

Ten reasons why the European Commission's proposed Critical Raw Materials Regulation is not sustainable – and how to fix it

SOMO position paper

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On March 16, 2023, the European Commission (EC) presented a Proposal for a Regulation of the European Parliament and of the Council establishing a framework for ensuring a secure and sustainable supply of critical raw materials (the CRMR).¹

The main objective of the CRMR is to ensure that the European Union (EU or Union) has access to a secure and sustainable supply of Critical Raw Materials² (CRMs) and Strategic Raw Materials³ (SRMs) for its digital and green transitions. The CRMR aims to: i) strengthen the different stages of the SRMs value chain⁴; ii) diversify the Union's imports of SRMs⁵, iii) improve the Union's ability to monitor and mitigate supply risk related to CRMs and iv) ensure the free movement of CRMs and products containing them placed on the market while ensuring a high level of environmental protection, circularity and sustainability.

In SOMO's view, the proposed strategy of the EU to secure access to CRMs and SRMs will not lead to a sustainable supply of minerals for Europe because it will exacerbate human rights and environmental risks and undermine development in partner countries. Critically, the CRMR fails to address Europe's unsustainable consumption, and it reinforces an economic framework where resource-rich third countries are pushed to remain as suppliers of raw materials that feed the consumer demands and unsustainable lifestyles of global powers.

The following are SOMO's ten key concerns and recommendations related to the CRMR:

¹ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) 168/2013, (EU) 2018/858, 2018/1724 and (EU) 2019/1020.

² Critical Raw Materials is a broader concept used by the proposed CRMR and includes all of the SRMs as well as additional ones that reach or exceed certain thresholds of economic importance and supply risk. Annex II includes a list of 34 critical minerals.

³ Strategic Raw Materials refer to those that hold the highest strategic importance and highest demand growth for the digital and green transitions, as well as defence or space-related applications, and for which increasing production is difficult. Annex I of the CRMA defines a list of 16 strategic minerals including Cobalt, Copper, Platinum Group Metals as well as battery grade lithium, manganese, graphite and nickel.

⁴ The goal is that by 2030 the EU is able to extract, within its territory, the ores, minerals or concentrates needed to produce at least 10% of its annual strategic raw materials consumption (to the extent reserves allow); processing capacity to meet at least 40% of Union's annual consumption; and recycling capacity is able to produce at least 15% of the Union's annual consumption

⁵ To ensure that by 2030 annual consumption of strategic raw materials, at any stage of production, no more than 65% comes from a single country.

1) Designating Strategic Projects⁶ (SPs) as having an “overriding public interest” results in a regulatory break for environmental standards

Recommendation 1: To be sustainable, the CRMR should not provide any exceptions or regulatory breaks to environmental safeguards and regulations.

According to Article 7 (2), SPs in the EU “shall be considered as being of public interest or serving public health and safety, and may be considered as having an overriding public interest”. In practice, this designation is likely to enable projects to be approved without important safeguard processes, including environmental safeguards, being observed. Under the proposed CRMR, Member States (MS) could override (derogate from) key environmental provisions, for instance those contained in the Habitats Directive (92/43/EEC) for the protection of flora and fauna, the Water Framework Directive (2000/60/EC), and the Birds Directive (2009/147/EC) on the conservation of wild birds. Special Protection Areas, such as Natura 2000, and other Special Areas of Conservation could be in jeopardy and open to mining and processing projects.

2) Streamlined and predictable permitting procedures result in a disproportionate tilting of power relations in favour of project promoters

Recommendation 2: 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.

SPs in the EU will receive ‘streamlined and predictable permitting procedures.’⁷ This will clearly benefit corporate project promoters and investors rather than protecting the environment or balancing the interests of all stakeholders. Article 8 mandates MS designate a national competent authority to facilitate permit-granting processes. Such authority is also mandated to ensure that SP applicants have *simple procedures for the settlement of disputes concerning permits, including, where applicable, alternative dispute resolution mechanisms.*

Article 9 calls for SPs to receive the highest national significance possible and to receive priority in permit granting processes. It also calls for all dispute resolution procedures, litigation, appeals and judicial remedies to be treated as urgent. It further adds that *project promoters* shall be part of such expedited procedures, omitting to mention the participation of other legitimate stakeholders such as affected communities or environmental groups. The expedited nature of such a process will disadvantage (potentially) affected rightsholders because they will

⁶ Strategic Projects: The EC will recognize certain raw material projects, both within the Union and in third countries, as "strategic projects" if they meet the following criteria: (a) the project contributes significantly to the Union's supply of strategic raw materials; (b) the project is or will become technically feasible within a reasonable timeframe, and production volume can be estimated with confidence; (c) the project is implemented sustainably, with consideration of environmental impacts, socially responsible practices, quality jobs, and transparent business practices; (d) projects within the Union provide cross-border benefits beyond the Member State; and (e) projects in third countries that are emerging markets or developing economies projects are mutually beneficial for the Union and the third country by adding value to that country. SPs in the Union will benefit from streamlined permit granting processes and other assurances, while SPs in both the Union and in third countries will, according to the draft law, gain improved and coordinated access to finance.

⁷ Recital 9, see also Chapter 3, Section 2.

have less time to prepare their defence and less information about the project than the project promoters.

According to Article 10, if the SP includes extraction the permit granting process must not exceed 24 months. If the SP solely involves processing or recycling, then the permit-granting process must not exceed 12 months. Those timeframes could even be shorter, at 21 months and 9 months respectively, if the project entered the permitting granting process before being declared an SP.

According to Article 11, *the time-frame for consulting the public concerned on the environmental impact assessment report referred to in Article 5(1) of Directive 2011/92/EU shall not be longer than 90 days in the case of Strategic Projects*. This gives the public a very limited timeframe to express their concerns and feedback. It is important to mention that Directive 2011/92/EU applies to the environmental assessment of “those public and private projects which are likely to have significant effects on the environment”. The 90-day timeframe will likely strain the right of public participation, under the Aarhus Convention, in the decision-making on environmental matters and to effectively contribute to protecting the right to live in a healthy environment.

The CRMR rationale for changing pre-existing EU processes around permitting is based solely economic reasons. The draft law does not justify the removal of safeguards and the contraction of timelines in relation to environmental, and associated social, considerations. There is no suggestion that the pre-existing safeguards are unnecessary or erroneous, only the assumption that economic actors must be allowed to proceed quickly to extract or process critical minerals. Such an assumption is not only problematic in relation the CRMR, but it sets a dangerous precedent for setting aside hard-won environmental safeguards in the EU. These provisions must be removed in the final text.

3) European Commission and Member States are put at the service of companies and investors to support access to finance to the detriment of other stakeholders

Recommendation 3: The European Commission should conduct a comprehensive impact assessment to evaluate the potential negative effects on suppliers of raw materials, considering factors such as pricing, lead times, contracts and working conditions, and propose appropriate mitigating measures. Clear safeguards and standards should be established to protect the interests of suppliers, workers, and communities, including guidelines on fair pricing, responsible sourcing practices, labour rights, and environmental sustainability, with effective monitoring and enforcement mechanisms in place.

Chapter 3, section 3 focuses on increasing access to finance for SPs. This is to be done by mandating the EC and MS to ‘accelerate and crowd-in’ private investments (Article 14); creating a sub-group under CRMR implementing board (see below) to advise on how to complete financing of SPs (article 15); mandate the EC to set up a ‘system to facilitate the conclusion of off-take agreements’ (Art 16); and asking MS to provide certain information on administrative processes related to projects including permit-granting process; financing and investment service; funding possibilities and business support services. Clearly, the focus is on benefiting businesses and investors instead of informing and supporting all stakeholders.

Article 24 mandates the EC to set up a system to aggregate the demand of interested undertakings consuming strategic raw materials and to seek offers from suppliers to match such aggregated demand (joint purchasing mechanism).

The crowding in of private investments, the facilitation of off-take agreements, and the joint purchasing system raise several concerns about the impacts that such practices will have on suppliers of raw materials (particularly those outside the EU) including on price, lead times, and working conditions along the value chain. The processes that the CRMR envisages could result in the abuse of market power to push for lower prices and accelerate lead times, with potentially damaging impacts on suppliers, workers, and communities in resource-rich countries.

4) Risk monitoring and mitigation are narrowly focused on supply risk rather than on social and environmental impacts

Recommendation 4: The EC should be expressly mandated, staffed, and sufficiently funded to monitor not only supply risk but also social and environmental risks along CRM value chains.

Article 19 requires the EC to monitor supply risk related to CRMs. Such monitoring is strictly focused on securing access to raw materials rather than on the social and environmental sustainability of such minerals. The focus is on a) trade flows, b) supply and demand, c) concentration of supply and d) Union and global production and production capacities.

Risk monitoring should include social and environmental risks, and the CRMR should be closely tied to companies' compliance with the upcoming corporate sustainability due diligence directive (CSDDD) or similar human rights due diligence requirements.

5) Stockpiling will distort prices and deprive poor countries of raw materials needed for development

Recommendation 5: The CRMR should include measures to discourage stockpiling of minerals or any other market abuse and unfair trading practices that could lead to price distortions or hinder the availability of resources for the energy transition in third countries, particularly those in need of raw materials for development.

Article 21 refers to the possibility of MS asking economic operators to build up strategic stocks of minerals. According to Article 22, the EC may advise MS to increase their mineral stocks. This could result in stockpiling, reducing the availability of such minerals for the energy transition requirements of third countries and possible price or trade distortions. The CRMR should discourage stockpiling if doing so would distort prices or deprive other countries of raw materials needed for their development.

6) The CRMR fails to address the root of the problem - Europe's unsustainable consumption

Recommendation 6: To stay within planetary boundaries and reduce dependency on other countries for resources, the EU must establish unambiguous binding targets for reducing its material footprint. This should be at the core of the CRMR.

Chapter 5, section 1 of the CRMR focuses on circularity. It includes some positive measures obliging MS to adopt and implement national programmes to increase the collection of waste, increase the reuse of products and components, increase the use of secondary critical materials, and increase the technological development of recycling technologies. It also mandates MS to promote the recovery of CRMs from extractive waste which is certainly a positive development.

However, the CRMR, and in particular the chapter on sustainability, does not address Europe's unsustainable consumption of raw materials. The CRMR fails to acknowledge that a truly just energy transition requires Europe to reduce its material footprint in absolute terms.

By failing to address this root problem, Europe is replicating the economic model and assumptions that have underpinned the fossil fuel energy era, and as a result Europe's energy transition risks major negative consequences for biodiversity, the environment and global inequality. So, while governments need to encourage recycling and the circular economy, it is imperative that they also significantly reduce resource consumption as part of the transport and broader energy transition. (The Big Battery Boom, SOMO).

7) Certification by industry schemes is treated as a proxy for sustainability and provides a safe harbour for companies

Recommendation 7: Certification of an SP by a recognized industry scheme should not be included as an option to fulfil the sustainability criterion. Certification should only be one tool that companies and regulators may use to assess an SP, and are not a replacement for a broader assessment of human rights and environmental performance.

Applications for SPs submitted to the EC need to provide evidence of 'sustainability.' Annex III of the CRMR provides for two options for the EC assessment of the sustainability criterion. The first option is if the project complies with Union Legislation or international instruments⁸; the second option is by either providing evidence that the project is individually certified as part of a recognised industry scheme or by committing to obtain certification for the project as part of a recognised scheme.

The EC's second option relies on certification by industry schemes to demonstrate the sustainability of SPs, enabling companies to use these schemes to 'attest compliance' with the sustainability criterion. In other words, it treats certification as equivalent to complying with Union legislation or international instruments. It risks treating certification as a substitute or equivalent of the corporate obligation to conduct Human Rights and Environmental Due Diligence (HREDD) and to abide by EU legislation and international law.

Such an approach disregards extensive research and evidence that indicates the lack of effectiveness of industry schemes and certification in reliably and consistently identifying risks of harm and preventing abuse. As SOMO has demonstrated in its A piece, not a proxy report, key flaws of industry schemes and certification include:

- Industry-only initiatives are affected by inherent conflicts of interest.
- Industry schemes, multi-stakeholder initiatives, and third-party auditing typically operate with very limited transparency.
- Industry schemes and MSIs tend to adopt weak standards that are not in line with international law and standards, or they use vague and misleading language that gives a false impression of robustness and reliability.

⁸ The following are mentioned: Corporate Sustainability Due Diligence Directive; Corporate Sustainability Reporting Directive; ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy; OECD Due Diligence Guidance for Responsible Business Conduct, in particular the guidelines related to combatting corruption; OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas; OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector; OECD Principles of Corporate Governance; OECD Guidelines for Multinational Enterprises; UN Guiding Principles on Business and Human Rights.

- Industry schemes, MSIs, and third-party auditing operate in a regulatory vacuum, without effective government regulation, oversight, and accountability.
- The private, commercial, and highly competitive nature of the auditing market creates perverse incentives against rigorous auditing practices.

The EC's approach in the draft CRMR is misguided and could potentially enshrine in law a decades-long strategy for voluntary corporate social compliance that has proven ineffective in improving outcomes for people. While industry schemes and third-party auditing may be a tool to aid companies in their due diligence obligations, the need for EU regulation of business was recognized by policymakers due to the limitations and weaknesses of corporate self-regulation, making it illogical for an EU law to rely on industry-led initiatives in the manner set out in the draft CRMR. Such an approach would shift responsibilities from states to the private sector and transfer supply chain responsibilities away from companies causing, contributing to or linked to harm. It would also promote a top-down approach to compliance, provide an effective 'safe harbour' for companies simply participating (or even just promising to participate) in industry schemes, and stifle innovation in due diligence practices.

8) Criteria for Strategic Partnerships are vague, incomplete, and fail to refer to key international instruments

Recommendation 8: The criteria used to prioritize third countries for the conclusion of Strategic Projects should be further elaborated and strengthened. They should also include the respect of Free, Prior, and Informed Consent (FPIC) and other rights of Indigenous Peoples. The provision on engagement with local communities should refer to existing international frameworks such as Article 27 of the International Convention of Civil and Political Rights, the UN Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises, the United Nations Declaration on the Rights of Indigenous Peoples, and the International Labour Organization's Convention 169. Finally, what is meant by 'local value addition' should be further elaborated.

The CRMR proposal includes provisions related to Strategic Partnerships between the EU and third countries 'to increase cooperation related to raw materials value chain that is established through a non-binding instrument setting out concrete actions of mutual interests.'⁹

According to article 33, the criteria to prioritize countries for the conclusion of Strategic Partnerships include i) potential contribution to the security of supply, ii) *the third country's regulatory framework related to environmental protection and the use of responsible practices including respect for human and labour rights and engagement with communities*, iii) existing cooperation agreements, and iv) local value addition potential for emerging and developing economies.

In SOMO's view, the second criterion on sustainability and respect for human rights should be further elaborated and strengthened.

9) Governance body does not include civil society

Recommendation 9: The European Critical Raw Materials Board should include the participation of civil society representatives.

⁹ Article 2 (62).

Article 34 of the proposed CRMR would establish a European Critical Raw Materials Board to implement the Regulation. According to Article 35 the Board is composed of the Member States and the Commission. Members of the European Parliament can be invited to meetings as observers. A sub-group within the Board is established to coordinate financing for SP, which can also invite representatives of financial institutions including private corporations as observers. Civil society groups are not mentioned, even as observers, within the Board or its sub-groups. This is a serious omission and one the final text should remedy.

10) Accompanying EC Communication proposes an EU trade policy that poses risks of significant adverse impacts for third countries

Recommendation 10: Require the development of robust and scientifically sound criteria for defining mining and refining as sustainable activities by the Platform on Sustainable Finance and the adoption of strict criteria as part of the EU Taxonomy Regulation. For the definition of sustainable mining and refining activities, the minimum social safeguard measures in the EU Taxonomy Regulation (Art. 18) are to be fully developed and enforced, addressing concerns related to labour rights, human rights, community engagement, and indigenous rights.

Recommendation 11: Ensure that the establishment of a critical raw materials club with resource-rich partners does not compromise environmental and social protection rules in third countries. Advocate for the inclusion of stringent environmental and social criteria in trade agreements to prevent weakening of standards. Engage in dialogue and negotiation with exporting countries to address concerns related to trade restrictions, seeking win-win solutions that support sustainable development and climate finance.

The EC has published a [Communication](#) to accompany the CRMR proposal which includes non-legislative measures to diversify the external supply of strategic minerals. Although not binding, the Communication includes several proposed actions that could significantly and adversely impact third countries.

The EU's plan to have the Platform on Sustainable Finance 2.0 develop criteria for defining mining and refining as environmentally sustainable activities is concerning because the criteria may be too weak, meaning that activities that are not sustainable may still be classified as such. As a result, projects with negative environmental impacts will not be stopped and will have greater access to finance that is labelled as green. Moreover, the criteria in the EU Taxonomy Regulation have only weak minimum social safeguard measures. A taxonomy without strict conditions is not acceptable as it may undermine efforts to reduce the negative social and environmental impacts of mining and refining.

The establishment of a critical raw materials club with resource-rich partners to strengthen supply chains and diversify sourcing may also lead to deregulation and potential weakening of environmental and social protection rules in third countries. While the EU has stated its intention to combat unfair trading practices and push harder on enforcement of EU trade agreements, the concern is that what the EU considers 'trade restrictions' are often export taxes that benefit exporting countries or other measures that are put in place to add local value and increase revenue to those countries. Therefore, the EU's proposed actions may not be in the best interests of third countries and could have negative consequences for their development.

Conclusion

The proposed CRMR falls short of ensuring a sustainable supply of minerals for Europe. The strategy neglects to address Europe's unsustainable consumption patterns and reinforces a framework that perpetuates human rights and environmental risks while undermining development in partner countries. By prioritising the interests of project promoters and investors, the strategy tilts the power relations in favour of corporate entities, disregarding important environmental safeguards and neglecting the participation of other legitimate stakeholders that are crucial for sustainable supply chains and economic partnerships.

Moreover, the reliance on industry certification schemes as a proxy for sustainability overlooks their inherent flaws and limitations, undermining efforts to ensure human rights and environmental due diligence. Additionally, the governance structure proposed by the CRMR fails to include civil society representation, a critical omission that should be rectified.

Furthermore, the accompanying EC Communication poses risks of significant adverse impacts for third countries, as it may lead to the classification of environmentally unsustainable activities as "green" and potentially weaken social and environmental protection rules. The proposed actions, such as the establishment of a critical raw materials club, could have detrimental effects on the development of resource-rich countries, raising concerns about deregulation and undermining local environmental and social safeguards.

To achieve a truly sustainable and equitable raw materials strategy, a more holistic approach is necessary, including a rapid and drastic reduction of the EU's material footprint, robust risk monitoring and mitigation of social and environmental impacts, meaningful stakeholder participation, and stronger adherence to international human rights and environmental standards.

Further information

Alejandro González

Researcher on climate justice and the energy transition

Centre for Research on Multinational Corporations (SOMO)

a.gonzalez@somo.nl

Tel: + 31 (20) 6391291