Understanding Strategic Projects Under the CRMA:

A Guide to Rights and Processes

EEB
European Environmental Bureau

ClientEarth

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Foreword

As mining activities intensify globally, it is essential for affected communities to be well-prepared. These guidelines aim to shed light on the latest legislation from the European Union seeking to secure access to raw materials, known as the Critical Raw Materials Act (CRMA). Though the CRMA applies to the entire metal supply chain for Europe, these guidelines pay particular attention to the discussion of mining activities within the legislation.

All too often, the communities impacted by mining projects are forced to scramble—educating themselves, seeking legal advice, and understanding the potential effects mining can have on their land—while mining companies employ experts to navigate legal and technical complexities. The burden placed on local communities, who often lack the time, financial resources, or technical expertise necessary, is immense.

These guidelines are intended to bridge this gap by providing accessible information to activists, researchers, community organisers, and grassroots movements, saving you the time and effort it would take to gather this knowledge on your own. Whether you aim to impose conditions on a mining project, improve its performance, or oppose it altogether, we hope these resources can prepare you for taking meaningful action.

These guidelines are one part of a broader effort, alongside the initiatives and resources of other organisations. For more general information, we recommend you read "The Basic Principles for Protecting Your Community from Extractive Industries" from the Gaia Foundation. If you would like to learn about the meaning of the "Right to Say No", refer to our Legal Toolbox. If you plan to interact with European institutions and processes, consult the "How to Guide" from Yes to Life, No to Mining. Lastly, as explained in the Guidelines, there is also an important demand

reduction and sufficiency dimension to these issues, where it is critical that the need for these minerals is properly scrutinised and tested - and that all opportunities are taken to avoid the need for critical minerals in the first place.

Addressing the issues related to human rights and ecological harm also requires a strong focus on the root causes of resource extraction, thus prioritising demand reduction and sufficiency. It is crucial to rigorously scrutinize and evaluate the necessity of these minerals, ensuring that all possible measures are taken to eliminate or minimize the need for minerals wherever feasible.

Lastly, we believe that the European Union and Member States have the responsibility to prioritise the interests of people and the environment over corporate interests. The permitting process of mining projects must properly identify, take into account, and balance multiple interests, including the protection of the environment, human rights, Indigenous Peoples' rights, and people's legal rights more generally.

We hope these guidelines assist you in understanding the procedures under the CRMA, and how you can influence them while ensuring your rights are respected.

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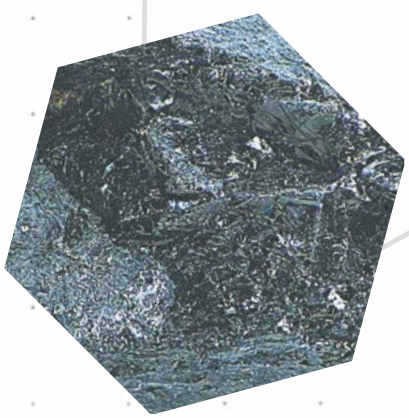


1. Introduction

In December 2023, the European Parliament voted in favour of the *Critical Raw Materials Regulation* (formerly the *Critical Raw Materials Act*, or CRMA), which came into force on May 23, 2024. The central objective of the CRMA is for the EU to secure the supply of raw materials for key industries. European politicians fear that the Russian war of aggression against Ukraine, the economic rise of China, and the USA's Inflation Reduction Act will damage the European economy. At the same time, the CRMA, together with the Net-Zero Industry Act (NZIA) and the reform of the electricity market, is one of the legal flagship initiatives of the European Green Deal, which aims to make the EU climate-neutral by 2050 and fulfil its commitments under the Paris Agreement.

The EU relies heavily on mineral resources from other countries, with dependence on some materials, like rare earths and lithium, nearing 100%. To reduce this reliance on strategic raw materials, the CRMA includes plans to designate Strategic Projects, aiming to secure political support for raw material extraction and processing both within EU Member States and through international partnerships. **Projects granted 'strategic' status will have expedited approval processes and access to public and/or private funding.** The CRMA sets several targets to be achieved by 2030, including the share of domestic, (intra-European) mining, expanding the processing of strategic raw materials within the EU, reducing the dependency on individual countries for specific raw materials, and recovering raw materials through a circular economy with strong focus on recycling.

These so-called benchmarks pose certain risks. On the one hand, the intensification of mining within Europe threatens new conflicts and impacts. On the other hand, the exploitation of raw materials throughout the Global South could further perpetuate global injustices.

These community guidelines will primarily focus on Europe, where the relevant legislation originates and, at the time of writing, most projects seeking Strategic Project status are located on European territory. These guidelines outline the CRMA framework, the criteria for Strategic Projects, and how communities can effectively exercise their rights. Our goal is to ensure that these guidelines empower communities to participate in decision-making processes, ensuring their voices are heard and their rights are respected.

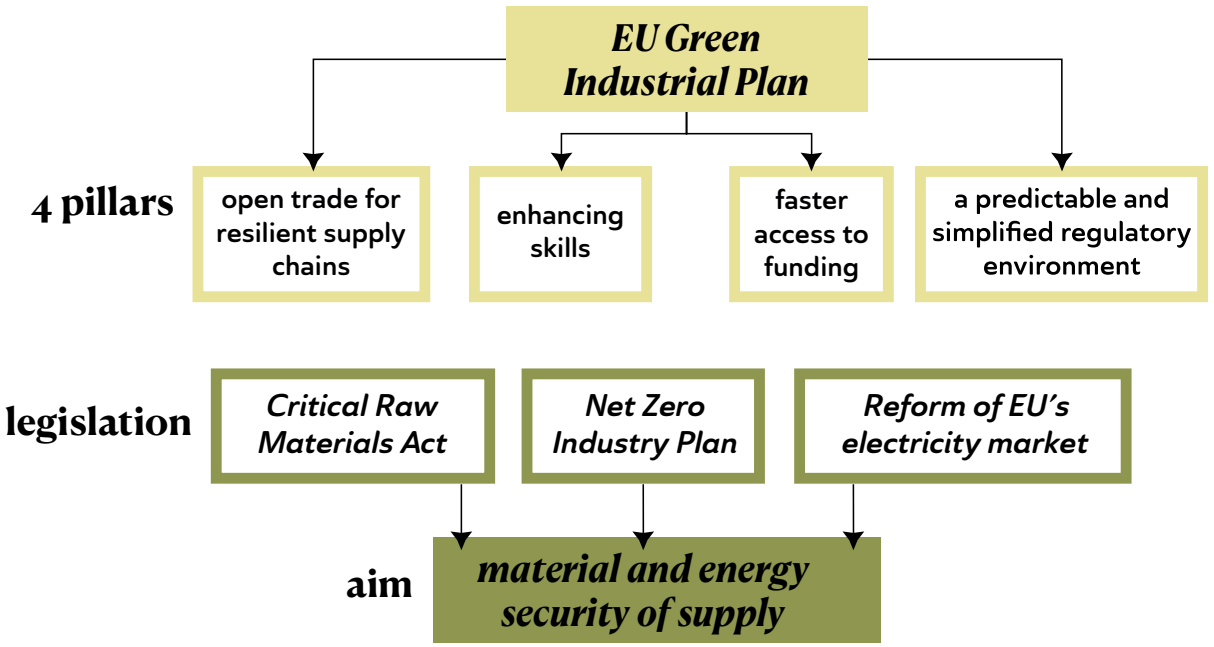
2.

The EU's Green Deal Industrial Plan

This chapter introduces the EU's Green Deal Industrial Plan and the Critical Raw Materials Act, providing context for EU legislation on industrialization and the transition from fossil fuels.

The EU's Green Deal Industrial Plan was created in 2023 to increase the EU's manufacturing capacity and support the EU's clean tech industry and supply chains. A key regulation within this plan is the establishment of a framework for ensuring a secure and "sustainable" supply of critical raw materials, widely known as the Critical Raw Materials Act (CRMA). The term "Act" is informally used before the final format is decided (e.g., regulation, guideline, or directive). Despite being labelled an "Act", the CRMA is ultimately a Regulation. A Regulation is a form of EU law that applies directly and uniformly across all Member States. In contrast, a Directive establishes goals for Member States, and grants flexibility for how these goals are turned into national law.

The CRMA is a crucial piece of the EU's strategy for industrialisation, including achieving the Green Deal's goals of decarbonisation (moving away from the use of fossil fuels). However, as these guidelines will explain, the CRMA's priorities and commitment to private-led growth highlight a lack of adequate environmental, social, and climate justice considerations. The chapters of these guidelines will outline and describe how the CRMA lacks these considerations, and what you and your community should be aware of as a result.



3. The Critical Raw Materials Act (CRMA)

This chapter outlines the CRMA, distinguishing between critical and strategic raw materials, their uses, and the sectors they serve. It highlights ways to reduce raw material consumption in the EU, an aspect overlooked by the CRMA. It also provides clarity on the materials and industries addressed by the CRMA, including potential regional impacts.

The CRMA identifies a regularly reviewed list of 34 critical raw materials, 17 of which are considered strategic (the difference between critical and strategic materials is explained in the section below). The CRMA sets **four benchmarks** to build a resilient and autonomous supply chain for the EU.

The four benchmarks are:

- **EU domestic extraction:** 10% must be derived from local extraction either as a main product or as a by-product;
- **Processing:** 40% of these critical minerals must be processed in the EU;
- **Recycling:** 25% must be sourced from recycled materials;
- **Supply Diversification:** No more than 65% of the EU's annual consumption of the 17 strategic metals should originate solely from a third country.

What are these materials used for?

- **Critical raw materials (CRMs)** are deemed as essential for key industries like renewable energy[1], electronics, and transportation, but they face supply risks due to factors like scarcity or geopolitical challenges. These materials are described as being crucial for economic growth and technological innovation, and it is said that disruptions in their supply could have significant economic impacts.

- **Strategic raw materials,** on the other hand, are said to be not only critical, but vital to national security, making them also strategic. They are described as being indispensable for maintaining military capabilities, energy security, and geopolitical interests according to the EU. Their heightened importance for defence and security is said to make them a national priority for secure supply chains, including stockpiling.

1. It is important to note that the list of critical or strategic raw materials continues to expand primarily due to increasing industrial activity, rather than solely because of the energy transition. These materials are in high demand across a variety of sectors, including construction, agriculture, pharmaceuticals, and defense, among others. Conflating the energy transition with the broader demand for raw materials obscures the reality that economic growth as a whole—not just the shift to renewable energy—is the major driver behind the rising need for critical and strategic raw materials.

Within the CRMA, there are five key sectors that rely heavily on strategic raw materials:

1

Renewables:

The renewable energy sector relies on rare earth elements for wind turbine magnets, and critical materials like indium for solar panels, as well as for energy storage systems;

2

Electric Mobility (e-mobility):

Lithium-ion technologies are crucial for powering electric vehicles (EVs);

3

Industry and Information & Communications Technology (ICT):

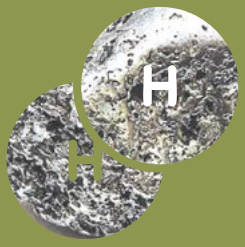
Electronics and telecommunications depend on semiconductors and capacitors made from materials like gallium and tantalum, which enhance device performance;

4

Aerospace and Defence:

Titanium is essential for the construction of aircraft and missiles, while rare earth elements are used in precision-guided munitions and other military applications;

5



Hydrogen Sector:

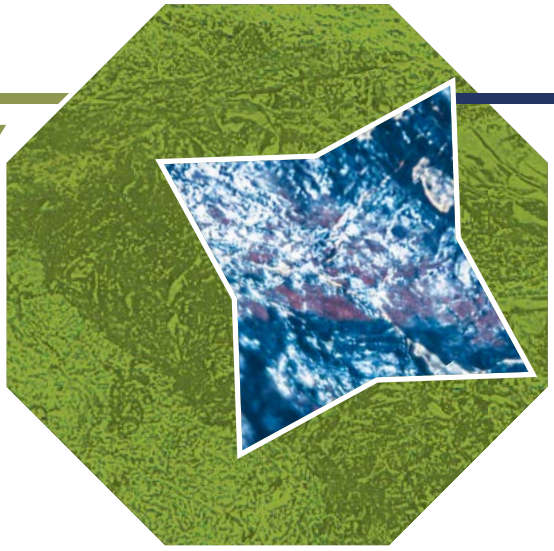
Platinum plays a key role in manufacturing the fuel cells and electrolyzers needed for hydrogen production.

Missing from the CRMA - demand reduction/sufficiency measures:

The CRMA does not include any concrete targets to limit overall EU demand and consumption of strategic raw materials. The EU consumes more than double a sustainable and just level of materials and energy. Continuing this level of consumption means more extraction and more impacts on the environment and on communities all over the world. Examples of demand reduction/efficiency measures are set out in a recent EU Sufficiency Manifesto and include:

- **prioritising public transport over private cars - including electric vehicles given their high energy and resource use;**
- **making more efficient use of existing buildings;**
- **requiring that products with electronic components are more durable, more modular and more repairable;**
- **introducing stronger targets and implementation for sourcing from recycled materials.**

List of Critical and Strategic Raw Materials (2023)



34 Critical Raw Materials

- Economically important to the EU
- High supply risk

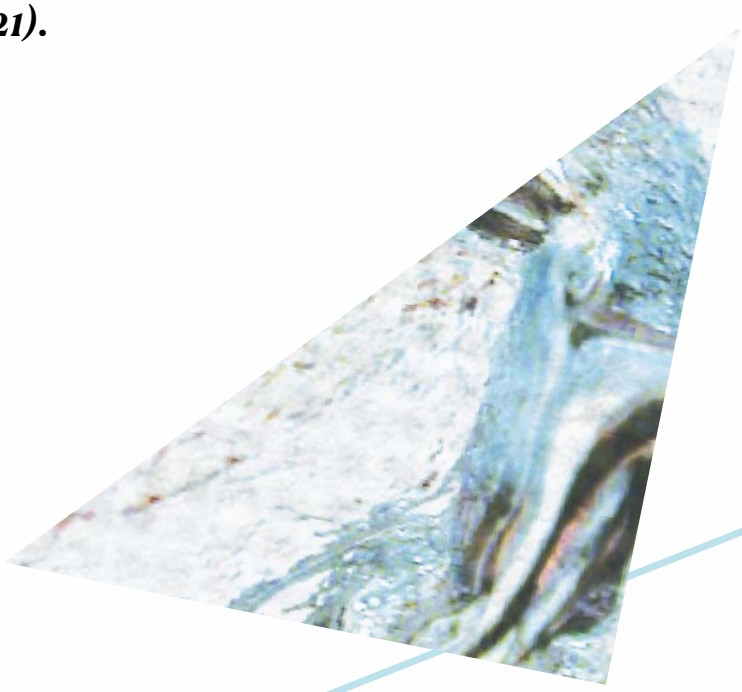
17 Strategic Raw Materials

- Essential for the green and digital transitions as well as for defence and space applications
- Strongly growing demand
- Only a limited increase of their production is possible

4.
Strategic Projects

This chapter details the criteria and process for mining projects to gain or lose Strategic Project status (pp. 14-15, 15-16). It outlines the requirements to prevent and minimize environmental and social impacts, with relevant EU laws listed on p. 15. While certification schemes address sustainability, they remain insufficient and pose risks to human rights and environmental protection (pp. 16-18).

The chapter also highlights the limited public involvement in granting Strategic Project status, with minor consultation opportunities (p. 19). Additionally, the assessment process and Member States' right to veto Strategic Project status are covered (pp. 20-21).



Escalating raw materials' extraction across the EU

The CRMA mandates that each Member State creates a national exploration program for critical raw materials. Additionally, national, regional, and local authorities must include provisions for critical raw material projects in zoning, spatial, and land-use plans. **This effectively prioritises mining exploration, which could potentially allow zoning changes, or override future protected areas, if they are identified as potential mining sites.**

For projects granted strategic status, approval procedures will be fast-tracked, streamlining their application process and facilitating access to public or private financing. Strategic status is especially beneficial for mining companies struggling to secure capital or permits. However, as clarified in Recital 25 of the CRMA, **Strategic Project status is only a label and does not constitute a permit.** Projects will still be required to comply with EU law, including environmental, social, and procedural standards.

Procedure

To obtain strategic status, project promoters must submit an application to the European Commission demonstrating compliance with the criteria outlined below. The application period began in May 2024, with the first cut-off on August 22, 2024. By this date, 170 applications were submitted, covering key CRMA materials like lithium, nickel, cobalt, graphite, and rare earth elements. The projects span the value chain, with **77 focused on extraction, 58 on processing, 30 on recycling, and five on substitution.** Of these, 121 were from the EU, and 49 from outside. Four more deadlines are planned for 2025, with potential extensions into 2026-2027. For more details refer to the **"Timeline of Strategic Projects" on page 22.**

All applications will undergo a completeness check, followed by an assessment by external experts appointed by the European Commission. Based on the results of both, the Commission will draft a list of selected projects for discussion with EU countries during the CRM Board meeting. After receiving a positive opinion from the European Critical Raw Materials Board, the Commission grants projects strategic status, unless the host country objects. The Commission can revoke strategic status if conditions are no longer met or if false information is provided.

Criteria

The CRMA details several criteria[2] to determine the strategic nature of a mining project, including:

- **Contribution to supply security:** whether it would make a meaningful contribution to the security of the supply of strategic raw materials;
- **Technical feasibility:** the project is, or will become, technically feasible within a reasonable timeframe and the expected production volume can be estimated with a sufficient level of confidence;
- **Environmental, Social, and Governance (ESG):** 'sustainable' implementation, which includes monitoring, **prevention and minimisation of environmental impacts** and **prevention and minimisation of socially adverse impacts,** with plans to engage local communities and Indigenous Peoples, prevent and minimise adverse impacts upon human rights and Indigenous Peoples, create jobs, and employ best business practices to inhibit corruption and bribery;
- **Cross-border benefits:** the establishment, operation or production of the project would have cross-border benefits beyond the Member State concerned, including for downstream sectors.

Strategic Projects can also be developed in third countries (countries outside of the EU[3]), including under the so-called Strategic Partnerships - at the time of writing these guidelines (December 2024), the EU has already signed partnerships with 14 countries, including Argentina, Canada, Chile, the Democratic Republic of the Congo, Greenland, Kazakhstan, Namibia, Norway, Rwanda, Serbia, Ukraine, Uzbekistan, and Zambia. It is likely that many more countries will be added to the list in the coming years.

For Strategic Projects developed in third countries, the relevant criteria also include:

- **Mutual benefits:** that the projects are mutually beneficial for the EU and the third country concerned by adding value in that third country.

2. REGULATION (EU) 2024/1252 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020, (Hereinafter, "CRMA"), Article 6.

3. A country that is not a member of the European Union as well as a country or territory whose citizens do not enjoy the European Union **right to free movement,** *as defined in Art. 2(5) of the* **Regulation (EU) 2016/399 (Schengen Borders Code.**

Whether or not the above criteria have been met will be assessed by the Commission, based on elements and evidence listed in the **Assessment of the Recognition Criteria for Strategic Projects (Annex III).** Annex III (5) of the CRMA clarifies that for projects located in the EU, assessing whether the project fulfils the criteria on prevention and minimisation of environmental and social impacts will be determined through both the overall assessment of projects' general compliance with relevant EU or national law, as well as supplementary evidence–with each project's location being taken into account.

For local communities and national decision-makers, it is important to understand the meaning of **prevention and minimisation of environmental and socially adverse impacts** – these elements refer directly to the effects that a project can have on the local environment and communities.

The fulfilment of the criteria on prevention and minimisation of environmental and social impacts will depend on the project's alignment with all relevant pieces of EU law, especially the Environmental Impact Assessment Directive[4], Habitats[5] and Birds Directive[6], Water Framework Directive[7], Industrial Emissions Directive[8], Waste Framework Directive[9], Seveso III Directive[10], Nature Restoration Law[11], EU Biodiversity strategy, as well as the Aarhus Convention[12] and the EU Charter of Fundamental Rights[13].

4. Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended by 2014/52/EU (hereinafter, "EIA Directive").

5. Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora OJ L 206, 22.7.1992, p. 7–50 (hereinafter, "Habitats Directive").

6. Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (Codified version), OJ L 20, 26.1.2010, p. 7–25 (hereinafter, "Birds Directive").

7. Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22.12.2000, p. 1–73 (hereinafter, "WFD").

8. Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

9. Consolidated text: Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives.

10. Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC.

11. REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on nature restoration and amending Regulation (EU) 2022/869 (hereinafter, "Nature Restoration Law").

12. UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

13. CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (2012/C 326/02).

This essentially means that all relevant pieces of EU law that are applicable to permitting and assessing the environmental impact of a mining project, as well as its social impact, such as the protection of human rights or public participation in environmental decision-making, should be considered. Therefore, the obligations embedded within these pieces of EU law should inform the Commission's assessment. The application of some of these pieces of EU law will be explained in more detail in the following chapters.

Lastly, recital 17 of the CRMA states that compliance with relevant EU and national law, international standards, guidelines and principles when relevant, or participation in a certification scheme under the CRMA, should be considered sufficient in fulfilling this criteria[14]

Certification Schemes and the risk of greenwashing

As outlined in the previous section,companies applying for Strategic Project status with the European Commission are required to provide evidence of 'sustainability.'. The European Commission has two approaches for assessing the sustainability criterion[15]:

1. If the project complies with EU legislation or international instruments[16]

2. If the **project provides evidence that they are individually certified** under a recognized industry scheme or by **committing to obtain** such certification[17].

It is crucial to highlight that the second approach should not be considered sufficient to fully meet the sustainability requirements. The CRMA text prioritizes the first approach, stating that compliance with legislation fulfills the criterion, while the second approach is presented as an additional option: "Project promoters may also attest compliance with the criterion."

The second option falls short of adequately fulfilling sustainability requirements and presents significant risks.

14. Recital 17, CRMA.

15. Recital 17 and Annex III (4), CRMA.

16. Annex III (4) and (5)

17. Annex III (4), CRMA.18.

Evidence shows that[18] **certifications alone cannot replace a comprehensive assessment of a company's or project's human rights and environmental performance, nor can they ensure compliance with national and local regulations on human rights, environmental sustainability, and corruption.** Alarmingly, there is a high risk that certification may be used as a substitute for a comprehensive assessment in many cases. For further details, refer to Annex IV of the CRMA, which outlines the criteria for certification schemes.

In response to challenges in the raw materials sector, industry standards have emerged as private, non-governmental initiatives aimed at promoting 'responsible' sourcing. These standards set criteria for human rights and environmental protections in raw material extraction and sourcing. To ensure compliance, companies are often required to obtain certification, usually verified through audits[19]. Certification providers act as intermediaries, assessing and confirming companies' adherence to sustainability criteria both for the public and supply chain partners.

In many cases, these certifications fail to address the systemic issues inherent to extractive industries. This framework often lacks the accountability mechanisms needed to ensure meaningful compliance. They may focus narrowly on specific metrics, such as GHG emissions or water use, while neglecting broader concerns like land rights, cultural heritage, and community well-being. Moreover, they often do not include the voices of rights holders in their audits. As a result, certification risks becoming a superficial exercise that overlooks the deeper social and environmental impacts of mining activities, and can act as a smokescreen, allowing companies to claim sustainability credentials while continuing harmful practices.

Within the CRMA, this overreliance on private certification bodies—especially for projects outside the EU, where EU oversight is limited—outsources the responsibility and power to evaluate whether proposed projects comply with sustainability criteria to entities that may lack robust verification processes, transparency, and multi-stakeholder governance[20]. Such a system undermines accountability and transparency, failing to adequately protect vulnerable communities and the environment.

18. **An Examination of Industry Standards in the Raw Materials Sector (Germanwatch, 2022).20.**

19. **Human rights fitness of the auditing and certification industry?: A cross-sectoral analysis of current challenges and possible responses (ECCHR, 2021).**

20. For more information on the various certification standards in the mining industry, see Germanwatch's detailed examination of industry standards for the raw materials sector: **An Examination of Industry Standards in the Raw Materials Sector.**

Main Concerns for certification schemes:

- **Compliance:** Certification schemes are not able to **adequately** ensure compliance to environmental and social standards
- **Multi-Stakeholder Governance:** Schemes often lack equal decision-making power for civil society, Indigenous Peoples, other rights-holders and local affected communities, which can lead to industry-led initiatives that do not fully address social and environmental concerns
- **Audit Credibility:** The credibility of audits is questioned due to the limited involvement of impacted local populations, including Indigenous Peoples, other rights-holders and local affected communities, which may lead to the potential overlooking of serious human rights and environmental abuses. This can result in certifications that do not guarantee adequate human rights due diligence. Auditing operates in a regulatory vacuum, without effective government regulation, oversight, and accountability
- **Transparency Issues:** There is a lack of transparency in the audit findings of many schemes. Without detailed public reports, it's difficult for external stakeholders to trust the assurance process and its outcomes, increasing the risk of unchecked harmful behaviours
- **Corrective Actions and Grievance Mechanisms:** There are insufficient requirements for corrective actions and a lack of robust grievance mechanisms. This can prevent meaningful improvements in company practices and hinder the remedy of harms caused to rights-holders
- **Race to the bottom[21]:** What has been observed in other sectors and the mining sector is that, often, companies do not choose the best but the cheapest audit scheme. 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
- **Conflict of interest:** private, commercial, and highly competitive nature of the auditing market creates perverse incentives against rigorous auditing practice

21. An Assessment of Third-Party Assurance and Accreditation Schemes in the Minerals, Steel and Aluminum Sectors (Lead the Charge, 2024).

Commission/Board level: Public involvement in the decision on the status of a Strategic Project

According to Article 7(6), the Critical Raw Materials Board (see **"Assessment process: the Critical Raw Materials Board"** below) discusses and issues an opinion on the completeness of an application[22], and whether its proposed project fulfils the Strategic Project criteria, based on a fair and transparent process. The final decision is, then, taken by the European Commission.

Even though the decision on whether to grant the status of a Strategic Project involves environmental considerations[23], the CRMA does not specify how these discussions will be made transparent, especially with regard to the public and local communities of the Member State or third country where the project is intended to be based. There are also no provisions guaranteeing the right of the public, including NGOs and Indigenous Peoples, to participate or express their views in the assessment process before the Board. This creates a risk of decisions being made without adequate input from those directly affected.

However, according to Article 37(8)(b) of the CRMA, the Board will establish a standing subgroup to discuss and exchange views on measures for increasing public knowledge on the critical raw materials supply chain and sharing best practices concerning public participation and stakeholders' involvement in critical raw materials projects. Representatives of civil society organisations must be regularly invited as observers.

Despite this, the Board will hold significant power, with no clear obligation to involve civil society or the public in consultations or assessments. Civil society stakeholders and private actors may only be invited on an ad-hoc basis to address specific issues.

22. *The Council, however, proposes to exclude review of the completeness of the application by the Board, see: 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 - Mandate for negotiations with the European Parliament* **(the Council's General Approach)**, *Article 6(4).*

23. *See Article 7(1)(h) and (i).*

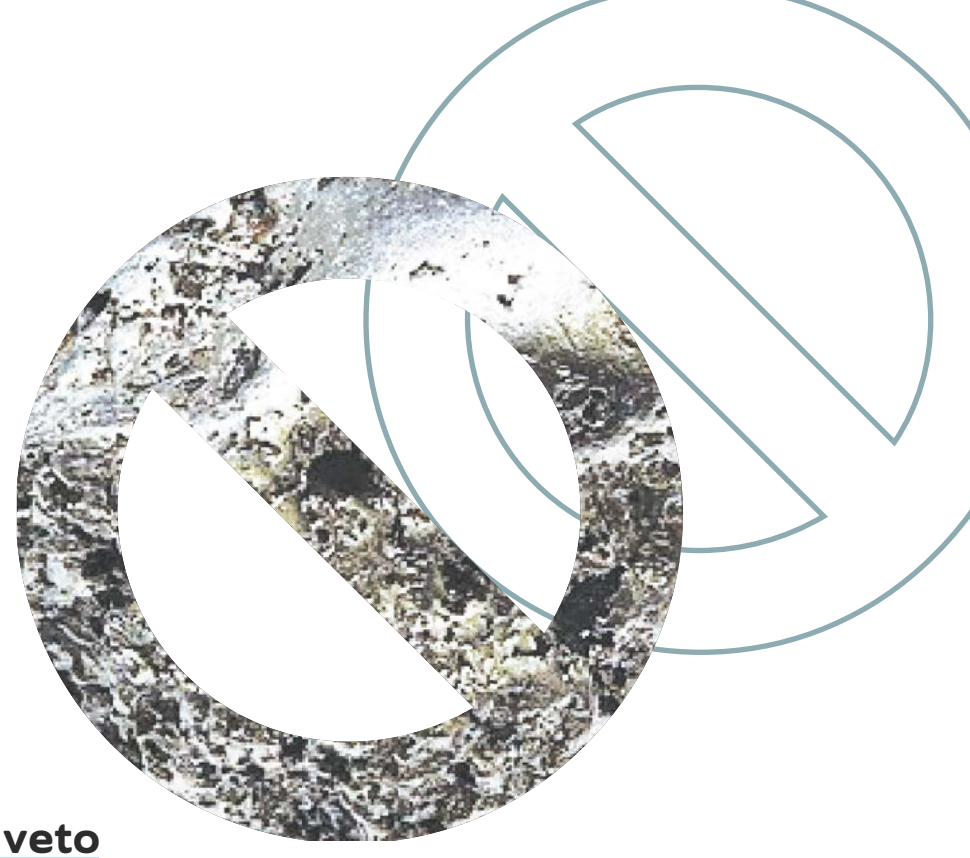
Assessment process: Critical Raw Materials Board

The Board is composed of one political representative per Member State (EU-27) and one representative of the Commission. Their tasks include deciding on the applications for the status of Strategic Projects, the development of monitoring for risk mitigation (stockpiling and joint-purchasing), and monitoring the progress of national exploration programmes.

There will also be subgroups that invite participants and observers: private financial institutions, national geological institutes or surveys, national supply and information agencies covering critical raw materials, financing, national emergency and stockpiling agencies, and representatives of the European Parliament. When appropriate, the Board may invite experts, NGOs, other third parties, or representatives of third countries to attend meetings of the standing or temporary sub-groups.

After the project promoter sends their application for a Strategic Project to the European Commission, the Commission informs the Board of all complete applications. The Board then discusses and issues an opinion (votes) on whether the proposed projects fulfil the assessment criteria, based on the opinion of the European Commission[24].

24. *The Board will periodically discuss the implementation of the one-stop-shop and share best practices for the purpose of accelerating the permitting procedure for critical raw material projects, as well as to improve public participation and consultation in those projects.*



Member States' right to veto

Private promoters (in this case, mining companies) apply to the European Commission for Strategic Project designation. If granted, the Strategic Project designation elevates private undertakings to **public interest status** and entitles them to a one-stop-shop for planning and development consent with set timelines for planning permission. Member States reserve the right to veto the designation of a project as strategic within their territory before the decision is taken.

It is important that you contact your national authorities with any reasons why a Strategic Project should not be approved. The contacts of the Board's administrations in the Member States, meeting schedule and minutes, as well as the Rule of Procedures and Terms of References) are now available on our website at the following address:

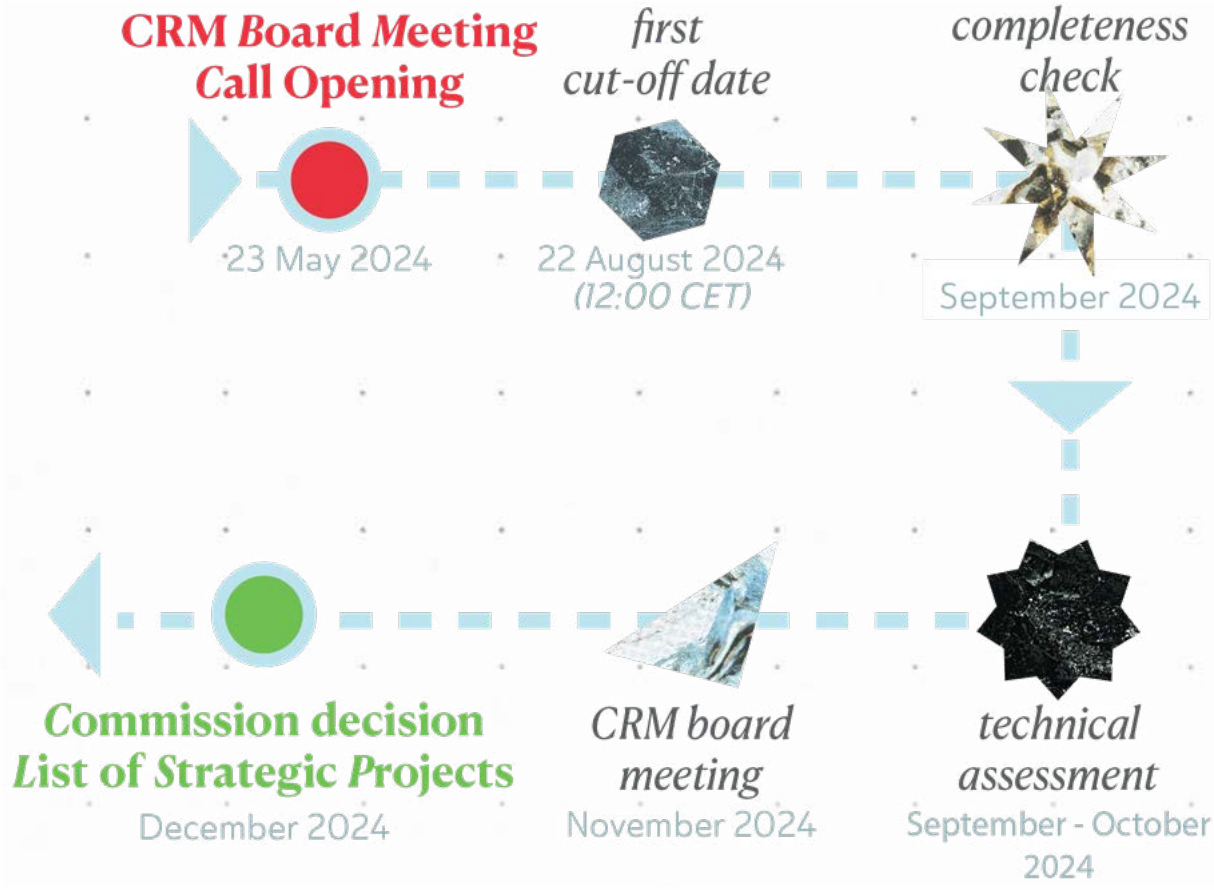
The European Critical Raw Materials Board

The European Commission set up a Strategic Projects Helpdesk for project promoters (mining companies):

grow-crma-strategic-projects@ec.europa.eu

If you have important environmental or social information that the mining company and your local/national authorities have ignored/disregarded, you can submit it to this email address.

Timeline for Strategic Projects for the Commission



Source: European Commission Timeline for Strategic Projects

The first list of Strategic Projects will most likely be announced in the beginning of 2025. There will be more lists in the future. Follow the Commission website to be up to date with future cut-off deadlines: Strategic projects under the CRMA.

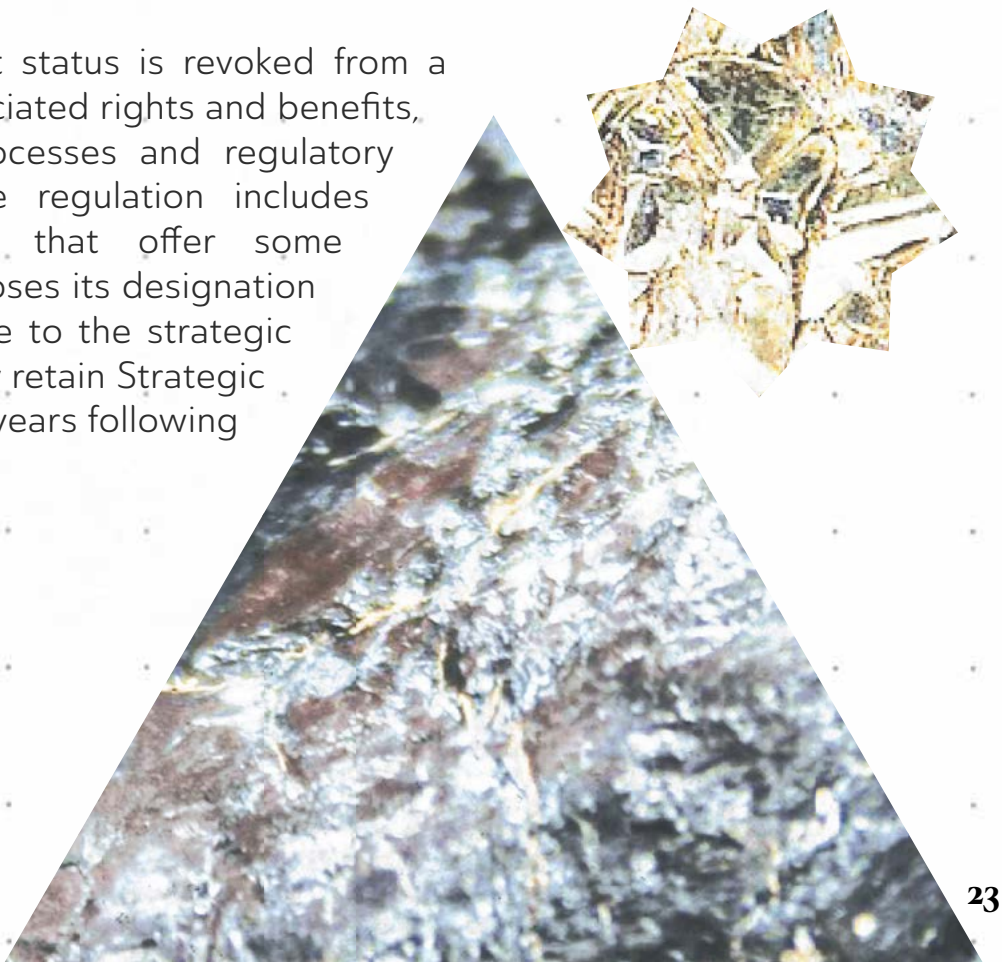
Additionally, experts within the European Commission may request site visits to the project site "if relevant", **which could be an opportunity to talk to the people deciding on the Strategic Project.** Stay vigilant in case a site visit takes place–it might be difficult to know if/when this happens, as the mining company will likely not inform you in advance.

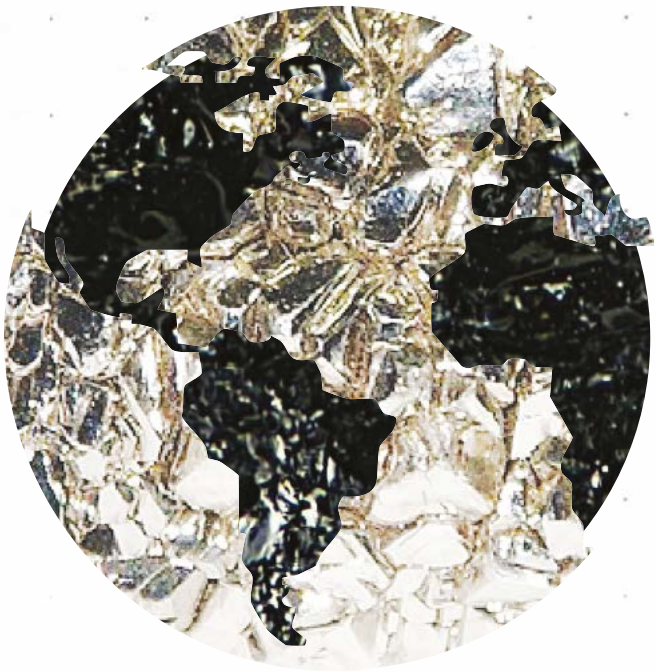
Loss of Strategic Project status

A project may lose its designation as a Strategic Project under specific conditions outlined in the regulation. First, the Commission can withdraw recognition if it determines that a project no longer meets the established criteria detailed in Article 6(1) of the CRMA. This can occur if changes in the project's status, viability, or compliance lead it to fall short of the initial requirements. Such situations underscore the importance of maintaining ongoing alignment with the regulation's criteria to retain Strategic Project status.

Additionally, **the Strategic Project designation may be revoked if it is found that the initial application contained incorrect information that influenced the selection.** This emphasises the need for accuracy and transparency during the application process, as any misleading information can jeopardise the project's status. The regulation mandates that the Commission consult with the Board and the project promoter before making a final decision on withdrawal. This consultation provides the project promoter an opportunity to address any findings that could impact the project's designation.
If the Commission decides to proceed with withdrawal, it must notify the project promoter and provide clear reasons for its decision. The project promoter is then given a chance to respond, ensuring that their perspective is considered before a final determination is made.

When Strategic Project status is revoked from a project, it loses all associated rights and benefits, such as expedited processes and regulatory support. However, the regulation includes transitional provisions that offer some continuity: if a project loses its designation solely due to an update to the strategic raw materials list, it may retain Strategic Project status for three years following the update.





5. Strategic Projects in Third Countries or Overseas Countries and Territories (OCTs)

Guidance on qualifying criteria and required international instruments can be found on pp. 25-26, along with discussions of their environmental and social limitations (pp. 27-28).

Guidelines for public engagement and the opportunities and challenges for civil society to raise complaints are outlined on pp. 29-30. For details on how 'value addition' is measured in third country projects, and how it should be assessed, see p. 30.

National Legal Framework Compliance

The process for awarding Strategic Project status in third countries is less clearly defined than within the EU. Compliance with sustainability criteria in third countries relies on the project's adherence to applicable national laws and various international instruments listed in Annex III (5) of the CRMA. Similar to the veto rights granted to EU Member States, third countries must provide "explicit approval" before a project can be designated as strategic

The Commission's "Strategic Projects under the Critical Raw Materials Act - Guide for Applicants" *provides an outline of the required compliance steps:*

- **Outline Legal Requirements:** Companies must briefly outline the relevant legal requirements applicable to a project's location;
- **Demonstrate Compliance:** Companies must describe how they have met or plan to meet these requirements. If a project exceeds these minimum requirements, they must indicate this as well;
- **Provide Supporting Evidence:** Companies need to reference any permits, pending applications, environmental impact assessments, or relevant certifications to substantiate their compliance.

International Standards Compliance

Companies must show the specific international standards that cover each sustainability criterion and how their project adheres to these requirements (as per Annex III of the CRMA).

Relevant standards include:

1. ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy;
2. OECD Due Diligence Guidance for Responsible Business Conduct, in particular, the guidelines related to combating corruption;
3. OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from ConflictAffected and High-Risk Areas;
4. OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, including where referring to the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples (explained below);
5. OECD Principles of Corporate Governance;
6. OECD Guidelines for Multinational Enterprises on Responsible Business Conduct;
7. UN Guiding Principles on Business and Human Rights;
8. IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement.

Annex III of the CRMA notably excludes key environmental and biodiversity instruments[25], such as the **Bern Convention[26], Ramsar Convention[27] or Convention of Biological Diversity[28],** which are essential for ensuring the prevention or minimization of environmental and social impacts. This omission raises doubts about whether the existing Annex III criteria are sufficient to comprehensively assess and effectively address the environmental (particularly nature-related) and social implications of third-country projects.

25. The list of international instruments in Annex III includes the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct regarding corporate accountability in relation to the environment, covering the issues of climate, biodiversity and animal welfare. However, it remains unclear whether the other international instruments listed in Annex III are stringent enough to effectively prevent and minimize environmental and social impacts.

26. Convention on the Conservation of European Wildlife and Natural Habitats - **https://www.coe.int/en/web/bern-convention**

27. Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention), **https://www.ramsar.org/**.

28. Convention on Biological Diversity, **https://www.cbd.int/**.

Environmental Impacts

Companies must assess their projects' environmental impacts across several categories, including:

- **Air:** pollution (e.g., greenhouse gas emissions)
- **Water:** marine and freshwater pollution, usage, quantities, and access
- **Soil:** pollution, erosion, and land degradation
- **Biodiversity:** habitat, wildlife, and ecosystem protection
- **Hazardous Substances, Noise/Vibration, Plant Safety, Energy Use, and Waste Management**

Social impacts and Indigenous Peoples

Within a third country project application, the description must include the ways in which the project will ensure respect for human rights, Indigenous Peoples' rights (particularly in the case of involuntary resettlement), and labour rights. Companies should provide examples of stakeholder engagement, local support for the project, and the level of public awareness of the project's existence.

- If the project has the potential to affect Indigenous Peoples, the company summary must include a plan containing measures dedicated to **a meaningful consultation of the affected Indigenous Peoples** regarding the prevention and minimisation of any adverse impacts on Indigenous rights and, where appropriate, fair compensation for Indigenous peoples, as well as measures to address the outcomes of this consultation. If these concepts are addressed by the national law applicable to the project, the plan could instead describe such measures. Providing this plan is a requirement according to Art. 7(1)j of the CRMA. For more information on Indigenous Peoples, please see Chapter 6: Indigenous Peoples Rights (UNDRIP and ILO 169) of these guidelines;
- The company must describe how meaningful engagement with local/affected communities and relevant social partners is carried out (see section on meaningful engagement below). A company must, also, list all concrete measures, and their status, for facilitating public acceptance of a plan. Providing this plan is a requirement according to Art. 7(1)d of the CRMA;
- A company must provide a summary of potential quality jobs that will be created by the project (directly and indirectly). The company must also describe how they would support any necessary upskilling and/or reskilling. These are requirements according to Art. 7(1)g of the CRMA (see value addition box, p. 19).

Plan of community engagement: meaningful engagement according to the OECD

For Strategic Projects in third countries, one of the criteria that should be assessed is compliance with the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector. The OECD Guidelines are designed to help companies and governments engage effectively with stakeholders, especially those affected by their operations. As part of the broader OECD Guidelines for Multinational Enterprises, they establish standards for responsible business conduct, with a focus on transparency, inclusivity, and respect for human rights. Companies are expected to follow the outlined principles to demonstrate strong compliance[29].

- **Define Clear Objectives and Train Personnel:** establish engagement goals aligned with corporate policy and endorsed by senior management. Ensure all personnel interacting with stakeholders are trained in cultural sensitivity, respectful behaviour, and prohibition of manipulation;
- **Provide Transparent Information and Document Engagement:** share clear, timely information about operations, impacts, and grievance mechanisms with stakeholders, balancing transparency with privacy. Document all engagement activities, including feedback, agreements, and progress updates;
- **Develop and Consult on Grievance Mechanisms:** implement accessible, fair, and transparent grievance mechanisms tailored to the project. Consult stakeholders on appropriate forms of remediation for adverse impacts, such as compensation or rehabilitation, ensuring fairness and conflict prevention;
- **Maintain Accountability and Report Regularly:** track commitments through a register to ensure follow-through. Report regularly to stakeholders on commitments, the integration of their feedback, and any outstanding issues;
- **Address Capacity Constraints and Engage Inclusively:** support local authorities and community leaders in overcoming capacity constraints. Adopt an inclusive engagement approach to ensure all stakeholder voices are considered and addressed.

The OECD guidelines include annexes dedicated to engaging specific groups, such as women, artisanal miners, and Indigenous Peoples. **Failure to comply with these guidelines can serve as evidence for civil society to file complaints with national authorities,** highlighting non-compliance with the OECD's Due Diligence Standards for Meaningful Stakeholder Engagement.

29. For more information on public consultation for projects in the EU, please refer to Chapter 8.

Implementation Challenges with OECD Guidelines

The OECD Guidelines for Meaningful Stakeholder Engagement are **not enforceable before national courts and enforcement possibilities can vary significantly from country to country.** The National Contact Points (NCPs), which are set up to handle grievances, often lack the authority, resources, and independence needed to provide effective redress and may be slow to respond, lack transparency, and have inadequate remedies. There are no fixed penalties for non-compliance, which can also limit their effectiveness. Companies might also interpret or apply these guidelines inconsistently, leading to gaps in their implementation.

The OECD guidelines, also, do not fully address the power imbalances between multinational enterprises and local communities–they can also lack a focus on the broader socio-political contexts that affect engagement and can often overlook grassroots movements that are essential for authentic engagement.

However, despite their limitations, the OECD guidelines still carry significant moral and reputational weight, particularly in global markets where responsible conduct is being increasingly demanded, and can be a useful tool for seeking redress.

Value Addition

The CRMA includes the concept of "value addition", particularly for third-country projects. However, the term is vague and lacks a clear definition. It primarily focuses on financial aspects like increased payments, yet it overlooks a broader perspective. True value addition requires economic diversification, social and infrastructural investments, and cultural preservation. This means that to build resilient economies, investment is needed in sectors beyond mining, such as agriculture and education. In addition, preserving cultural heritage is essential for Indigenous Peoples and local communities. Lastly, technology transfers and sustainability measures like reforestation, water management, and soil conservation are crucial. These combined efforts would ensure that value addition goes beyond financial gains, fostering long-term, inclusive, and sustainable development in host countries.

6. Indigenous Peoples Rights and Local Communities

This chapter covers the UN Declaration on the Rights of Indigenous Peoples and Free, Prior, and Informed Consent, which require Indigenous Peoples' consent for projects affecting their land, resources, or rights (pp.32-34). However, enforcement is weak, as companies often prioritize profit over Indigenous rights (p. 35). The CRMA's provisions for projects impacting Indigenous communities are detailed on pp. 35, offering useful insights for your community.

Who are Considered Local Communities?

Indigenous Peoples are entitled to collective rights such as the right to lands and territories and Free, Prior and Informed Consent, as distinct, self-determining Peoples. In contrast, local communities are not uniformly defined and do not inherently possess specific collective rights. **Indigenous Peoples and their rights under international law should not be conflated with local communities or other rights holders.**

Some definitions of local communities available refer to *"any community of people living or having rights or interests in a distinct geographical area;...a group of individuals who have settled together and continuously inherit production processes and culture or a group of individuals settled together in a village or area and under an eco-cultural system*[30]*."* The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) has defined local communities as *"non-indigenous communities with historical linkages to places and livelihoods characterized by long- term relationships with the natural environment, often over generations*[31]*."*

Currently, the rights available to individuals, local communities, affected communities, NGOs and other members of the public that are legally binding on Member States and the EU are the rights explained in chapter 8 and 9.

Indigenous Peoples and their rights under international law

It is important to note that the OECD's interpretation of meaningful stakeholder engagement, while influential, is not legally binding and lacks the enforceability of international human rights frameworks like the ILO Convention 169 (ILO c169), which is a legally binding international treaty that protects the rights of Indigenous and Tribal Peoples. The Convention emphasizes their rights to land, self-determination, and cultural preservation, and requires governments to consult them in good faith and obtain their **Free, Prior, and Informed Consent (FPIC)** for projects

30. Definitions gathered by Law insider, an international legal resource, available at **https://www.lawinsider.com/dictionary/local-community**

31. IPBES, 2020

affecting their lands or resources. The OECD emphasises concepts such as two-way communication, good faith engagement, and responsiveness, which are valuable principles, but fall short of the stronger protections offered by **FPIC** as enumerated **by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**, which although not enforceable, has been endorsed by all 193 Member States of the United Nations.

UNDRIP and the Indigenous and Tribal People Convention (ILO c169) provide a right to Indigenous Peoples to self-determination through Free, Prior and Informed consent and the right to possession of their lands. ILO C169, which is legally binding (i.e., can be used in court) is not mentioned in the CRMA and has not been ratified by most EU Member States. However, **the CRMA does say that for the recognition of a project as strategic, one of the criteria to be assessed is the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector and the principles set out in the UNDRIP.** Although UNDRIP is non-legally binding, it is still expected to be considered by the CRM Board during project evaluations.

FPIC is a framework that applies to Indigenous Peoples under international law. This framework is a cornerstone of Indigenous Peoples self-determination. It requires governments and companies to seek the explicit consent of Indigenous Peoples before proceeding with activities that impact their lands, territories, or livelihoods. This framework ensures that decisions are made without coercion, on a timeline that respects Indigenous Peoples' cultural practices, and with access to all necessary information to make informed decisions. Yet, in practice, FPIC remains inconsistently applied. There are few recognised Indigenous Peoples within the EU and Overseas Countries and Territories (OCTs), and many Member States have troublesome relationships with Indigenous communities. For example, Sweden did not endorse the ILO c169 and the Sami Peoples are confronted strongly with the violation of their FPIC rights, including with mining projects for the energy transition.

32. The European countries that signed are: Denmark, Germany, Netherlands, Norway, Spain and Luxembourg.

33. For specific recommendations on Indigenous Peoples rights, see Cultural Survival and First Peoples Worldwide's guide, **Securing Indigenous Peoples' Right to Self-Determination: A Guide on Free, Prior and Informed Consent.** *This guide is meant to support Indigenous leaders in developing protocols and processes for their FPIC priorities, both within their communities and with external parties.*

34. Cambou, D., & Ravna, Ø. (2023). The significance of Sámi rights. In Routledge eBooks. **https://doi.org/10.4324/9781003220640**

What Does Free Prior and Informed Consent mean?

- **Free** means that there is no coercion, intimidation, or manipulation;
- **Prior** implies that consent is to be sought sufficiently in advance of any authorization or commencement of activities and respect is shown to time requirements of Indigenous consultation/consensus processes before decisions are taken;
- **Informed** means that Indigenous Peoples receive all information, including: the nature, size, pace, reversibility, and scope of any proposed project or activity; the purpose of the project as well as its duration; locality and areas affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks; personnel likely to be involved in the execution of the project; and procedures the project may entail;
- **Consent** means that there is a collective decision made by the Indigenous Peoples, reached through customary decision-making processes of the Indigenous community. Consultation and participation are crucial components of a consent process, and Indigenous Peoples should specify which representative institutions are entitled to express consent on behalf of the affected peoples or communities. This process may include the option to say yes, yes with conditions, or no.

It is still challenging for Indigenous communities to negotiate with authorities or decide on their rights because of historical colonisation and other imposed limitations. FPIC is a legal model for public participation engagement that can inspire other models which are not limited to Indigenous Peoples, but are more broadly focused on all affected communities (including land belonging to minority groups or traditional communities)[35]. Its application in practice, however, also serves as a case study on the complexity of public participation approaches in mining-related decision-making. This model is not only about consent, but also about good faith from authorities and the utilisation of a community-centred approach. However, the lack of serious enforcement of FPIC continues to be an issue, with the green energy industry usually not doing enough to inform Indigenous communities about upcoming projects, and prioritising profits over human rights[36]. The same happens with local and traditional communities around the world.

So, what does this mean for (potential) Strategic Projects in my region?

The CRMA says that for projects with the potential to affect Indigenous Peoples, there should be:

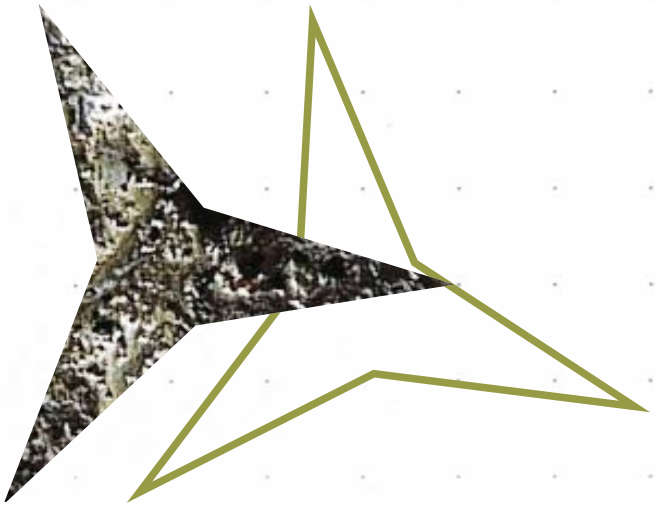
- A plan containing measures dedicated to a meaningful consultation (as defined by the OECD/UNDRIP) with the affected Indigenous Peoples about the prevention and minimisation of the adverse impacts, in particular in the case of involuntary resettlement, on Indigenous rights and, where appropriate, fair compensation for those peoples, as well as measures to address the outcomes of the consultation.

The plan must also include:

- Examples of stakeholder engagement (affected communities are stakeholders);
- Evidence of local support for the project;
- The level of public awareness of the project's existence;
- If these concepts are addressed already by the national law applicable to the project, the plan could instead describe such measures. It is important for you to know what your national law says about this.

35. Traditional communities can be defined as communities or peoples that maintain livelihoods, beliefs and values, knowledge, languages and institutions in some continuity with the past. The term is used to underline the existence of historical rights to lands, water and other natural resources. Traditional communities are associated with traditional knowledge, that is, a living body of knowledge that can "provide information, methods, theory and practice for sustainable ecosystem management". (IPBES Glossary, definition of Indigenous knowledge/local knowledge systems, available online at **https://www.ipbes.net/glossary**).

36. **Recharging Community Consent: Mining companies, battery minerals, and the battle to break from the past (Oxfam, 2023).**



7.

National Level Assessment: Priority Status and Permit Timelines for Strategic Projects in the EU-27

This chapter outlines the accelerated permitting process for Strategic Projects in the EU. A designated 'single point of contact' assists project promoters, and information on this authority in your country is available on p. 37. The expedited timeline is detailed on p. 38-39, along with the obligation for project developers to comply with EU and international laws, such as preparing environmental assessments (pp. 48-49).

The CRMA's requirement for project promoters to involve affected communities is discussed (p. 40), as is the classification of Strategic Projects as 'in the public interest' (pp. 40-41). This classification may relax certain environmental protections in the name of public interest or safety, raising concerns and risks (pp. 42-46). Conditions for such exemptions are outlined on pp. 42-46. However, Strategic Projects must still undergo relevant environmental assessments, with details on their scope and implications on pp. 47.

A big reason why project promoters (mining companies) would want to seek out Strategic Projects is due to the fast-tracking and streamlined permitting benefits, as well as financing. After a Strategic Project has received approval from the Board, Strategic Projects will benefit from a priority status, or a status of **"highest national significance possible"** in the national permitting procedure of the Member State it is located in. They will receive expedited treatment by national authorities through the avoidance of duplication of studies or permits, unless otherwise required by EU or national law[37]. Strategic Projects will also be considered to be in the public interest or serving public health and safety, and they may qualify as projects of overriding public interest. Despite potential negative environmental impacts, particularly due to limited alternative locations, such projects can proceed if they comply with the conditions set out in the Habitats Directive (92/43/EC), Water Framework Directive (2000/60/EC), Birds Directive (2009/147/EC), or the Nature Restoration Regulation.

What is a 'single point of contact?'

The commitment to simplify permit-granting for any critical raw mineral project falls on the authority designated by the EU Member States' regulation, known as a 'single point of contact'. This 'one-stop shop' entity will assist the project promoter and coordinate and facilitate the permitting process, providing relevant information on key elements of this process.

Member States may have more than one of these single points of contact, and these permitting authorities can be a new entity or an existing authority at the local, regional, or national level. Member States must ensure that these points of contact have sufficient human, financial, technical, and technological resources to effectively exercise their duties, and that project promoters work with a single entity whose details and relevant information must be easily accessible online. **Find out who is the single point of contact in your country.**

37. *This duplication often arises because different authorities—local, regional, or national—may require overlapping assessments for aspects like environmental, social, or economic impacts.*

National Permit Granting Procedure

The permit granting procedure has been accelerated in the CRMA. According to Article 11(1), Strategic Projects' permit granting procedures[38]:

- Shall not exceed 27 months for Strategic Projects involving **extraction;**
- Shall not exceed 15 months for Strategic Projects involving **processing or recycling;**
- Will have a shorter duration for Strategic Projects that **had already entered the permit-granting process** before being recognised as strategic, as well as for extensions of existing Strategic Projects that have already received a permit:
  - The permit granting procedure for such projects shall not exceed 24 months for projects involving extraction and 12 months for projects involving only processing or recycling[39];
- **In exceptional cases,** extensions of up to six months for extraction and three months for recycling projects may be granted if the nature, complexity, location, or size of the Strategic Project warrants it. Member States may authorise such extensions on a case-by-case basis, provided they do so before the original deadline.

The duration of the permit-granting process does not account for the time taken by the developer to prepare the environmental impact assessment report under the EIA Directive.

Assessments required during the permit-granting procedure, such as the appropriate assessment[40] under the Nature Directives or assessment on the water bodies under the WFD, **should also be understood to fall under project requirements and should not be subject to shorter deadlines.** This is because all assessments related to permit-granting need to be consolidated through a joint or coordinated assessment procedure, as required under Article 12(2) of the CRMA.

38. These timelines apply specifically to projects within EU-27 Member States. For projects outside the EU, there are no specific timelines, as the EU cannot override a country's sovereignty. The timelines for Strategic Projects, including those related to public participation, will depend on the national legislation of each country. For more information on international policies or details on a specific country, visit the International Energy Agency's policy database: **Policy database – Data & Statistics - IEA.**

39. Article 11(1)(2), CRMA.

40. An appropriate assessment under the Water Framework Directive (WFD), Birds Directive, and Habitats Directive ensures that proposed projects do not harm the status of water bodies, protected species, or habitats. It evaluates risks of ecological deterioration, including impacts on biodiversity and conservation areas, while considering cumulative effects. The assessment promotes sustainable use of resources and includes public participation. If necessary, mitigation measures are outlined to prevent adverse effects. These assessments are typically part of broader environmental evaluations such as the EIA and SEA directives. For more information: **refer to this link.**

Furthermore, considering that there is no hierarchy between different legislative acts at the EU level, EU legislation should be coherent across all EU law, ensuring that various acts operate consistently with one another[41]. This is also confirmed in Article 11(10) of the CRMA, where it is stated that **such shorter time limits do not override obligations under EU and international law,** and they do not interfere with the right to administrative appeals or legal actions in court.

This also indicates that the preparation of other reports and assessments (other than the EIA report), deriving from EU law (e.g. appropriate assessment), or international law (e.g. Espoo Convention[42] in case of transboundary environmental impacts, or Aarhus Convention), **are not subject to these shorter deadlines.**

So, what does this mean for Strategic Projects in my region?

It is crucial to note that although the permit granting procedure has been accelerated in the CRMA, which may create challenges for national decision-making authorities, shorter deadlines do not encompass the time required for preparing the environmental impact assessment report. This also applies to the time needed for conducting the appropriate assessment under the Nature Directives and assessment of impacts on water bodies under the WFD.

The Regulation, also, ensures that the EU's international obligations are still fulfilled when permitting mining projects, which means that some of the international instruments– such as the Espoo Convention, Kyiv Protocol[43], or the Aarhus Convention–still need to be fulfilled, therefore assessments or environmental reports prepared under these conventions should, also, not be included in these shorter deadlines.

41. See, Article 7 of TFEU and Melina Malafry, 'Renewable Energy Activities – Overriding the Interest of Biodiversity?', p. 167. In: De Lege: Hållbarhet ur ett rättsligt perspektiv / [ed] Mattias Dahlberg, Therése Fridström Montoya, Mikael Hansson och Charlotta Zetterberg, Uppsala: Iustus förlag, 2022, p. 159-194.

42. Convention on Environmental Impact Assessment in a Transboundary Context, 1989 UNTS 309, 30 ILM 800 (1991), Espoo Finland, (Hereinafter, "Espoo Convention").

43. UNECE Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (Kyiv, 2003).

Rushed Participation and Lack of Environmental and Community Safeguards

Despite obligations to address human, community, and Indigenous rights, and to comply with the Aarhus and Espoo Conventions, **fast-tracked procedures risk compromising these rights and environmental protections.** Genuine support is crucial for project success, requiring transparent, meaningful engagement with affected communities. A just transition must avoid "citizen washing"[44] by ensuring consultations and environmental impact assessments give all stakeholders sufficient time to participate and to provide or withhold an informed opinion.

However, it is important to note that public participation under the Aarhus Convention is an obligation of Member State authorities. In addition to public participation, the CRMA also requires project promoters to engage with stakeholders, including local communities during the Board/Commission level assessment. Article 7 outlines the criteria for projects to be recognized as strategic and emphasises the importance of "meaningful engagement" with affected communities (article 7.1(d)), particularly Indigenous Peoples (Article 7.1(j)). This article is crucial, as it **requires project promoters to actively involve affected communities in development processes.** Promoters must develop a comprehensive plan that includes measures to ensure genuine involvement, such as establishing regular communication channels with local communities and authorities, conducting awareness-raising and information campaigns, and, where necessary, implementing mitigation and compensation mechanisms to address any adverse impacts on these communities.

Meaningful stakeholder engagement is not just a box-ticking exercise, though there are many cases where they have been portrayed as such. Instead, it requires good faith from all parties, with enterprises demonstrating a genuine willingness to understand and address stakeholder concerns, rather than merely going through the motions. Stakeholders, too, must be allowed to represent their interests in a safe environment without fear of dismissal or manipulation. Moreover, engagement must be more than lip service—it must lead to concrete actions, including addressing adverse impacts and offering remedies where necessary. Anything short of ongoing, responsive engagement throughout the project's life cycle risks eroding trust and perpetuating harmful practices.

What does EU law say about "Overriding Public Interest"?

According to Article 10(2) of the CRMA, are deemed to serve the public interest or address public health and safety, provided they meet all conditions outlined in the Habitats Directive, Water

44. See **Citizenwashing – the Greenwashing of Democracy,** *case study 2.3: "Covas do Barroso Mining Project EIA"*

Framework Directive, Birds Directive, or Nature Restoration Law. All provisions referred to in Article 10(2) of the CRMA relate to instances where the exceptional relaxation of the obligations to protect the integrity of the Natura 2000 site, protected species (Habitats and Birds Directives), and water bodies (Water Framework Directive) may be allowed. These provisions also involve unique tests for determining whether these exemptions from protecting nature and water are allowed (e.g., being in the overriding public interest).[45]

The phrase "public interest or serving public health and safety" is mentioned in the Habitats Directive under Article 6(4), which **allows for exceptions** to the general rules of protecting the integrity of Natura 2000 sites (under Article 6(3)), and Article 16, which allows exemptions to the provisions on the protection of species (under Article 12). A similar term is included in Article 9(1)(a) of the Birds Directive, which deals with instances where strict protection rules on bird species can be relaxed. However, the meaning of public interest or serving public health and safety has not been defined by these directives. **Yet, the CRMA declares that all Strategic Projects are in the public interest or serve public health and safety as a matter of law.**

The Habitats Directive also uses the term "imperative reasons of overriding public interest" (IROPI) in Articles 6(4) and 16, whilst a similar term is used in Article 4(7) of the WFD, which regulates exemptions from the requirement to prevent further deterioration, or to achieve good status, of water bodies. However, this term is not defined in either of the directives nor has the Court of Justice of the European Union (CJEU) provided any rulings that clarify its meaning, which means that **it is left to the Member States to decide if the project could be in overriding public interest[45].**

Declaring certain projects as being in the "public interest or serving public health and safety", and suggesting they may have an overriding public interest, raises significant concerns. For instance, it undermines the project-specific assessments required by nature protection laws, potentially weakening their effectiveness, as it limits decision-makers' ability to thoroughly evaluate whether these projects truly serve the public interest or public health and safety. It is crucial to emphasise that meeting this criterion is only **one of several conditions required** to comply with the relevant provisions of nature protection laws.

For instance, concerning species protection, if a project would be likely to have an impact on animal species listed under Annex IV of the Habitats Directive, then Article 12 of the Habitats Directive also applies, and such a project can only be allowed in limited situations that are prescribed under Article 16 of the Habitats Directive.

45. However, an overview of assessments of the CJEU on how the concept could be interpreted can be found in: Melina Malafry, 'Renewable Energy Activities – Overriding the Interest of Biodiversity?', p. 180. In: De Lege: Hållbarhet ur ett rättsligt perspektiv / [ed] Mattias Dahlberg, Therése Fridström Montoya, Mikael Hansson och Charlotta Zetterberg, Uppsala: Iustus förlag, 2022, p. 159-194

Derogations from species protection under the Habitats Directive

Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate:

a. In the interest of protecting wild fauna and flora and conserving natural habitats;

b. To prevent serious damage, in particular to crops, livestock, forests, fisheries, water and other types of property;

c. In the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;

d. For the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants;

e. To allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV of the Habitats Directive in limited numbers specified by the competent national authorities.

The failure to respect any one of these conditions may render a derogation invalid. The competent national and other authorities or conservation bodies must therefore carefully examine all general and specific requirements before granting a derogation from species protection provisions[46].

Also, Article 9(1)(a) of the Birds Directive lists reasons for why Member States may derogate from key substantive requirements of the directive, such as the need to establish a bird species protection system.

46. Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC, Final version, February 2007, p. 51.

Derogations under the Birds Directive

Provided there "is no other satisfactory solution" enabling compliance with these requirements, derogations are allowed for specific reasons, such as:

- In the "interests" of public health and safety;
- In the interests of air safety;
- To prevent serious damage to crops, livestock, forests, fisheries and water; and
- For the protection of flora and fauna.

Therefore, Strategic Projects being in "public interest or serving public health and safety" is **only one of several conditions** that would have to be met to comply with Article 16 of the Habitats Directive and Article 9(1)(a) of the Birds Directive.

In addition, it is unnecessary and potentially confusing for the CRMA to state that Strategic Projects may be in the **overriding public interest** if relevant nature protection tests are already met, as these tests would apply regardless. Including a statement about 'overriding public interest' in the CRMA risks creating ambiguity about whether these established safeguards under EU nature protection laws should apply in full to Strategic Projects. This could lead to the misapplication or derogation of those laws, even if not explicitly required by the CRMA, especially given the limited capacity and resources at the local level in many cases. As a result, protected habitats and species could face unnecessary risks, even though the CRMA does not explicitly authorise derogations from these directives.

Recital 27 of the CRMA states that it should be possible to authorise Strategic Projects when the responsible permitting authority concludes, **after a case-by-case assessment,** that the public interest served by the project overrides impacts the project has on the environment, **provided that all relevant**

conditions set out in abovementioned legal acts are met. This case-by-case assessment should duly take into account the geological specificity of extraction sites, which **limits decisions on location due to the absence of alternative locations for such sites.**

This means that the competent authorities will need to assess, on a case-by-case basis, whether all the conditions set out in these Directives are fulfilled. Considering the lack of further clarification in the CRMA regarding these procedures, the competent authorities will need to refer to the directives in question to ensure that all relevant conditions are met.

It is important to note that under the Habitats Directive, before authorities can allow the relaxation of rules and carry out the derogation test, they must first complete an appropriate assessment under Article 6(3)[47], the purpose of which is to evaluate how a plan or project might impact a Natura 2000 site's conservation goals, either on its own or alongside other plans or projects. This is because the derogations can only apply after the consequences of a plan or project have been studied within the appropriate assessment procedure. If there is no knowledge of those effects on conservation objectives relating to the site, the conditions for applying that exception cannot be evaluated. For instance, assessing whether there are imperative reasons for overriding public interest, or less harmful alternatives, requires carefully weighing them against the damage caused to the site by the proposed plan or project. Additionally, to determine the appropriate compensatory measures (concept discussed below), the exact nature of the damage to the site must be clearly identified[48].

47. Article 6(3) defines a stepwise procedure for considering plans and projects.
a) The first part of this procedure consists of a pre-assessment stage ('screening') to determine whether, firstly, the plan or project is directly connected with or necessary to the management of the site, and secondly, whether it is likely to have a significant effect on the site; it is governed by Article 6(3), first sentence.
b) The second part of the procedure, governed by Article 6(3), second sentence, relates to the appropriate assessment and the decision of the competent national authorities.
A third part of the procedure (governed by Article 6(4)) comes into play if, despite a negative assessment, it is proposed not to reject a plan or project but to give it further consideration. In this case Article 6(4) allows for derogations from Article 6(3) under certain conditions. For more detail, please see: 'Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC' **https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1548663172672&uri=CELEX:52019XC0125(07)**

48. Case C-304/05, Commission v. Italian Republic, para. 83.

Therefore, to be able to discuss whether a project is of overriding public interest, an appropriate assessment is a prerequisite. Only then can the authorities refer to the derogation provision, which in Article 6(4) Habitats Directive outlines three main conditions that need to be met to allow for a derogation. These are:

Derogations for overriding public interest in the Habitats Directive

1. **The alternative put forward for approval is the least damaging for habitats, for species and for the integrity of the Natura 2000 site(s);**
2. **There are imperative reasons of overriding public interest, including 'those of a social or economic nature';**
3. **All compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected are taken.**

These conditions apply in sequential order[49], must be interpreted strictly[50], and can only be satisfied by a project in exceptional circumstances[51].

This means that, once the assessment of the lack of suitable alternatives and the acceptance of imperative reasons of overriding public interest are fully ascertained and documented, all compensatory measures that are needed to ensure the protection of the overall coherence of the Natura 2000 network have to be taken[52].

As cited above, this consideration by the authorities needs to be done on the basis of a case-by-case assessment, in which the authorities may conclude that a mining project is of overriding public interest. Thus, such a status does not come automatically, but only after a careful and strict assessment of all conditions under Article 6(4) of the Habitats Directive.

Article 4(7) of the WFD also includes instances where exceptional relaxation of rules for the protection of water bodies may be allowed in cases of new modifications and new sustainable human development activities (for example, mining). This can happen if:

49. Case C-209/02, Commission v Austria; Case C-239/04, Commission v Portugal; Case C-304/05, Commission v Italy; Case C-560/08 Commission v Spain; Case C-404/09 Commission v Spain.

50. Case C-239/04 Commission v Portugal, paragraphs 25–39.

51. Case C-182/10, Solvay and Others, para. 75 and 76. See also, Melina Malafry, 'Renewable Energy Activities – Overriding the Interest of Biodiversity?', p. 180. In: De Lege: Hållbarhet ur ett rättsligt perspektiv / [ed] Mattias Dahlberg, Therése Fridström Montoya, Mikael Hansson och Charlotta Zetterberg, Uppsala: Iustus förlag, 2022, p. 159-194.

52. For better understanding of Article 6(4) of the Habitats Directive, see Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC **https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1548663172672&uri=CELEX:52019XC0125(07)**

Derogations from species protection under the Habitats Directive

a. All practicable steps are taken to mitigate the adverse impact on the status of the body of water;

b. The reasons for those modifications or alterations are specifically set out and explained in the river basin management plan;

c. The reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and;

d. The beneficial objectives served by those modifications or alterations of the water body cannot, for reasons of technical feasibility or disproportionate cost, be achieved by other means, which are a significantly better environmental option.

However, Article 4(7) of the WFD cannot be applied if it cannot be guaranteed that the project would not permanently exclude or compromise the achievement of the wider objectives of the WFD in other bodies of water within the same river basin district, and if at least the same level of protection as existing EU legislation is not ensured by those derogations[53]. This means that the authorities cannot approve the project under the WFD if it would not fulfil the conditions of other applicable directives (e.g. Habitats Directive or Birds Directive), in which case amendments to the project should be examined to see if it can satisfy the requirements of those other relevant directives[54].

This Regulation is changing pre-existing EU processes around permitting solely for economic reasons. This new law does not justify the removal of safeguards and the limitation of timeframes in relation to environmental and social considerations. There is no suggestion that the pre-existing safeguards are unnecessary or bad, only the assumption that economic actors must be allowed to proceed quickly to extract or process critical minerals - this sets a dangerous precedent of pushing aside hard-won environmental and social rights and safeguards.

53. Common Implementation Strategy for the Water Framework Directive and the Floods Directive, Guidance Document No. 36, Exemptions to the Environmental Objectives according to Article 4(7), p. 54.

54. Common Implementation Strategy for the Water Framework Directive and the Floods Directive, Guidance Document No. 36, Exemptions to the Environmental Objectives according to Article 4(7), p. 49.

So, what does this mean for (potential) Strategic Projects in my region?

It is important to remember that any assessment by the authorities, of whether a mining project is in overriding public interest, does not come automatically, and can only happen after the appropriate assessment under Article 6(3) of the Habitats Directive has been carried out. **This is an opportunity for the public concerned to be involved in such decision-making and to challenge any decision coming out of this procedure** (for more detail, please refer to Chapters 8 and 9, and to ClientEarth Access to Justice in European Union Law - a legal guide on **Access to Justice in environmental matters Edition 2021)**. Only after the appropriate assessment can the authorities carry out the derogation procedure and see if all the conditions have been met.

The CRMA's provision that Strategic Projects are considered to be in the public interest or serving public health and safety limits the discretion of the competent authority in applying nature protection laws. However, this is just one of several conditions that must be met for any derogations to be granted. A careful and strict assessment of all conditions under Articles 6(4) and 16 of the Habitats Directive, Article 4(7) of the WFD, and Article 9(1) of the Birds Directive is still required for Strategic Projects to be approved.

Environmental assessment and authorisation

It must be emphasized that designation as a Strategic Project does not exempt a project from compliance with the required environmental assessments under EU environmental law. Therefore, provisions under the EIA Directive, WFD, Birds, Habitats, Industrial Emissions, Waste Framework and Seveso III Directives are applicable and need to be carried out before a project can go ahead[55].

The CRMA is, however, pushing for further streamlining of the assessment procedures by requiring that the necessary assessments, stemming from the directives mentioned above, be bundled through a joint or coordinated procedure in order to prevent unnecessary overlaps. The idea is to ensure that the procedure for Strategic Projects is predictable and timely, whilst at the same time not lowering the level of environmental protection, or the quality of the assessments that should take place[56].

Whether they choose to carry out a joint or coordinated procedure, Article 12(2) of the CRMA requires Member States to ensure that the chosen procedure meets all the requirements set out in the relevant EU legislative acts[57]. This means that assessments carried out pursuant to, for example, the EIA Directive, cannot replace the procedure and obligations provided for in Article 6(3) and (4) of the Habitats Directive, or Article 4(7) of the WFD, as neither procedure overrides the other.

In many Member States, however, this coordinated approach is a common practice; the appropriate assessment under the Nature Directives, the assessment of the impacts on water bodies under the WFD, and the environmental impact assessment procedure are typically already coordinated. Moreover, the EIA Directive includes a provision on streamlining the assessment procedures related to environmental issues required under various EU directives, including the Habitats Directive and the WFD[58].

However, **it is important to stress that while these necessary assessments, especially under the Nature Directives and the WFD, have many similarities, they are distinct from the environmental impact assessment required under the EIA and SEA Directives.** Therefore, even when conducted simultaneously, information and conclusions from each assessment must remain clearly distinguishable and identifiable in the environmental impact assessment report[59].

55. Recital 25, CRMA.

56. Recital 34, CRMA.

57. Article 12(2), CRMA.

58. Article 2(3) of the EIA Directive. See also Article 11(2) of the SEA Directive.

59. See for example in the context of the Natura 2000 sites, 'Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC' https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1548663172672&uri=CELEX:52019XC0125(07) , p. 44.

This is also important, not only because there are a number of important distinctions between these assessment procedures[60], but primarily because **their outcomes vary in terms of detail and legal implications.** For instance, in the case of the EIA or SEA assessments, the authorities have to take the outcomes of these assessments into account when making a decision. On the other hand, the appropriate assessment requires a more rigorous test and its outcome is legally binding for the competent national authority, which can only agree to a project after being certain that it will not adversely affect the integrity of the Natura 2000 site site[61]. The same rule applies to the WFD; Member States are required to refuse authorisation for an individual project that may cause deterioration of a water body or failure to achieve good status or potential, unless an exemption is granted under Article 4(7)[62].

Furthermore, it is important to stress that if, for example, a project is likely to have an impact on animal species listed under Annex IV of the Habitats Directive, then Article 12 of the Habitats Directive also applies, and **such a project can only be allowed in limited situations** that are prescribed under Article 16 of the Habitats Directive.

Finally, Article 6(2), requires Member States to take all the appropriate actions to ensure that no deterioration or significant disturbance occurs in the Natura 2000 sites [63]. The scope of this article is broader than that of Articles 6(3) and 6(4), which apply only to plans and projects. Alternatively, Article 6(2) is applicable to the performance of all ongoing activities that may not fall within the scope of Article 6(3), while also applicable to any plans and projects already authorised in the past and, subsequently, prove likely to give rise to deterioration or disturbances [64].

So, it is important to know that Article 6(2) applies to the Natura 2000 sites and may concern past, present, or future activities or events. In addition, if an already existing activity in a Natura 2000 site is likely to cause deterioration of natural habitats or the disturbance of species within the designated area, it must be covered by the appropriate measures within Article 6(2) of the Habitats Directive. This may require, if appropriate, stopping the activity and/or taking mitigation or restoration measures to bring these negative impacts to an end [65].

60. The Nature Directives will specifically look into the impacts that a project is likely to have on the habitats and species protected, and coherence of the Natura 2000 site, while the WFD will look into the impacts of water bodies. On the other hand, the EIA Directive, although including some of these factors, such as water and species in Article 3, is not that specific and looks into an overall impact that a project is likely to have.

61. Such a project can only be approved following the derogation procedure under Article 6(4) of the Habitats Directive. Article 6 of the Habitats Directive, Rulings of the European Court of Justice, September 2014, p. 7.

62. See Case Ruling C-461/13 Bund für Umwelt und Naturschutz Deutschland e.V. versus Bundesrepublik Deutschland: **http://curia.europa.eu/juris/document/document.jsf?text=&docid=165446&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1112450**

63. Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC **https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1548663172672&uri=CELEX:52019XC0125(07)** *, p. 25.*

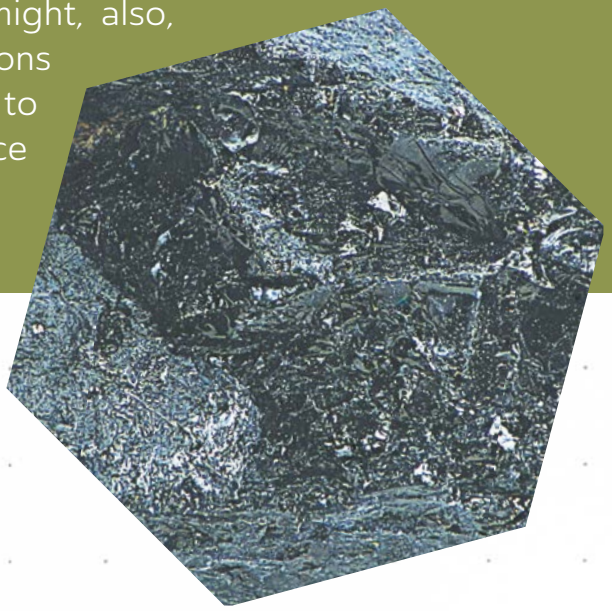
64. Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC **https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1548663172672&uri=CELEX:52019XC0125(07)** *, p. 25.*

65. Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC **https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1548663172672&uri=CELEX:52019XC0125(07)** *, p. 26.*

So, what does this mean for (potential) Strategic Projects in my region?

Strategic Projects are not exempt from relevant environmental assessments under EU environmental law, such as the environmental impact assessment, appropriate assessment, or assessment of impacts on water bodies. Although the CRMA requires assessments to be coordinated, this is not a major novelty, since this is already encouraged by the EIA Directive, and many Member States are already carrying out the same coordinated or joint procedures.

However, even in occasions where these assessments are carried out together, the information and conclusions of such assessments need to remain clearly distinguishable and identifiable in the environmental impact assessment report, in order to ensure alignment with other pieces of EU law, such as the Habitats Directive or WFD. Finally, the impact of certain projects on species might, also, trigger the application of species protection provisions of the Nature Directives, as well as the obligation to prevent the deterioration or significant disturbance from occurring in the Natura 2000 sites.



8. Environmental Impact Assessments and Public Consultation under the EIA Directive, Aarhus and Espoo Conventions

This chapter outlines the public participation process for mining projects as defined in the CRMA, Aarhus Convention, and Espoo Convention (pp. 52-55). These requirements ensure your community's right to information and involvement from the project's early stages, with key details listed on pp. 53-55.

As explained in the previous chapter, the fact that a project is recognized as a Strategic Project[66] does not exempt it from the EIA and, where relevant, assessments under other applicable directives[67]. According to Article 11(1) of the CRMA, the competent national authorities[68] will issue an opinion determining the necessity, scope, and level of detail of the information to be included in a project's environmental impact assessment. Based on the draft environmental assessment, the competent authorities must organise public consultations. The consultation process and requirements are set out in Article 6 of the EIA Directive. The Aarhus Convention and the Espoo Convention, which set out the right of the public to participate in the decision-making process, also apply to the permitting procedures under CRMA[69].

Note that the CRMA strongly encourages project promoters to implement measures aimed at already securing public support when applying for the status of a Strategic Project. These measures may include public consultations and other types of interaction with the public, including civil society. These interactions are valuable and present a good opportunity to understand and influence a project's development, but they do not replace proper public consultations. The state authorities are responsible for consulting the public in their decision-making on permitting[70].

Public participation

The CRMA does not create new procedures or rules for consulting the public, but it limits the freedom of the competent authorities to set a time frame for these consultations. The CRMA states that the timeframe for **consulting the public cannot be shorter than 30 days or longer than 85 days[71].** This period can be extended by a further 40 days if the location or complexity of the project requires it. This should give the competent authorities enough flexibility to set a reasonable[72] timeframe for conducting meaningful public consultations.

66. With the exception of the projects that entered permitting process before being recognized as Strategic (Article 12(6) CRMA).

67. Water Management Directive, Birds Directive, Habitats Directive, Industrial Emissions Directive (2010/75/EU), Waste Framework (2008/98/EC) and Seveso III (2012/18/EU) Directives.

68. These may include ministries of the environment, regional or local environmental agencies, or specialized permitting authorities established to regulate industrial and infrastructure projects.

69. Article 14 CRMA.

70. See Annex to the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention, p.58.

71. Article 12(5) CRMA.

72. The Maastricht Recommendations provide guidance in this regard stating that generally a period of six weeks for the public to inspect the documentation and prepare itself for the public inquiry and a further six weeks for the public to submit comments, information, analyses, or opinions could be considered reasonable. This may not be sufficient time in all cases but gives an indication as to the minimum appropriate period. See Maastricht Recommendations, II. Public participation in decision-making on specific activities (article 6), Section E, p.31.

What does a public consultation entail?

Regardless of the timeframe set in each case, Article 6 of the Aarhus Convention and Article 6 of the EIA Directive require that the competent authorities guarantee certain minimum requirements within each public consultation, including:

1 **Granting access to background information:**

All relevant information about the project, such as the draft combined environmental assessment and the options available to the decision-maker, should be available to the public for a sufficient period of time before the public consultation is launched[73]. Where the information is lengthy or highly technical, simplified summaries of such documents should be published[74].

The CRMA contains additional obligations to disseminate information that could be useful in preparation for public consultations. Information about the administrative process[75] and a detailed permitting schedule[76], including the timeframe for conducting the EIA and other relevant assessments, should be determined early on and **published on a website** run by the single access point or the project promoter[77]. This website should also publish all decisions made throughout the permitting procedures[78].

73. The CJEU has stressed that a right to participate in the decision-making procedure could not be effective without the right to receive information about the project and the procedure envisaged, see CJEU, Case C–826/18, LB and Others, para. 43 and Case C280/18, Flausch and Others, paras 45.-54.

74. Maastricht Recommendations, II. Public participation in decision-making on specific activities article 6, Section H, p.34.

75. Article 9(2) CRMA.

76. Article 11(7) CRMA.

77. Articles 8(5) and 9(2) CRMA.

78. Article 14(2) CRMA.

2 Identifying the public concerned and choosing appropriate communication channels.

The public concerned must be effectively notified of the planned project and ensuing public consultation. The "public concerned" in this context is defined as "public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures (..)."[79] This includes non-governmental organisations promoting environmental protection and meeting the requirements under national law[80].

Only communication channels that convey information effectively will fulfil the requirements of the Aarhus Convention[81]. When a plan involves the community's administrative area, the local authorities[82] should be involved in identifying the appropriate communication channels to make information available for local and Indigenous communities, NGOs, and other stakeholders in their area.

3 Organising the consultation when all options are still legally and practically open.

The public should be involved from the early stages of the process, when all options, including an option not to issue a permit for the Strategic Project, are still open[83]. The fact that a project is recognized as "strategic" should not affect the possibility of refusing a permit or proposing different mitigation measures, alternative locations, or other aspects if they do not comply with the requirements of environmental law and other legal rules.

79. Article 1(2)(e) of the EIA Directive.

80. Article 1(2)(e) of the EIA Directive.

81. Case C-280/18, Flausch and Others, **Opinion of the Advocate-General,** *para.53.; see also the C-280/18, Flausch and Others,* **Judgement**, *para. 32.*

82. In Flausch and Others the CJEU concluded that regional announcement was not sufficient to reach the public concerned: "However, in order to provide it with a useful answer, it may be pointed out that, inasmuch as, on the date on which the invitation to participate in an EIA was made public, most of the interested persons resided or owned a property on the island of Ios, the posting of a notice in the regional administrative headquarters, located on the island of Syros, even accompanied by publication in a local newspaper of the island of Syros, would not appear to have been liable to contribute sufficiently to informing the public concerned", see Case C-280/18, Flausch and Others, **judgement**, *para. 34.*

83. Article 6(4) of the Aarhus Convention, see also ACCC findings on Communication (France), No. ACCC/C/2007/22, para. 38 and Communication (Slovakia), ACCCC/C/2009/41, para. 63.

4 Allocating sufficient time for each stage of the consultation process.

The timeframe proposed by the CRMA affords the competent authorities sufficient flexibility to set a reasonable timeframe for all steps of the public consultation. Importantly, sufficient time must be given for each stage, including time for the public to familiarise itself with the background information, to prepare and submit the opinion, and for the authorities to analyse the outcomes and provide feedback on the opinions received[84].

5 Ensuring effective possibility to express an opinion.

The time frame, format, and location of the public consultations should be adapted to the needs of the public identified, taking into account their location and ability to travel, access to the internet, special needs, and other factors[85].

6 Taking comments into account and providing detailed feedback.

The competent authority must "seriously consider all the comments received"[86]. According to Article 9(1)(b) of the EIA Directive, the decision adopted at the end of the procedure must reflect how the results of the public consultation and information gathered therein have been incorporated or otherwise addressed in the decision.

In case a project is likely to have significant effects on the environment in another Member State, the public concerned in this other Member State must be consulted and given an equal opportunity to participate in the decision-making under the Espoo Convention[87]. This process is regulated in Article 7 of the EIA Directive.

84. See e.g., CJEU, Case C474/10, **Department of the Environment for Northern Ireland v Seaport (NI) Ltd and Others,** *para.46.*

85. See e.g. on the location of the public consultations Case C-280/18, Flausch and Others, **judgment,** *paras. 40 and 44.*

86. ACCC findings on Communication (Spain), ACCC/C/2008/24, para. 99 and Communication (Czechia), ACCC/C/ 2012/70, para. 61.

87. See Article 2(6) and 3(8) of the Espoo Convention.

9. Access to Justice

This chapter outlines which decisions local communities, NGOs, and other stakeholders can legally challenge and the procedures for doing so (p. 59), as access to justice is not explicitly ensured in the CRMA. Decisions that can be contested at the regional level are detailed on p. 57, while those at the national level are covered on p. 58.

This information is crucial for empowering you and your community to pursue legal action and seek justice if needed.

The CRMA does not include clear and explicit provisions guaranteeing access to justice for the public concerned, including environmental NGOs. However, the right of local communities, NGOs, and other stakeholders to access judicial procedures and dispute settlement mechanisms is guaranteed elsewhere under EU law. This applies both to the decisions taken by the European Commission, as well as those taken by the national authorities in the permitting procedures under the CRMA[88].

Which decisions can be challenged?

On a regional level

The European Commission's decision to grant a project strategic project status should be amenable to judicial review, in line with the EU Treaties and relevant secondary legislation. Article 10(1) of Aarhus Regulation[89] gives any NGO which meets certain criteria[90] a right to request an internal review to the Community institution or body that has adopted an administrative act under environmental law[91]. Such request can be made within eight weeks of the administrative act being adopted, notified, or published[92].

88. For more detailed legal guidance Chapter 2 of the **ClientEarth Access to Justice in European Union Law A Legal Guide on Access to Justice in environmental matters,** *2021 edition.*

89. Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.

90. An NGO in this context is an independent non-profit-making legal person in accordance with a Member State's national law or practice; has the primary stated objective of promoting environmental protection in the context of environmental law; it has existed for more than two years and is actively pursuing the objective referred to; the subject matter in respect of which the request for internal review is made is covered by its objective and activities, see Article 11(1) of the Aarhus Regulation.

91. For more detailed guidance see Chapter 5, Section 1.3. of the **ClientEarth Access to Justice in European Union Law A Legal guide on Access to Justice in environmental matters,** *2021 edition.*

92. Article 10(1) of the Aarhus Regulation, on the obligation to publish the decision see recital 16 of the Preamble of the CRMA.

93. Article 12 of the Aarhus Regulation (Regulation 1367/2006).

94. See Articles 115-118 of the **Rules of Procedure** *of the Court of Justice.*

On a national level

Article 11 of the EIA Directive which applies to critical raw materials projects, in particular underground mining projects, guarantees access to justice in line with Article 9 of the Aarhus Convention. **Article 9(2) of the Aarhus Convention guarantees a right to challenge the legality of any decisions, acts, or failures to act subject to public participation,** including those taken in accordance with the EIA Directive[95]. Decisions made under the EIA Directive, including the screening decision determining that an EIA is not necessary[96], potentially erroneous EIA decisions[97], as well as final permitting decisions can thus be ***challenged*** in court[98].

According to Article 12(1) of the CRMA, where the EIA is required under the EIA Directive, the authorities must issue an "opinion" on the scope and level of detail of the EIA. It is unclear whether this opinion will be published and what legal nature it will have under the national law of each Member State. However, as a decision taken in the context of a screening process, the opinion should be treated as part of a screening decision and should be able to be challenged in court.

According to the explanatory memorandum for the CRMA proposal, the CRMA will *"apply without prejudice to EU nature protection legislation, including Directive 2011/92//EU3 on the environmental impact assessment, Directive 2010/75/EU4 on industrial emissions, Directive 92/43/EEC5 on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC6 of the European Parliament and of the Council on the conservation of wild birds, Directive 2000/60/EC7 of the European Parliament and of the Council on water policy"*[99]. Thus, where the Industrial Emissions Directive[100] applies, it contains an access to justice provision to verify the substantive and procedural legality of several decisions, including permitting new installations.

95. Article 11 of the EIA Directive; see also CJEU, C-72/95, Kraaijeveld and Others, 24 October 1996, para. 56.

96. Case C-137/14 **European Commission v. Germany,** *ECLI:EU:C:2015:683, para. 48; see also Case C-570/13* **Gruber,** *ECLI:EU:C:2015:231 para. 44 and* **C-75/08 Mellor,** *ECLI:EU:C:2009:279, para. 59 and* **ACCC/C/2010/50 (Czech Republic),** *par*

97. Case C-137/14 **European Commission v. Germany,** *ECLI:EU:C:2015:683, paras.47-51.*

98. ACCC/C/2010/50 (Czech Republic), ECE/MP.PP/C.1/2012/11, para. 78.

99. 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 – **Explanatory Memorandum,** *p.4.*

100. Directive 2010/75/EU of the European Parliament and Of The Council Of 24 November 2010 On Industrial Emissions (Integrated Pollution Prevention And Control) **(Industrial Emissions Directive)**, *Article 25.*

Access to justice is also guaranteed for challenging decisions to permit projects, plans and programmes that are likely to have a significant impact on Natura 2000 sites under Habitats Directive[101], and, in cases where a project may have a significant adverse effect on the state of water, forming the subject of a permit under the Water Framework Directive[102].

Existing complaints before national courts can also be used to urge national courts to request interpretation or challenge the validity of specific provisions of the CRMA before the CJEU. The so-called preliminary reference procedure under Article 267 TFEU allows national courts to request the CJEU to provide clarity on the interpretation and application of the provisions of CRMA or if necessary rule on their validity. Lower court can file such reference, but only courts whose decisions are final are obliged to do so.

Procedure

The CRMA strongly encourages urgent procedures to settle disputes related to the permitting of Strategic Projects, where such permitting procedures exist under national law. This may mean that various procedural steps, such as deadlines for submission of a complaint, are shortened. Timely judicial review in itself is welcome as it can help to identify and fix errors earlier and contribute to legal certainty. However, regardless of the limitations set by the urgent procedures, EU law[103] and the Aarhus Convention require that the available judicial procedures reach certain minimum requirements of effectiveness. Namely, they have to provide adequate and effective remedies, including injunctive relief where appropriate, and be fair, equitable, timely and not prohibitively expensive[104]. In this regard, the CRMA emphasises in Article 10(5), that urgent judicial proceedings should be conducted only if the "usually applicable rights of defence of individuals or of local communities are respected".

101. *Article 6(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora* **(Habitats Directive);** *see Case C-127/02,* **Waddenzee,** *ECLI:EU:C:2004:482, paras 66 – 70 and* **C-243/15, Lesoochranárske zoskupenie VLK v Obvodný úrad Trenčín (Slovak Bears II),** *ECLI:EU:C:2016:838, paras. 46-49.*

102. *Article 4(7) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy* **(Water Framework Directive),** *see Case C-664/15* **Protect,** *ECLI:EU:C:2017:987, para. 42.*

103. *See Article 19(1) of the Treaty on European Union, Article 47(1) of the Charter of Fundamental Rights of the European Union. For more detailed guidance see Chapter 4 of the* **ClientEarth Access to Justice in European Union Law A Legal guide on Access to Justice in environmental matters,** *2021 edition.*

104. *Article 9(4) of the Aarhus Convention.*

10.

Other Relevant EU Regulations

This chapter details EU regulations relevant to Strategic Projects, particularly mining projects, that may affect your community. It outlines company responsibilities and regulations, which may be valuable for you to understand. However, significant gaps exist, such as weak enforcement and a lack of penalties (p. 64-65). Liability mechanisms are available for affected workers or communities to seek justice, but only after harm has occurred, and the process is limited in scope and highly challenging (pp. 40-64-65). Examples of communities resisting mining projects through various methods can be found on p. 65.

Battery Regulation

The EU's Battery Regulation (Regulation (EU) 2023/1542) establishes detailed rules covering the full life cycle of batteries - from production to disposal - with a strong emphasis on sustainability and minimizing environmental impact. However, the human rights and environmental **due diligence aspects of the regulation only applies to four metals:**

- **cobalt**[105]
- **nickel**
- **graphite**
- **lithium**

In contrast, Strategic Projects will be selected from a broader list of 17 metals designated as "strategic", which includes but is not limited to the metals covered by the Battery Regulation. Concerning minerals and raw materials, the regulation highlights several critical points in its due diligence rules.

To comply with the EU Battery Regulation's due diligence requirements, companies must establish a robust battery supply chain management system that addresses social and environmental risks.

First, companies are required to adopt a formal due diligence policy specific to their battery supply

chains. This policy must align with international standards and clearly state the company's commitment to responsible sourcing and sustainability. Additionally, companies need to develop comprehensive management systems that operationalize this policy by defining roles, responsibilities, and processes to manage risk effectively.

Transparency is another crucial aspect. Companies must implement systems, such as chain-of-custody or traceability mechanisms, to monitor battery materials from the mine to the end of the supply chain. To address stakeholder concerns, companies must also establish grievance mechanisms, **allowing workers and communities impacted by supply chain activities to raise issues and seek remedies.**

105. For project related to Cobalt, you can learn more about the supply chains by following the work of the **Cobalt Supply Chain Platform.**

In line with risk management requirements, companies must identify and assess potential social and environmental risks within the battery supply chain, evaluating impacts on human rights, labour conditions, and environmental health. After identifying risks, companies are expected to develop and implement strategies to mitigate them, which may involve working closely with suppliers to manage these risks more effectively.

According to the Batteries Regulation, due diligence schemes can ***support*** companies in fulfilling their due diligence obligations, however the text is clear stating that companies ***remain individually responsible*** for the fulfilment of such due diligence obligations. To maintain compliance, companies should monitor their supply chains continually and report on their due diligence practices, providing updates on the effectiveness of their risk management strategies.

Engagement with stakeholders, including civil society organisations, affected rights-holders, and local communities, is encouraged to improve due diligence processes and incorporate stakeholder feedback. Finally, companies must cooperate with market surveillance authorities in EU Member States, which are responsible for monitoring and enforcing compliance with the regulation.

Non-compliance with the Batteries Regulation can have wide-ranging consequences for both economic operators and the broader market. **Member States' supervisory authorities, mandated under the regulation, have the power to restrict or prohibit non-compliant batteries from entering the market.** These measures can severely impact a company's revenue and market position, while also disrupting its supply chains and straining relationships with suppliers and downstream partners. In more serious cases, authorities may order product withdrawals or recalls, leading to significant logistical challenges and increased operational costs for companies.

Other measures of non-compliance include legal and financial penalties, including fines or potential litigation. Companies may also face substantial costs in overhauling their operations to meet due diligence requirements, including implementing traceability systems and updating sourcing policies.

EU Corporate Sustainability Due Diligence Directive

In 2024, the European Union adopted a directive on Corporate Sustainability Due Diligence (CSDDD)[106] for responsible business conduct. According to this law, companies have to identify, mitigate, and prevent actual and potential harmful impacts that their operations have on the environment and human rights throughout their own operations, those of their subsidiaries and the activities of their business partners in their "chains of activities" - including the 'upstream' activities associated with the provision of goods and services in the company's value chain, as well as 'downstream' activities associated with the distribution, transport and storage of the company's products.

This directive[107] will apply to companies based in and outside of the EU, however only very large companies fall within its scope, which is a real disappointment. The companies this directive applies to encompasses around only 0.05% of EU companies and business activities within its scope. **The scope of the CSDDD includes EU companies with more than 1,000 employees and a net worldwide turnover of more than EUR 450 million in the last financial year.**

The CSDDD represents a significant step forward in mandating European companies' supply chain responsibilities. While France's Duty of Vigilance Law and Germany's Supply Chain Due Diligence Act have laid foundational obligations for French and German companies, the CSDDD aims to set a unified EU-wide standard - essential for harmonisation across the single market.

Yet, critical gaps remain in the proposed directive. While the CSDDD establishes reasonable enforcement and accountability requirements on Member States, their implementation and application will largely be determined by national implementing laws which are still to be developed. Furthermore, effective monitoring and legal recourse provisions are crucial for ensuring that both affected communities and the environment are genuinely protected.

The CSDDD introduces a civil liability regime that strengthens corporate accountability, enabling judicial remedy and incentivizing compliance. This

106. Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.

107. Legal Analysis: Corporate Environmental Due Diligence and Reporting in the EU (ClientEarth, 2024).

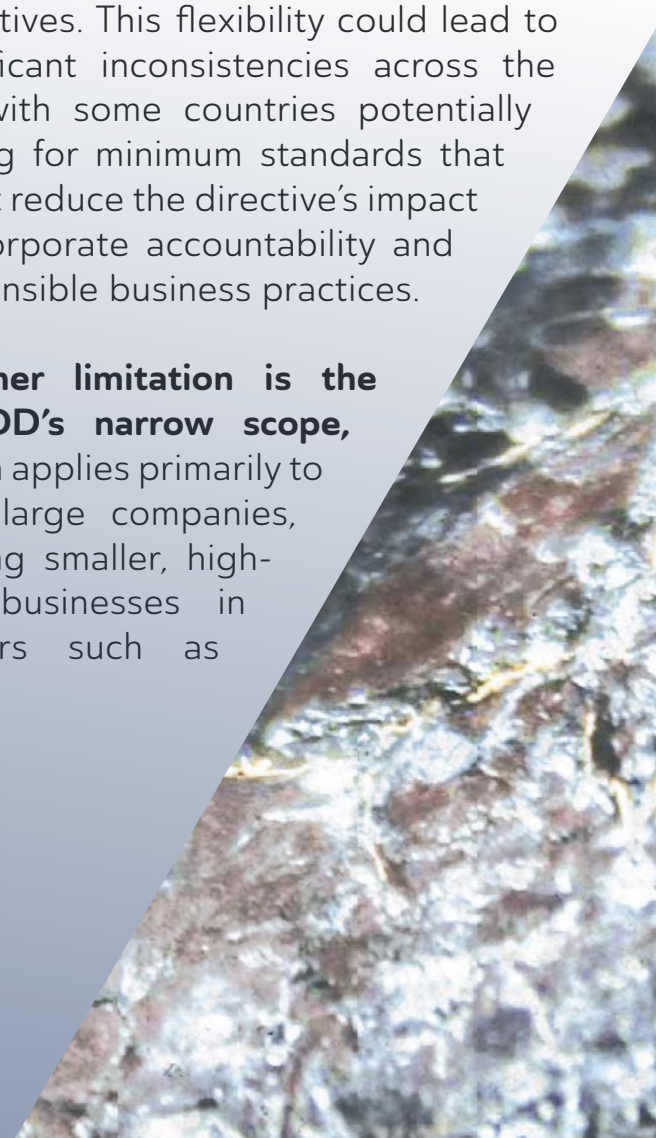
liability mechanism requires companies to address both actual and potential human rights and environmental harms across their operations, subsidiaries, and supply chains. **While not preventive (only applicable after harm has occurred), it ensures affected workers and communities can seek justice, holding companies legally accountable for the damages they cause.**

The CSDDD also obliges companies to identify, prevent, mitigate, and remediate harms, including restoring the environment and compensating affected individuals. Additionally, companies must meaningfully engage with stakeholders, such as workers and impacted communities, during the human rights and environmental due diligence (HREDD) process. This stakeholder engagement is vital for transparency and accountability.

Challenges of the CSDDD

Those seeking justice will likely still find it extremely hard to prove the company's breach of its duties in court, as well as the causal link between this breach and the harm caused to them. **The directive does not ensure a fair distribution of the burden of proof** (who needs to prove the harm was done, and by whom). The implementation of the CSDDD is therefore likely to present several challenges, particularly around consistency, scope, and enforcement. One of the primary issues is transposition variability, as the directive gives Member States discretion in how they apply its objectives. This flexibility could lead to significant inconsistencies across the EU, with some countries potentially opting for minimum standards that might reduce the directive's impact on corporate accountability and responsible business practices.

Another limitation is the CSDDD's narrow scope, which applies primarily to very large companies, leaving smaller, high-risk businesses in sectors such as



junior extractive companies, garment manufacturing, and agriculture largely unregulated. This exclusion risks undermining the directive's effectiveness in addressing environmental and human rights abuses throughout entire supply chains. The directive also, notably, excludes financial services from mandatory due diligence, a gap that allows financial institutions to overlook their services' impacts on human rights and the environment. Together, these exclusions may create significant regulatory blind spots.

The CSDDD's approach to civil liability and access to justice presents further challenges. By placing the burden of proof for civil liability cases on national systems, the directive may inadvertently place high barriers on claimants, especially in complex, cross-border contexts. Additionally, procedural obstacles—such as strict limitation periods, high litigation costs, and limited access to evidence—**can hinder the ability of victims to seek redress effectively.**

Finally, effective implementation of the CSDDD will depend on meaningful stakeholder engagement and adequate enforcement mechanisms (see section "Plan of community engagement: meaningful engagement according to the OECD" on page 10). Ensuring that companies engage directly with affected communities in a timely and culturally appropriate manner remains a challenging but essential element of the directive. Equally, national authorities must be properly resourced and empowered to enforce due diligence requirements effectively.

You can find a collection of interactive case studies here, from the Yes to Life, No to Mining Network, which shares the stories of communities resisting mining, restoring damaged ecosystems, and protecting and developing alternatives to extractivism.

11. Conclusion

These Guidelines have highlighted a pressing need to empower you in the face of escalating global demand for raw materials. While the CRMA aims to secure a stable supply of critical resources for the EU, it raises significant concerns regarding the potential environmental degradation and social injustices that intensified mining activities can cause.

While the CRMA aims to secure a stable supply of raw materials, it risks prioritizing economic gains over the well-being of affected communities and ecosystems. The fast-tracked approval processes for Strategic Projects and limited opportunities for meaningful public consultation threaten to marginalize Indigenous Peoples and local populations, undermining their rights to participate in decisions that directly affect their lands, livelihoods, and futures.

The reliance on certification schemes to demonstrate sustainability is particularly concerning. These schemes, while usefull tools to gauge company performance, are insufficient to guarantee robust protections for human rights and environmental health. Weak oversight and enforcement mechanisms may exacerbate existing inequalities, perpetuating exploitation in both the EU and third countries where Strategic Projects are pursued.

Moreover, the classification of Strategic Projects as serving 'overriding public interest' introduces a dangerous precedent. It could allow for some relaxation of critical environmental protections under EU law, leading to irreversible harm to biodiversity and natural ecosystems. While liability mechanisms exist for addressing harm after it occurs, prevention must remain the priority, with stricter safeguards to avoid such outcomes.

As global demand for raw materials accelerates, the CRMA must ensure that resource extraction does not

come at the cost of environmental degradation and social injustice. A genuinely sustainable path forward requires integrating the voices of affected communities, upholding human rights, and adopting transparent and inclusive decision-making processes.

To ensure this goal is met during the implementation of the CRMA, whether at the EU or national level, the following principles and approaches should be adopted:

- **Mandating more comprehensive public participation and consultation processes, ensuring communities and stakeholders have a genuine say in project decisions, a Right to Say No to mining activities that affect their lives and lands, although this right is not yet recognized as such.**
- **Prioritizing compliance with EU environmental directives and international biodiversity frameworks, such as the Bern Convention and Ramsar Convention, to safeguard ecosystems.**
- **The Commission should reassess the reliance on certification schemes, ensuring they serve only as supplementary evidence alongside comprehensive assessments of environmental and human rights impacts. Certification schemes must complement, not replace, broader evaluations to establish robust safeguards for sustainability, human rights, and environmental standards.**
- **Creating robust accountability mechanisms to enforce compliance and address harm proactively, rather than reactively.**

A just and sustainable approach to resource management must center the needs and decisions of those most directly impacted. Community voices should guide decisions on resource extraction—whether that means embracing carefully regulated projects, imposing strict conditions, or outright rejecting a Strategic Project to protect their livelihoods and environments. By addressing the gaps and risks highlighted in this paper, the EU can chart a path toward a future where the benefits of resource use are equitably shared, and the rights of people and the environment are safeguarded.

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