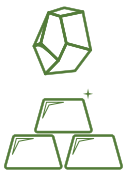
2 https://single-market-economy.ec.europa.eu/sectors/raw-materials/areas-specific-interest/critical-raw-materials/critical-raw-materials-act_en

How EU CRM consumption drives deforestation and human rights violations

The social and environmental impacts of mining and its associated infrastructure are well documented. As well as being a significant driver of deforestation, forest degradation and biodiversity loss,[3] it is linked with human rights abuses, including dispossession of people from their lands and disruption of rural livelihoods.[4] The EU has an important role in this as it has been estimated that EU consumption of metals and minerals accounts for 14% of global mining-related deforestation.[5]

Although at present 71% of direct mining-related deforestation (MRD) can be traced back to only two commodities (gold and coal[6]) this is set to change with the expected huge increase in demand for CRMs. Compared with 2022 levels, demand is expected to double by 2030, and more than triple by 2050.[7] Furthermore, many CRMs are found in particularly vulnerable areas - more than two thirds of existing reserves are located on or near the lands of Indigenous or peasant peoples,[8] a significant proportion are found in biodiverse regions such as tropical forests, and in 2019, 80% of global metal extraction in 2019 took place in highly diverse ecosystems.[9]

There are numerous and increasing examples of social and environmental harms caused by CRM mining.[10] For example, in Guinea, one of the main sources of European imports of bauxite (for aluminium), mining has destroyed large areas of farmland and forests, undermining the livelihoods of rural communities.[11] Nickel mining has also had a devastating impact on communities and forests in Indonesia[12] and the Philippines[13] where substantial reserves are to be found. Nickel mining has expanded particularly rapidly in Indonesia, with a number of nickel industrial parks being built in recent years.[14]



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3 *Kramer, M. et al. (2023) Extracted Forests. Unearthing the Role of Mining-related Deforestation as a Driver of Global Deforestation. WWF, WU Vienna & Satelligence. https://wwfint.awsassets.panda.org/downloads/wwf_studie_extracted_forests_1_1.pdf*

4 *Transition Minerals Tracker, 2022. https://www.business-humanrights.org/en/from-us/briefings/transition-minerals-tracker-2022-global-analysis/*

5 *Kramer, M. et al. (2023) Extracted Forests. Unearthing the Role of Mining-related Deforestation as a Driver of Global Deforestation. WWF, WU Vienna & Satelligence. https://wwfint.awsassets.panda.org/downloads/wwf_studie_extracted_forests_1_1.pdf*

6 *Kramer, M. et al. (2023) Extracted Forests. Unearthing the Role of Mining-related Deforestation as a Driver of Global Deforestation. WWF, WU Vienna & Satelligence. https://wwfint.awsassets.panda.org/downloads/wwf_studie_extracted_forests_1_1.pdf*

7 *IEA (2023) Critical Minerals Market Review 2023. https://www.iea.org/topics/critical-minerals*

8 *Owen, J.R. et al. (2023) Energy transition minerals and their intersection with land-connected peoples. Nature Sustainability 6: 203-211, https://www.nature.com/articles/s41893-022-00994-6*

9 *Luckeneder, S. et al. (2021) Surge in global metal mining threatens vulnerable ecosystems. Global Environmental Change 69, https://www.sciencedirect.com/science/article/pii/S0959378021000820?via%3Dihub*

10 *https://www.business-humanrights.org/en/from-us/transition-minerals-tracker/*

11 *https://www.washingtonpost.com/world/interactive/2023/ev-battery-bauxite-guinea/; Human Rights Watch (2018) What do we get out of it? The Human Rights Impacts of Bauxite Mining in Guinea. https://www.hrw.org/news/2018/10/04/guinea-bauxite-mining-boom-threatens-rights*

12 *Luckeneder, S. et al. (2021) Surge in global metal mining threatens vulnerable ecosystems. Global Environmental Change 69, https://www.sciencedirect.com/science/article/pii/S0959378021000820?via%3Dihub*

13 *https://news.mongabay.com/2023/12/nickel-mine-threatens-philippines-biodiversity-hotspot-on-sibuyan-island-analysis/*

14 *CRI (2024) Nickel Unearthed. The Human and Climate Costs of Indonesia's Nickel Industry. Climate Rights International, January 2024. https://cri.org/reports/nickel-unearthed/*

What is the CRMR?

The CRMR is a Regulation setting out a range of measures to diversify the EU's sources of SRM so as to reduce dependency on imports and the environmental and social impacts of their production. For SRM, it includes the following benchmarks to achieve by 2030:

- increase European capacity to provide the following annual proportions of EU consumption: 10% from the extraction of raw materials, 40% from processing and 25% from recycling.
- diversify imports, so that no single third country provides more than 65% of the EU's annual consumption.

One of the CRMR's key measures is to facilitate the implementation of strategic projects – for extraction, processing or recycling of SRM – both within the EU and beyond. The status "strategic" is granted by the Commission. For projects in the EU, the main benefit for project promoters, is that the strategic status implies that Member State authorities shall respect specific time limits for the permit granting process. In addition, although not legally regulated by the CRMR, the Regulation addresses international cooperation through the establishment of strategic partnerships and/or strengthening of CRM provisions within Free Trade Agreements (FTAs). A CRM club is also foreseen to support cooperation between producing and consuming countries.

According to the CRMR, the EU and its Member States will have to mitigate the expected increases in EU consumption of CRMs. Member States are also asked to encourage the re-use and recycling of CRMs and their end-products. Recovery of CRMs from extractive waste is also facilitated.

In the future, the Regulation aims to lessen the environmental footprint of CRM production. Those placing certain CRMs on the EU market will be required to provide an environmental footprint declaration for certain materials as a means of incentivising more sustainable practices.

The list of SRMs that the CRMR applies to are defined as those of high strategic importance for the EU's green, digital, defence and aerospace industries, where there is a high risk of supply disruption, where there is a potentially significant gap between global supply and projected demand, and where increasing production is difficult. Thirty-five materials are currently listed and they will be reviewed and updated at least every three years. The list includes key components of batteries such as cobalt, graphite, lithium, manganese and nickel; rare earth elements, used to make magnets for wind turbines and electric vehicles; and bauxite and copper, major components of electricity networks.[15]

15 *IEA (2021) The Role of Critical Minerals in Clean Energy Transitions. https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions*

Mining is linked with the dispossession of people from their lands.
Photo: Farmer sows seeds in Muara Tae Village, Indonesia
by Michael Eko/Climate Visuals Countdown

How will the CRMR affect resource-rich countries?

Because the CRMR aims to increase SRM availability, it is likely to have a significant impact on resource-rich countries within the EU and beyond. The expansion of extraction, processing and recycling capacity is intended to bring social and economic benefits to those countries where projects are located, but it will also bring significant risks, including to the rule of law, the environment and those communities located near projects. The Regulation includes a number of provisions to enhance sustainability and governance of the sector, but civil society organisations including Fern are concerned that these won't be sufficient, particularly given the expected increase in demand.[16]

Criteria for identifying strategic projects have been identified and included that they must contribute to the EU's security of supply and be sustainable. The CRMR requires discussions about the prioritisation of Strategic Partnerships with third countries but does not regulate anything tangible in the partnerships (see Box). Projects in third countries need to increase local value and be beneficial to the country where the project is located.

Box 1: CRMR sustainability criteria for strategic projects and partnerships

Sustainability criteria for selecting strategic projects, Art.6(1)c

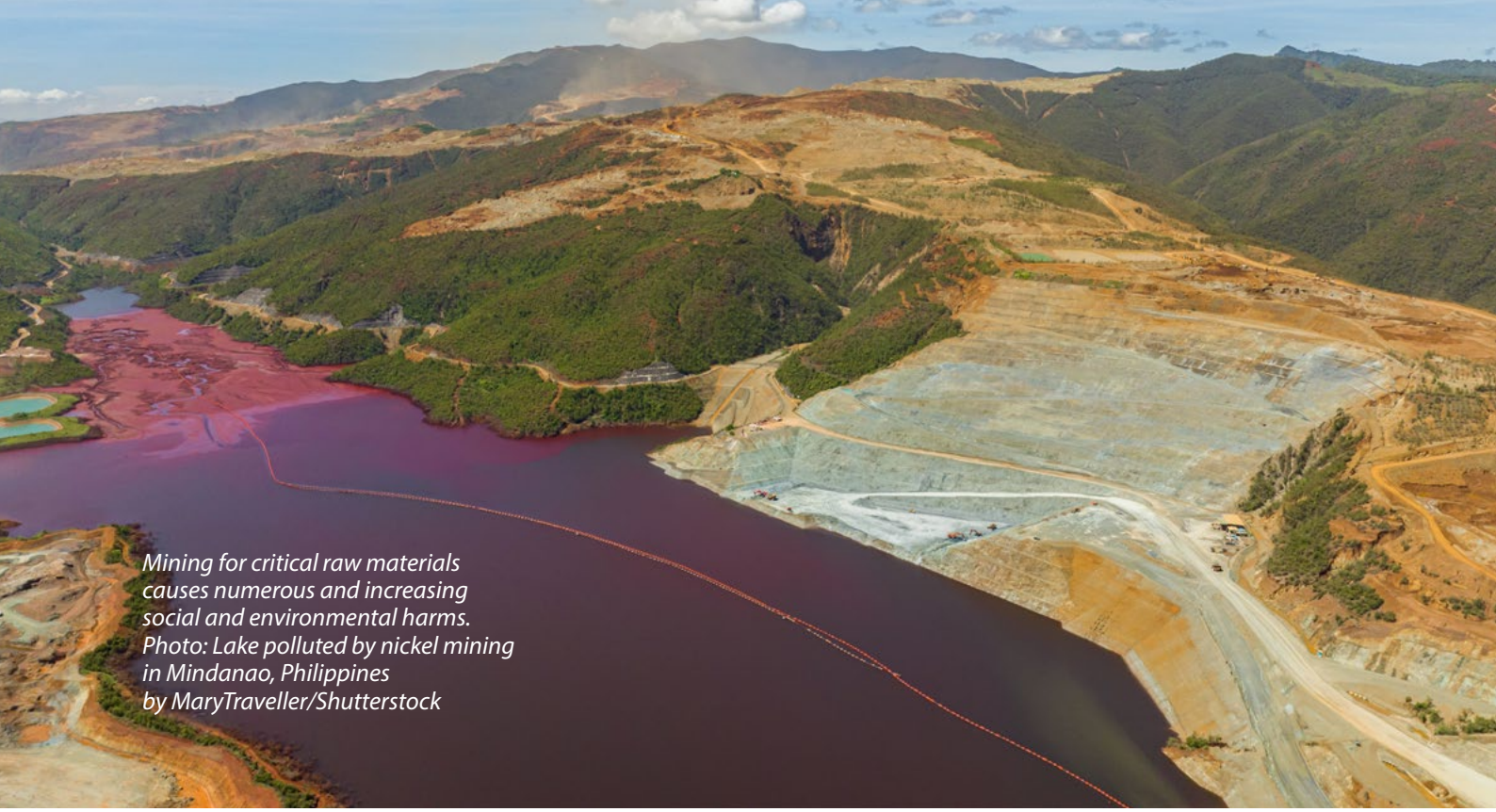
The project would be implemented sustainably, in particular as regards the monitoring, prevention and minimisation of environmental impacts, the prevention and minimisation of socially adverse impacts through the use of socially responsible practices including respect of human, indigenous peoples' and 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.

For projects in third countries that are emerging markets or developing economies, the project would be mutually beneficial for the Union and the third country concerned by adding value in that third country.

Sustainability criteria for prioritising strategic partnerships, Art.37(1)c(ii)

The Board shall periodically discuss which third countries could be prioritised for the conclusion of Strategic Partnerships, taking into account 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.

16 *Raw Materials Coalition (2024) Limiting environmental damage, human rights abuses and Indigenous Peoples' rights violations: Civil society guidelines for the implementation of the EU Critical Raw Materials Regulation. 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/*



Mining for critical raw materials causes numerous and increasing social and environmental harms. Photo: Lake polluted by nickel mining in Mindanao, Philippines by MaryTraveller/Shutterstock

One of the CRMR's priorities is to implement projects in a timely manner – the process to identify them should be 'light and not overly burdensome' for the Commission. So as to provide a 'clear and efficient way' for companies to meet sustainability criteria for projects, both compliance with relevant legislation (for projects inside the EU) or with relevant legislation and international instruments (for projects in third countries) and application of a 'recognised' certification scheme can substitute the detailed Commission's assessment. Once identified, projects will benefit from streamlined permitting procedures (in the case of EU projects) and support to access finance. A core objective for international cooperation is to facilitate the implementation of projects through strengthening governance and promoting investment.

Due to the already worrying mining laws that are not paying enough attention to the outrageous environmental and social impacts of mining, and the tangible concerns about the way that EU environmental legislation (on extractive waste for instance) is applied across the Member States today, this focus on speed without any additional safeguards at EU level brings the risk of environmental and social issues being overlooked. In addition, the limits of certification as a means of guaranteeing sustainability are well known, as are the risks to communities and Indigenous Peoples if projects do not require them to give their free, prior and informed consent.[17]

International cooperation also aims to promote sustainable and circular economy practices within partner countries, such as through capacity building and technology transfer programmes. Adding local value within emerging and developing economies is also a priority, particularly for strategic partnerships. However, it is not clear the extent to which developing countries will benefit from such cooperation given their weaker negotiating position and the pre-eminence that the CRMR gives to supply security.[18] The EU's focus on FTAs to secure supply from third countries also risks not giving environmental and social issues adequate attention.[19]

There is a real risk that increased cooperation on CRMs will follow a familiar pattern: partner countries will struggle to obtain fair benefits, and the environmental and social impacts will be regarded as secondary to the EU's priorities of securing access to raw materials.

17 *Raw Materials Coalition (2024) Limiting environmental damage, human rights abuses and Indigenous Peoples' rights violations: Civil society guidelines for the implementation of the EU Critical Raw Materials Regulation. 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/*

18 *https://www.fern.org/fileadmin/uploads/fern/Documents/2023/A_Partnership_of_Equals_01.pdf*

19 *Transnational Institute (2024) The Raw Materials Rush: How the European Union is using trade agreements to secure the supply of critical raw materials for its green transition. https://eurmc.org/publication/the-raw-materials-rush-how-the-european-union-is-using-trade-agreements-to-secure-the-supply-of-critical-raw-materials-for-its-green-transition/*

Can the CRMR reduce impacts on forests & forest peoples?

Although the Regulation's sustainability provisions are not considered sufficiently strong or prescriptive, they do provide the following opportunities to mitigate the risks to forests and forest peoples:

The selection and monitoring of strategic projects

Strategic projects are to be identified on the basis of both their feasibility and sustainability. The CRMR introduces different ways to assess compliance with sustainability criteria for a project to be recognised as Strategic by the Commission, depending on whether it is a project located in the EU or a project located in a third country.

For a project located in the EU, the Commission's assessment should be based on compliance with relevant national and EU legislation, while a project in a third country should be assessed on the basis of applicable national legislation and international instruments (including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), UN Guiding Principles, the Organisation for Economic Cooperation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals, and the OECD Guidelines for Multinational Enterprises).

However, a recital makes clear that, regardless of the way that compliance is assessed, "Both projects in the Union and in third countries, or Overseas Countries and Territories (OCT), need to adhere to the same level of social and environmental sustainability." It is important, because the reference to UNDRIP is in the list of international instruments, so one could think that only projects in third countries should follow UNDRIP's principles (such as Free Prior and Informed Consent), but the recital explains that, although assessments can be different, the requirements must be the same.

Participation in a certification scheme can also be used by the Commission to show that the project complies with the sustainability criterion and can therefore be granted strategic status.

When applying for strategic project status, regardless of the location, companies will need to submit plans to show how the project will facilitate the involvement and participation of affected communities, including where necessary, Indigenous Peoples, as well as plans for mitigation and compensation mechanisms. In addition, for extraction projects outside the EU, a plan will be needed for the restoration of the extraction site. An assessment of these plans would presumably also form part of the project assessment, although the process for this is not specified.

The extent to which civil society will be able input to the project selection process is somewhat limited. The assessment would be based on information submitted by companies, and with no requirement for company applications to be published it will not be possible for these to be reviewed by civil society organisations.

There may be more opportunities for civil society inputs in monitoring project implementation, as once approved, companies will be required to establish a website with information on their environmental, social and economic impacts and benefits.

Prioritising and monitoring strategic partnerships

Strategic partnerships assessments must also consider sustainability with some differences between existing and new partnerships. Existing partnership assessments must determine whether they are improving sustainable and circular economy practices in partner countries, working conditions, and respect for human rights. New partnership assessments must include whether it would improve a partner country's ability to minimise negative environmental impacts and ensure socially responsible practices, including respect of human and labour rights, engagement with local communities, and the use of transparent and responsible business practices. For emerging markets and developing economies, assessments should also include whether and how a partnership could add local value, and be mutually beneficial for the partner country and the EU.

While no formal process is set out, civil society could potentially provide evidence of the impact of existing partnerships, and the possible positive contributions of new partnerships.

Monitoring certification schemes

Civil society could also input into certification scheme monitoring. The European Commission is expected to establish a registration system for those schemes which they believe demonstrate compliance with project sustainability requirements. It will include a public website to allow for the collection of feedback. As soon as the Commission recognises the first scheme, the register and feedback system must be in place.

Environmental footprint methodology

The requirement for submitting declarations on the environmental footprint for certain materials also provides opportunities for civil society to engage. The scope of materials to be covered and the methodology for determining the footprint are to be determined within the first 30 months of the Regulation coming into force. This will be decided by an assessment made in consultation with stakeholders. Civil society should therefore be able to inform this process, for example, to ensure that impacts on forests and forest peoples are given adequate consideration. Once the system is in place, declarations and underlying studies will need to be published online, so that they can be reviewed.

Engagement with the European Critical Raw Materials Board

To CRMR foresees the establishment of a European Critical Raw Materials (ECRM) Board to support the Commission to implement the Regulation. The Board will be made up of representatives of all Member States and the Commission, but civil society representatives may be invited to provide written contributions or to join meetings as observers.

Board responsibilities include assessing strategic projects and partnerships, facilitating the exchange of best practice and providing advice to the Commission. Subgroups are to be established to focus on particular issues, including increasing public knowledge and best practices on public participation (to which it is noted that civil society organisations will be regularly invited as observers). There will also be a subgroup on measures to promote circularity, resource efficiency and substitution of CRMs.

Other relevant EU legislation

The CRMR sits within a broader network of legislation that aims to reduce the EU's environmental footprint and promote more responsible business practices and supply chains. In particular, there have been an increasing number of legal requirements for companies to implement supply chain due diligence. These include the Conflict Minerals Regulation,[20] which applies to importers of gold, tin, tantalum and tungsten (the latter two are included in the EU's current list of CRMs); and the Batteries Regulation,[21] which applies to battery manufacturers and their raw material supply chains(including many CRMs). In addition, the Corporate Sustainability Due Diligence Directive (CSDDD)[22] will apply to large European companies and is cross-sectoral.

There are a number of ways in which these pieces of legislation could interact with the CRMR, for example due diligence requirements may provide incentives to strengthen sustainability measures within strategic projects and encourage companies to source from strategic projects established under the CRMR. This is particularly likely if implementation or enforcement of due diligence proves to be more rigorous than the assessment or monitoring of projects under the CRMR.

Due diligence systems should also reduce the costs and burdens of complying with the CRMR's environmental footprint requirement. If these declarations are used as a source of data for due diligence systems, it could increase incentives for importers to purchase materials with a lower environmental footprint.

20 https://policy.trade.ec.europa.eu/development-and-sustainability/conflict-minerals-regulation_en

21 https://environment.ec.europa.eu/news/new-law-more-sustainable-circular-and-safe-batteries-enters-force-2023-08-17_en

22 https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en

Bauxite mining has destroyed large areas of farmland and forests. Photo: Aluminium production site in Guinea by Igor Grochev/Shutterstock

Conclusions and ways forward

The expected rapid growth in demand for CRMs will create huge challenges for countries and regions that are rich in these resources. While the CRMR acknowledges this and includes measures to mitigate the social and environmental risks and benefit partner countries, the focus on speed of implementation and on gaining security of access raises concerns as to whether these measures will be sufficient.

It will therefore be of critical importance that the CRMR is properly implemented and that the impact of strategic projects and partnerships is fully understood. Such vigilance will help identify problems if or when they emerge. It will also help the development of appropriate responses, whether from the EU, its partner countries or civil society.

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