

CLIMATE CHANGE, ENERGY AND ENVIRONMENT

THE EUROPEAN UNION'S CRITICAL RAW MATERIALS ACT

Implications and Challenges for Europe,
Latin America and Africa

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To ensure a stable and sustainable supply of critical raw materials, the EU passed its Critical Raw Materials Act, which entered into force in May 2024.



This law has raised concerns among civil society in Latin America and Africa, as these regions want to avoid being seen solely as raw materials suppliers.






This publication outlines the challenges of the demand for raw materials and seeks to identify common challenges and opportunities to foster a fairer and more sustainable approach to the implementation of this Act.

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Introduction

THE EUROPEAN UNION'S CRITICAL RAW MATERIALS ACT - IMPLICATIONS AND CHALLENGES FOR EUROPE, LATIN AMERICA AND AFRICA

In response to the growing demand for strategic minerals, the European Union (EU) adopted the European Union's Critical Raw Materials Act (CRMA), an initiative that seeks to ensure a stable and sustainable supply of essential materials - especially critical raw materials - for the economic development of European industry. The CRMA entered into force in May 2024, with the aim of strengthening the EU's strategic autonomy, as well as reducing its dependencies on external suppliers.

The measures proposed by the CRMA are ambitious: By 2030, at least 10% of the EU's annual consumption of raw materials should come from locally extracted minerals and 25% from recycled materials. 40% should be processed within the EU itself. In the same period, no third country should supply more than 65% of Europe's annual consumption of these materials. This limit is mainly directed at China, reflecting the EU's growing concern about its dependence on the Asian country for the supply of critical raw materials. However, most of the raw materials listed as critical do not exist in sufficient quantities in EU countries. The critical raw materials needed for electromobility —such as lithium, cobalt or copper— are mainly concentrated in Latin American and African countries. Considering the expected increase in demand for these minerals, there are major concerns among civil society in these regions about being seen only as raw materials suppliers. This could imply a strong expansion of the mining sector, with all the consequences that we have seen in the past. These include the destruction and pollution of the environment in areas with extremely fragile ecosystems, for example in the lithium triangle in the altiplano shared by Argentina, Bolivia and Chile, or in the areas of the large copper deposits in Chile and Peru.

With this publication, the Friedrich Ebert Stiftung's Regional Centre for Social-Ecological Transformation in Latin America seeks to contribute to the debate, both regional and interregional, through three in-depth analyses of the effects of the law. In addition, possible solutions to address conflicts that might occur in relation to the CRMA are presented. Experts from Germany, Belgium and Mexico have analysed the consequences and shortcomings of the law from economic, social and environmental perspectives in the contexts of two regions - Latin America and Europe - and of one country in particular - the Democratic Republic of Congo. Through these analyses, it seeks not only to identify common challenges, but also to highlight opportunities for international cooperation to foster a more just and sustainable approach to the implementation of the CRMA. It also highlights the importance of the challenges posed by the growing demand for raw materials in EU countries, promoting policies that minimise social and environmental impacts in producing regions and fostering a broader understanding of a responsible and sustainable implementation of the CRMA.



THE EUROPEAN UNION'S CRITICAL RAW MATERIALS ACT

A TEMPTING OFFER FOR LATIN AMERICAN PARTNERS OR MORE OF A RED HERRING?

Claudia Detsch

Geopolitics has found its way into the global trade policy arena. For the European Union, facing a deterioration of its industrial competitiveness, this means a weakening of its negotiating position. The Russian attack on Ukraine and its massive effects on energy prices and imports has brought home to Europeans the dangers of one-sided dependence on a handful of suppliers for strategically important goods. That is why other criteria are currently assuming more weight than price, such as geostrategic resilience and Europe's future viability as an industrial location.

Industrial policy will be high on the agenda of the new European Commission and the European Parliament in the wake of the 2024 elections. Generally speaking, the outlook is mixed. A broad majority on the progressive, ecological side and on the conservative side still regard the development of clean tech industries as a driver of economic development. At the same time, in many Member States concerns are increasing that we are being left behind and consequently are losing not only market share, but also decent jobs, tax revenues and ultimately also prosperity and democratic stability. The stakes could thus scarcely be higher for the European Union.

The energy transformation is based on the application of new technologies using key raw materials, with massive effects on supply and value creation chains. In future, global value creation is likely to be shared much more evenly, for example, because renewable energies are being generated much more decentrally than fossil fuel energy and because states rich in raw materials are pressing much more strongly today for integration in global value creation chains. Access to raw materials is seen as key to a strategic approach. The raw-materials-rich states of Latin America can benefit from this, provided that mutual trade policy interests are calibrated much more even-handedly than in the past and that announcements of the advent of more balanced relations are followed up with concrete practical steps. Europeans must correspondingly up their offer to strategic partners.

DE-RISKING INSTEAD OF DECOUPLING IS THE ORDER OF THE DAY

Europeans are casting a wary eye on China in particular. Their dependence on the People's Republic in strategic sectors has grown to alarming proportions. Although for years Beijing has made no secret, within the framework of its Five-Year Plans, of its industrial-policy ambitions and striving for dominance on the global market for clean tech products, Europeans have so far signally failed to give the matter due attention, settling complacently into an economic system that ensures them cheap raw materials and primary products. But they are in for a rude awakening. The People's Republic dominates not only a few key clean tech sectors, but also the supply chains for many of the raw materials indispensable to climate-neutral production. Consequently, the EU's desired strategic autonomy in these sectors is currently a distant dream. Nevertheless, many companies immediately slacken their efforts to diversify their raw material procurement as soon as the prices for raw materials and primary products fall again.

As of 2023 EU dependence for 31 out of 51 critical raw materials stood at 65 per cent.¹ In the case of 10 elements, for example, Turkey in relation to boron, the Democratic Republic of Congo for cobalt, South Africa for Ruthenium and Russia for palladium enjoy extremely high coverage rates. The EU, furthermore, has achieved recycling rates of at least 15 per cent for only six raw materials (copper, tungsten, aluminium, antimony, cobalt and nickel).² The rate is much lower for other raw materials or even tending to zero.

In its Critical Minerals Outlook 2024 the International Energy Agency (IEA) warns that the investments in key minerals announced to date are unsatisfactory. On top of that, global projects announced so far cover, for example, only 70 per cent

¹ <https://data.europa.eu/doi/10.2873/725585>

² <https://data.europa.eu/doi/10.2873/725585>

of copper needs in 2035 and 50 per cent of the required lithium. And if that wasn't enough, according to the IEA, China will maintain its dominant position in the refining and processing of critical mineral raw materials.³

Today rare earth metals are mined and processed mainly in China. As much as 98 per cent of rare earth magnets on the European market come from China and 90 per cent of processing takes place there.⁴ Not only the critical raw materials themselves, but especially intermediate products now come overwhelmingly from the People's Republic. The value of the lithium batteries imported from there is 75 times higher than the value of the imported lithium. Up to 75 to 95 per cent of many critical components, such as anodes, cathodes and wafers, which are important for clean tech products such as electric cars, solar panels and wind turbines, are imported from China.⁵ At the same time, China is investing massively in raw-materials-rich countries in order to step up mining there and secure a strategic position. Generally speaking, China is the biggest buyer of mining products, thereby exacerbating one-sided dependencies in the mining countries.⁶ Latin America is also of interest to China in this respect. In January 2023 the Chinese manufacturer CATL invested 1 billion US\$ in new lithium mines in Bolivia, while in April auto manufacturer BYT announced it was investing around 1 billion US\$ in cathode production facilities in Chile and Brazil.⁷

In contrast to the collision course currently being charted by the United States the predominant assessment in the EU is that decoupling from China is unrealistic. Given the strong potential for disruption in case of conflict, however, a de-risking by diversifying raw materials procurement is essential. In the course of digitalisation and climate-neutral reorganisation the need for raw materials will increase further, also in Europe. The EU's Foresight Study came to the conclusion that by 2050 overall demand for critical raw materials will increase sharply. The extent of the increase will depend on the respective materials, as well as on economic growth and the speed of the transition or the development of the economy into a circular economy.⁸ Given this need, even with a massive increase in recycling and mining within Europe it will not be possible to satisfy European needs for raw materials without imports.

THE CRITICAL RAW MATERIALS ACT AS THE EU'S STRATEGIC RESPONSE

The Green Industrial Plan is supposed to ensure Europe's competitiveness through investments in clean technologies and the digitalisation of industry.⁹ It is closely linked to the European Green Deal, which is supposed to pave the way for the envisaged climate neutrality by 2050 and sets targets and concrete paths in a variety of policy areas. The Green Industrial Plan was formulated with the intention of facilitating the transition to clean energies and a diversified energy supply and thus to enhance Europe's energy security. The Plan is also linked to the Circular Economy Action Plan, which forms the basis for the transformation of EU industry. The Critical Raw Materials Act – the EU's raw materials regulation – is part of this Green Deal Industrial Plan. It came into force at the end of May 2024 and its aim is to ensure the sustainable and secure supply of European industry with critical raw materials and, correspondingly, to support the aim of strategic autonomy. This aim is supposed to be achieved by, on one hand, identifying projects both within the EU and also in other countries through which important raw materials could be extracted, processed or recycled, and, on the other hand, by entering into strategic partnerships for raw materials with producer countries.

THE CRITICAL RAW MATERIALS ACT IN PRACTICAL TERMS

The specific aims of the Critical Raw Materials Act are typically ambitious (critics would say unrealistic). By 2030 the EU's annual consumption of raw materials is supposed to comprise at least 10 per cent locally extracted minerals and up to 25 per cent recycled materials. Some 40 per cent is supposed to be processed in the EU itself. During the same period no single third country is supposed to supply more than 65 per cent of annual European consumption of the respective listed materials. This is aimed primarily at China.

The reproach is often heard from civil society that the high and environmentally problematic utilisation of raw materials has not been properly debated or tackled. Indeed, the Net Zero Industry Act and the Critical Raw Materials Act don't exactly amount to a degrowth strategy. On the contrary, they are aimed at maintaining the EU's industrial base and competitiveness. Having said that, the reference to recycling and the circular economy is unmistakable. But both processes are still largely in their infancy. For example, there are still too few used batteries in circulation to even come close to covering the need for recycling materials. Furthermore, even with a reduction in auto production, for example, the need for raw materials – for

³ <https://www.iea.org/reports/global-critical-minerals-outlook-2024>

⁴ Seltene Erden: Wie die EU unabhängiger von Importen wird [Rare earths: how the EU is becoming more dependent on imports], Springer Professional, 04.10.2021.

⁵ Analysis: Why Europe's critical raw materials strategy has to be international, Bruegel, 05.04.2023.

⁶ De-risking Critical Mineral Supply Chains: The Role of Latin America, CSIS, 11.04.2024.

⁷ Critical Mineral Geopolitics: Latin America's untapped potential, Mining Technology, 13.09.2023.

⁸ <https://single-market-economy.ec.europa.eu/system/files/2023-03/Raw%20Materials%20Foresight%20Study%202023.pdf>

⁹ <https://nachhaltigwirtschaften.at/de/publikationen/strategien/green-deal-industrial-plan-2023.php>

example for making batteries – is still high and procurement is critical. The pressure for efficient use of scarce resources will increase further with the expansion of clean technologies.

The goal of expanding European refinery capacity to 40 per cent by 2030 seems to be a tall order. In any case, it doesn't make sense for all critical battery metals, as the example of lithium shows. Processing the raw material in Europe would require the import of hard rock. And the emissions balance is much worse than, for example, the lithium extracted from salt lakes in Chile. Experts thus recommend that each raw material and producer country be evaluated individually to determine whether further processing in Europe makes sense.¹⁰

The European public seems to be having a hard time reconsidering the domestic extraction and processing of raw materials. People have got used to locating such dirty business elsewhere. China, indeed, has taken full advantage of this to secure market power through the extraction and processing of raw materials. In Europe until recently the public debate on mining revolved around the phasing out of coal. Now the public will once again have to get used to the idea that domestic mining is a sector of the future. Nevertheless, even so there will be a stronger focus on environmental and labour standards. And third countries could also benefit from that.

The Critical Raw Materials Act defines a list of both critical and strategic raw materials. The 34 raw materials categorised as critical are extremely important for the whole economy of the EU. Around half of these critical raw materials are also classed as strategic: there is a real danger of global imbalances between supply and demand. In addition to lithium for stationary power storage and e-car batteries, as well as rare earths, the metals in high demand and at risk of shortage include nickel and copper. According to forecasts, the need for these metals will increase sharply in the future as a consequence of the electrification of the energy system.¹¹

In line with current debates in Brussels accelerated approval procedures, also in the raw materials sector, are at the top of the agenda. The approval procedures for mining projects are set to be concluded within 27 months and approvals for recycling and processing projects issued within 15 months. Needless to say this is a matter of some controversy as fears of insufficient environmental impact assessments and a lack of involvement on the part of the affected groups stand in the way of such acceleration.

In contrast to the past geopolitics is now high on the business agenda, too. Extended cooperation between state and economy represents an important pillar of the Critical Raw Materials Act. While it's true that companies are to be held accountable, they also receive support in return (critics have bemoaned the priority afforded to industry in the Critical Raw Materials Act over against citizens and communities). Large companies that manufacture key technologies such as batteries and generators for renewable energies are in future supposed to carry out risk assessments of their supply chains and develop strategies to cope with interruptions of supply.¹²

The industry association Eurometaux, in its Raw Materials 2030 Report, calls on Europe to open at least 10 new mines, 15 new processing plants and 15 new recycling plants over the next five years and to bring 20 decommissioned plants for the production of aluminium, zinc and silicon back into operation. Business associations are also prioritising international partnerships. For example, they have called on the EU to establish at least 15 new raw materials projects with third countries by 2030.¹³

PROJECTS AND PARTNERSHIPS AS KEY INSTRUMENTS OF RAW MATERIAL SECURITY

The Critical Raw Materials Act relies on both strategic projects and strategic partnerships. For example, a European committee for critical raw materials has been set up to advise the European Commission on the selection of strategic projects. This may include guidelines on procurement, processing, recycling and substitution of strategic and critical raw materials. Projects that make it onto this list are supposed to be subject to stricter approval procedures, and benefit from easier access to funding.¹⁴

Critics have found fault with the instruments envisaged in the Critical Raw Materials Act as too unfocused and inadequate, and point out that further incentives are needed, such as default guarantees for loans or public-private partnerships. Enhanced transparency is also needed with regard to individual support opportunities and a simplification of procedures.

¹⁰ Tagesspiel Background Energie & Klima, 19.03.2024.

¹¹ Tagesspiel Background Energie & Klima, 23.05.2024.

¹² <https://www.euractiv.com/section/circular-economy/news/eu-gives-final-green-light-to-critical-raw-materials-strategy/>

¹³ <https://eurometaux.eu/raw-materials-2030>

¹⁴ <https://globalstudies.at/die-bedeutung-des-critical-raw-materials-act/>

Because ultimately the relocation of value creation is a matter for companies rather than for governments or confederations of states the matter of financial incentives or protection is central. But as long as multinational companies shy away from corresponding investments in the Global South the requirements of the Critical Raw Materials Act will remain unfulfilled. Furthermore, the establishment of local production facilities depends on other location factors, such as good infrastructure and a sufficiently qualified workforce. That means that in practice the relevant partnership agreements need to be stronger in future and that the industrialised countries will have to deliver more.

Companies can submit plans for strategic projects to the abovementioned committee as part of a call for tenders. Besides strategic importance, technical feasibility and sustainability, societal and environmental effects have also been cited as key criteria: they must be prevented or, if unavoidable, at least minimised. Companies from non-EU countries can also take part, so long as their projects serve EU security of supply and the goal of diversification.¹⁵

All CRMA provisions are legally binding on EU Member States. It is a regulation and so national governments are obliged to implement it directly. But even the Critical Raw Materials Act has the usual characteristics of EU industrial policy: it formulates ambitious goals alongside a vague implementation strategy and inadequate financial arrangements. This is only partly to be laid at Brussels' door. In many areas the EU lacks competence and access to the practical level. Furthermore, there is no provision in the regulation for a separate fund for raw materials procurement. Individual Member States, such as France and Italy, have set up national raw materials funds. In Germany, the Ministry of Economic Affairs has announced a raw materials fund.

RAW MATERIALS PARTNERS URGENTLY SOUGHT

Diversification of raw materials procurement is thus the paramount goal. Strategic partnerships with countries rich in raw materials are supposed to pave the way. Raw materials partnerships have recently regained importance as a key means of closer cooperation. They are to be pursued with individual countries within the framework of bilateral agreements and also through the establishment of a club for key raw materials with a variety of countries. To date, declarations of intent for the establishment of strategic partnerships have been concluded with a dozen countries. In other words, as things stand they are not yet binding. In Latin America, Argentina and Chile are among the countries with which a memorandum of understanding has been signed.

Together with the Critical Raw Materials Act the European Commission also brought into being an EU Raw Materials Club. The aim of this club is to make supply chains more resilient and to boost sustainable investments. Furthermore, by linking up with the Global Gateway Strategy infrastructure projects are to be supported that enable secure raw materials supply chains (Europe's geopolitical framework for supporting infrastructure development in emerging and developing countries with a focus on climate neutrality and digitalisation). Hitherto, however, it largely remains unclear what actors will implement such raw materials partnerships in practice and in what form.¹⁶ After all, private investments by international companies remain decisive and often they have little interest in building up a local processing industry. In that case it is somewhat hard to tell how the promise of mutual benefits can be realised.

The EU is under pressure not only from the Chinese, but also from the US. The latest negotiating round within the framework of the Trade and Technology Council (TTC) between the EU and the United States ended largely without results, which is a problem for Europe in particular. Contrary to initial hopes no agreement was reached on a joint raw materials treaty. For example, e-cars produced in the EU could have benefited from subsidies under the US Inflation Reduction Act (IRA) under such an agreement. Within the framework of the IRA at least 40 per cent of critical minerals in an e-car battery have to come either from the United States itself or from a country with which it has a free trade agreement. There is at present no such agreement with the EU; hence the hopes vested in the conclusion of a raw materials treaty.

Instead, a partnership forum (the Minerals Security Partnership, MSP) was set up for critical mineral raw materials (CRMs). The aim of this forum is to bring raw-materials-rich countries together with countries with high demand for such resources. The MSP previously had 15 partners (Australia, Canada, Estonia, Finland, France, Germany, India, Italy, Japan, Norway, the Republic of Korea, Sweden, the United Kingdom, the United States and the EU). Also invited to the launch in early April 2024 were Malawi, Angola, the Philippines, Brazil, Indonesia, Ukraine, Libya, Kazakhstan and Uzbekistan.¹⁷

ARE THE PARTNERS' INTERESTS SUFFICIENTLY TAKEN INTO ACCOUNT?

The partner countries are supposed to be offered their own production and processing capacities, as well as a transfer of knowledge and technology. Infrastructure projects along raw materials value creation chains are also supposed to reduce

¹⁵ Tagesspiel Background Energie & Klima, 23.05.2024.

¹⁶ Gohla, Korn 2024. <https://www.fes.de/themenportal-wirtschaft-finanzen-oekologie-soziales/artikelseite/rohstoffpartnerschaften>

¹⁷ <https://www.euractiv.com/section/industrial-strategy/news/eu-and-us-look-to-attract-developing-countries-into-critical-raw-materials-partnership/>

investment risks. Besides the prospect of sustainable economic and social development in the extraction country itself the EU sees high social and environmental standards as arguments in competition with other actors. This standpoint is not universally shared in potential partner countries, however. They often harbour suspicions of paternalism and protectionism. All too often governments take the absence of such clauses in China's approach as an argument in favour. On the other hand, when it comes to getting the local population on board, high standards are important.

Besides its ambitious commitments, however, there is little concrete in the law on how this will be realised in practice. Article 8 contains reporting and information obligations for strategic projects. The project promoter shall 'establish and regularly update the undertaking's website or a dedicated project website with information relevant to the local population and to foster public acceptance about the Strategic Project, including at least information on the environmental, social and economic impacts and benefits associated with the Strategic Project'.

Looking in more detail at the provisions themselves does not bring much more clarity. Environmental organisations, for example, have complained that concrete measures are lacking on ensuring sustainability standards, the participation of civil society and the protection of human rights and the environment in third countries.¹⁸ Another criticism is that the CRMA to a considerable extent depends on certification systems to confirm compliance with its provisions for strategic projects outside the EU.¹⁹ They doubt that this will suffice to prove or ensure compliance with human rights and environmental standards. According to Article 30, 'Governments, industry associations and groupings of interested organisations that have developed and oversee certification schemes related to the sustainability of critical raw materials (scheme owners) may apply to have their schemes recognised by the Commission.' In other words, there is no question of an obligation. The situation is even more unsatisfactory with regard to labour standards – there is no direct reference to the promotion of workers' rights or the right to unionise.

In February, the German TÜV Nord, with EU funding, laid out the world's first comprehensive certification system for critical raw materials. The aim is to cover the entire value creation chain, from exploration through extraction and processing to the end product. The CERA 4in1 system is designed to make it possible to trace back along the whole raw materials supply chain. This is also intended to enforce compliance with environmental, social and governance standards (ESG). Such certification could make it easier for manufacturers to comply with EU standards. Take the example of the Battery Regulation, which will require the raw materials used in car batteries to be labelled from 2026. Information on these raw materials is supposed to be accessible through a QR code, which will be compulsory from 2027. Digital product passes of this kind are now envisaged for all kinds of consumer goods in Europe. TÜV Nord is thus striving to come up with certification that is oriented not only towards companies involved in raw materials supply chains. Consumers should also be in a position to obtain information on the origin of the raw materials used in a given product and make their purchasing decisions accordingly.²⁰ As it stands this seems ambitious, but it does nothing to change the aforementioned scepticism of many actors with regard to the scope of such certification systems.

The CRMA itself provides for no legally binding instruments that would enable third parties to hold companies responsible for environmental damage or human rights violations. However, the new EU directive on company due diligence with regard to sustainability (Corporate Sustainability Due Diligence Directive) does provide for some practical and legally binding instruments in this regard that could be made use of.

The directive obliges companies active in the EU to monitor their supply chains, »identifying, preventing, mitigating and accounting for their adverse human rights and environmental impacts«. Companies with over 1,000 employees and global turnover of over 450 million euros are affected. These companies are thus legally obliged to ensure that their activities and supply chains cause no harm. If they fail to perform due diligence and this leads to damages local communities can sue European companies before EU courts for compensation for environmental damage. The directive also obliges companies to work together with affected groups, including local communities. Because the Act was only adopted in April 2024, and fraught with controversy right up until the end, practical experience is largely lacking on actual implementation, for example, among affected local communities.

RAW MATERIALS PROCUREMENT AS THE CHOKEPOINT OF THE ECONOMIC MODEL

Europe needs a smart, strategic and credible energy and raw materials diplomacy that serves short-term supply aims, as well as long-term geostrategic and climate policy goals. Raw materials policy must be integrated much more coherently into industrial and economic strategy. This kind of raw materials diplomacy is only in its infancy, however. The concrete form

¹⁸ <https://weed-online.org/en/publications/publication-details/position-paper-on-the-eu-s-critical-raw-materials-act>

¹⁹ <https://eeb.org/eus-critical-raw-materials-act-2/>

²⁰ https://www.euractiv.com/section/circular-economy/news/eu-backed-green-certification-scheme-for-raw-materials-launched-in-world-first/?utm_source=Euractiv&utm_campaign=cc2a042e0f-RSS_EMAIL_CAMPAIGN&utm_medium=email&utm_term=0_24f4b280c0-2cec83e693-%5BLIST_EMAIL_ID%5D

of the much vaunted »partnership of equals« remains nebulous. In particular, specific instruments are lacking, such as training programmes and technology transfer, corresponding incentives for the private sector and adequate funding. The EU and its Member States will have to make a lot more effort in the coming years if they do not want to be left behind. Unfavourable conditions will not make things any easier. One example is the emergence of right-wing populists, who short-sightedly and against all logic denounce financial and technological cooperation with countries of the Global South as a betrayal of national interests and a burden on the national budget. In order to make substantial progress in raw materials partnerships, however, attractive offers will have to be made to partner countries, including financial and technological support in the transformation of their economies. This cannot be achieved at zero cost.

Europeans have considerable confidence in the assumption that what they have to offer partners from the Global South will ultimately be much more attractive than that of China. The worry is, however, that China's adaptability is underestimated and the attractiveness of its own diverse range of products and services, which is fragmented and often impenetrable for potential partners, overestimated. Winning over potential partners will be no easy task. For example, much closer integration is needed of individual policy areas and instruments, such as between trade policy and climate and energy transformation partnerships, as well as migration agreements.

Furthermore, a growing tension is discernible in Europe between industrial policy and agricultural policy goals, which will not easily be resolved. If Europe wishes to silo off its own agricultural sector in relation to cheaper competitors (which would be perfectly understandable in light of the desired sovereignty and growing protests) it can hardly expect the rejected partners to open up their markets to industrial products. Such an à la carte approach is scarcely strengthened by the respective negotiating positions with regard to raw materials, which are crucial to industrial policy.

The states of Latin America are particularly sought after partners for Europe because, as democratic states oriented towards the rule of law they share similar convictions. This makes it easier to envisage formulating common rules. Latin American governments can approach this with some confidence as they possess considerable leverage. They are able to choose between different interested parties and can use this to their advantage. Fears of a neo-extractivism with new dependencies and the danger of being left with the negative consequences of this relationship are understandable. However, those who allow them to gain the upper hand are failing to recognise the potential for establishing or deepening their own value chains.

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The background features a large, light-colored circular graphic containing a map of Latin America. The map is filled with various line-art icons representing different sectors: technology (laptop, smartphone, lightbulb), industry (factory, worker, hammer), and sustainability (leaf, sun, battery).

THE EUROPEAN UNION'S CRITICAL RAW MATERIALS ACT

POTENTIAL RISKS FOR LATIN AMERICA

Beatriz Olivera Villa

Introduction

Latin America, the region with the greatest inequality worldwide, is suffering the impacts of the global climate crisis, which are exacerbated and accentuated among the most vulnerable populations. Communities in Mexico, Colombia, and Panama are experiencing displacement due to rising sea levels.¹ The worst droughts are taking place in the Brazilian Amazon with rising temperatures and intense flooding is happening in Central America. These are new realities for the region.

The expansion of extractive activities in Latin America and the Caribbean (LAC) is an ongoing source of socio-environmental conflict and the criminalization of socio-environmental defenders. In 2023, Global Witness documented that 88% of the assassinations of people defending land and the environment occurred in Latin America, mainly in Colombia, Brazil, and Mexico. Furthermore, 36% of the murdered defenders were indigenous. Global Witness (2023) describes that agroindustry, mining, and forest exploitation are among the economic activities linked to these homicides and that the people murdered in 2022 included state authorities, protesters, park guards, lawyers, and journalists whose common cause was their commitment to defend the environment.

For Latin American countries, the Critical Raw Materials Act (CRMA), approved by the European Union (UE) in 2023, implies a risk of refocusing the national economies on the production of primary commodities through maintaining them as raw material suppliers and gearing them to develop activities with a lower added value in the European market. This Act will essentially intensify the role played by countries of the Global South in meeting the raw material needs of northern countries that, concerned about energy transition, digital industrialization, aerospace, and defense seek to obtain a secure supply of critical raw materials to ensure that their internal consumer needs are met.

This paper aims to provide elements for an understanding of the scope that the CRMA will have in Latin America and the Caribbean. It first describes the context in which the Act emerged, within the framework of the European Green Deal and the Global Gateway financing strategy. This paper then provides statistics that help to understand the effects that this Act will have upon the dynamic and extractive economies in the region, including an analysis of the socio-environmental and territorial impact that the CRMA will have, in particular on indigenous peoples. Finally, it describes some of the main legal instruments, agreements, rights, and statements, such as ILO Convention 169 and the Escazú Agreement, ratified by a large number of Latin American countries, conceived to ensure collective human rights and contribute to territorial defense.

¹ Since 2022, fishermen and inhabitants of “El Bosque” neighborhood in the state of Tabasco, Mexico, have been forcibly displaced due to the rising sea level. In 2024, the Twuliá coastal community in La Guajira, Colombia, denounced the loss of their boats, fishing gear, and the risk to their lives upon entering the sea in search of their livelihood. In Panamá, approximately 268 families abandoned their homes on the Caribbean island of Carti Sugdup in order to move to the mainland due to the rising sea level.

1

THE CONTEXT IN WHICH CRMA WAS CREATED

The CRMA forms part of the Industrial Plan pertaining to the European Green Deal, a strategy that seeks to enhance industrial competition in European industry and to accelerate the energy transition toward climate neutrality. It is based on four pillars: a foreseeable and simplified regulatory framework; quick access to financing; capacity-building; and open trade for resilient supply chains. The Green Deal reproduces extractive strategies in the Global South, does not establish strategies to integrate the vision held by the inhabitants of those countries, “neither the formation of specific regional associations to promote cross-cutting aspects such as a fair transition and a reduction of inequality in the Global South countries.”²

The EU launched the Global Gateway in 2021, a new strategy consisting of mobilizing up to 300 billion euros in investments³ in digital, energy, and transportation sectors between 2021 and 2027. These investments are meant to potentiate health and education systems, as well as research in Africa, Asia-Pacific, Latin America, and the Caribbean. The Global Gateway is in line with the UN 2030 Agenda and its Sustainable Development Goals, as well as with the Paris Accords.

Another relevant instrument to understand the context in which the Act emerged is the *New Agenda for Relations between the European Union and Latin America and the Caribbean*. This document mentions that LAC is a natural and trade partner of the EU. Furthermore, it highlights that the Latin American region is of vital importance for the planet’s ecological balance and a driver for renewable energies. Therefore, both regions must jointly lead towards an ecological transition and digital justice. Nevertheless, the 2030 Agenda and the European vision do not consider the asymmetries between both regions, which questions the feasibility of actually achieving fair and mutually beneficial trade societies.

In order to achieve its proposals, the 2030 Agenda intends to tighten the trade collaboration between both regions. For this purpose, in recent years the EU has tended to develop trade and investment agreements with LAC. Since 2018, bidirectional trading has increased by 40%,⁴ which has turned the EU into the main donor and investor in the LAC region, apart from becoming its third leading trade partner.

In June and July of 2023, the EU signed Memoranda of Understanding with Argentina and Chile aimed at establishing a strategic alliance in value chains of sustainable raw materials, including lithium.⁵ This will be described below, together with other trade agreements between the EU and LAC countries. Through these trade agreements, the EU seeks to diversify its sources of raw material supplies and construct supply chains:

Modernizing the Agreement between the EU and Chile: In December of 2023, Chile and the EU signed an Advanced Framework Agreement and a provisional trade agreement in order to reinforce political cooperation and promote trade and investment.⁶

The Agreements include reducing supply chain risk, ensuring the sustainable supply of critical raw materials, and the struggle against climate change. These Agreements are backed by the Global Gateway Investment Agenda, which includes support for projects, such as the development of critical raw materials value chains for lithium and copper and the production of green hydrogen in Chile.

2 Rivera, 2023
 3 European Commission, 2021
 4 European Commission, 2023
 5 OLADE, 2024
 6 European Commission, 2023c

In July of 2023, a Memorandum of Understanding was signed⁷ in which both Chile and the EU commit to promote economic measures for the development of mining and transportation infrastructure. The Memorandum focuses on the integration of raw material value chains, through the joint development of projects, cooperation in research and innovation, among other issues.

The EU-Mercosur Trade Agreement—An Historic Accord Signed by the EU and Argentina, Brazil, Paraguay, and Uruguay: This agreement offers EU and Mercosur industries easier access to raw materials and components.⁸ The EU-Mercosur trade agreement aims to increase trade and bilateral investment, as well as to reduce tariff and nontariff barriers to trade, in particular regarding medium and small enterprises. An important part of the agreement was signed in 2019 and the rest is still under negotiation.

Modernizing the Global Agreement between the EU and Mexico: The relationship between the EU and Mexico has been developed in different realms, particularly since the Global EU-Mexico Agreement came into effect in the year 2000. Thereafter, in 2016 the EU and Mexico began negotiations to modernize the Global EU-Mexico Agreement. In principle, both parties achieved an agreement in 2018 and negotiations were completed in April of 2020.⁹ The chapter on energy and raw materials establishes norms regarding the adoption of procedures that ensure EU companies can gain access to Mexican hydrocarbon and clean energy markets.¹⁰

Argentina-EU Strategic Partnership:¹¹ This partnership aims to ensure the development of a secure supply of the raw materials necessary for a digital transition and clean energy. It also seeks to develop a sustainable industry of raw materials and support the creation of local added value, quality employment, and the economic, sustainable, and inclusive growth of mutual benefit to both parties. The Argentina-EU Strategic Partnership is focused on a diversity of collaboration spheres:

- The integration of raw material value chains through the joint development of projects, new business models, and promoting and facilitating trade and investment links;
- The development of open, resilient, and competitive markets for raw, processed, and recycled materials that may enable the EU to diversify their material suppliers;
- The cooperation to promote environmental, social, and governance criteria;
- The deployment of infrastructures for project development, minimizing their environmental and climate impact.

The Economic Partnership Agreement between the EU and CARIFORUM: The Caribbean Forum of African, Caribbean and Pacific States (CARIFORUM) is comprised of fifteen Caribbean countries,¹² and seeks, among other objectives, to support conditions to increase private sector investment and initiatives, as well as to reinforce the supply, competitive, and economic growth capacity in the CARIFORUM region.¹³

In addition, there are agreements both in force and in the process of negotiation with Guatemala, Nicaragua, Colombia, the Dominican Republic, and Peru.

⁷ European Commission, 2023d

⁸ European Commission, 2019

⁹ Delegation of the European Union to Mexico, 2021

¹⁰ Grieger, 2020.

¹¹ European Commission, 2023e

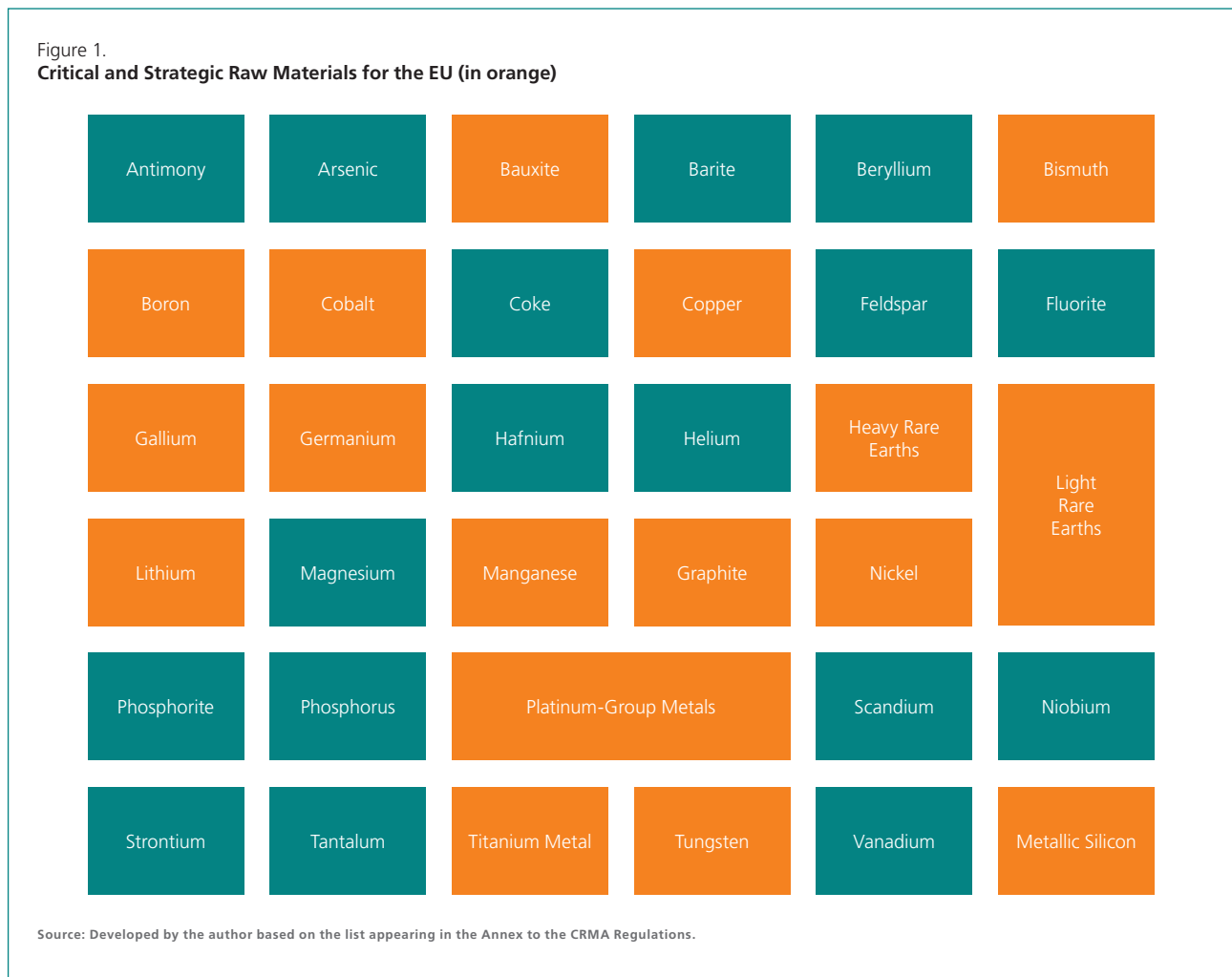
¹² Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, The Dominican Republic, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

¹³ See "The Economic Partnership Agreement between the EU and CARIFORUM."

2 EFFECTS OF THE CRMA ON THE ECONOMIC AND EXTRACTIVE DYNAMICS

Based on 34 identified specific critical raw materials, the CRMA foresees a specific list of 17 strategic raw materials, the supply of which will increase exponentially, will have complex production needs, and will imply a major risk of suffering supply problems. The list of critical raw materials includes all strategic raw materials, as well as any other raw materials of considerable importance for the whole of the EU economy, which may suffer a higher risk of disrupting the supply which may distort competition and fragment the internal market.¹⁴

The following diagram describes the critical and strategic raw materials for the EU (highlighted in orange).



¹⁴ CRMA Regulation, par. 7.

In Latin America and the Caribbean, the main countries producing and exporting critical minerals are Chile, Brazil, Mexico, Peru, and Bolivia. The region has 25% of the critical minerals in the world market.¹⁵ LAC has 47% of the world's lithium reserves, 37% of the copper reserves, 23% of the natural graphite reserves, 17% of the rare earth reserves, and 16% of the nickel reserves. The region also responds to a great extent to the world production of some critical minerals, such as 37% of all copper and lithium production.¹⁶ The lithium triangle located between Bolivia and the north of Chile and Argentina is an area that concentrates 53% of the worldwide resources and 47% of the lithium reserves, a critical mineral for electromobility.¹⁷

The exportation of critical raw materials from Latin America to the EU is important. Minerals such as copper are exported by Chile, the largest exporter worldwide. Peru, Guatemala, and Bolivia also export copper to the EU. Lithium is exported to the EU by Chile and Argentina, countries with which the EU already has trade agreements. The following table highlights the critical raw materials supplied by some LAC countries to the EU.

Figure 1.
Critical Raw Materials Exported to the EU

Country	Critical Raw Materials Exported to the EU
Chile	Lithium, copper
Argentina	Lithium, aluminum
Brazil	Niobium, tantalum, graphite, copper, and magnesium
Mexico	fluorite (fluorspar), strontium, barite, and cobalt
Peru	Copper
Guatemala	Nickel, aluminum, and copper
Colombia	Coking coal, nickel, and manganese
Bolivia	Copper

Source: Developed by the author based on RMIS, 2021.

The CRMA openly promotes the extraction of raw materials both within the EU and externally through setting the year 2030 as a guiding reference for the EU to increase the use of its own geological resources of strategic raw materials and increase its capacity to such an extent that it can extract the necessary raw materials in order to produce at least 10% of the strategic raw materials it uses.¹⁸ Keeping in mind that the extractive capacity largely depends on the availability of geological resources in the EU, compliance with this benchmark also depends on this availability. By May 24, 2025, each member State of the EU is obliged to formulate a national program aimed at specifically exploring for critical raw materials.

The CRMA regulation stipulates that the EU's capacity to process must also be increased and enable countries to produce at least 40% of their annual consumption of critical raw materials by 2030.¹⁹ Should this goal be met, given that the EU countries have small reserves of certain minerals, they will engage, to a greater extent, in transforming raw materials from some southern regions. Copper, a mineral that is necessary for transforming energy, is a good example. Chile, Peru, and Mexico together concentrate 54% of the worldwide copper reserves, whereas the EU only has 3.1%.²⁰ At present, China is the main producer of refined copper, yielding more than 42% of the copper production worldwide. In contrast, the EU produces only 10.7%.²¹ Thus, with the CRMA's entry into effect, the EU is betting on increasing its internal capacities. In parallel to this, the Latin American countries will tend to compete with each other, thus reinforcing their subordination within the international economic scheme.²²

In certain cases, the EU depends almost completely upon one country for its raw material supply. 97% of its magnesium supply comes from China and 100% of rare earths are refined in that country.²³ Such dependence creates a risky situation within Europe's internal market supply. In order to limit this risk, the European Act stipulates that by 2030, the EU must stop

¹⁵ OLADE, 2024
¹⁶ ECLAC, 2023
¹⁷ EU-LAC Foundation, 2024
¹⁸ CRMA Regulation, par. 11
¹⁹ Ibid.
²⁰ RMIS, 2021
²¹ Ibid.
²² Svampa, 2023
²³ European Commission, (undated). EU's Critical Raw Materials Act.

depending on a third party for more than 65% of the supply of any strategic raw material, whether unprocessed or in any phase of processing²⁴, with the purpose of ensuring the internal supply coming from other countries.

The extractive and neocolonial nature of this Act is evident since it does not set any goals to reduce the use of raw materials. On the contrary, the CRMA holds the premise that the EU countries can maintain their unbridled increase in the use of resources serving to promote certain sectors of the economy and to transition toward renewable sources of energy through using the supply of raw materials from the Global South regions, such as Latin America, transferring the economic, social, and environmental impacts of extractive projects to those countries, that is to say, creating sacrifice zones. The current European demand for raw materials is unsustainable: the EU represents 6% of the world's population, but consumes between 25 and 30% of the metals produced globally, with an ecological footprint that is twice the acceptable level of sustainability.²⁵

In order to gain access to the mineral resources outside the EU, the CRMA set up a series of mechanisms, such as the creation of strategic associations and projects, particularly focusing on those countries with which the EU has already signed a free trade agreement or other forms of cooperation regarding raw materials.

The Strategic Partnerships with other countries are non-binding commitments between the EU and a third country aimed to increase cooperation in relation to raw material extraction and the value chain. The CRMA has stipulated certain criteria for the establishment of Strategic Partnerships²⁶:

- The potential contribution to supply security and resilience, keeping in mind the third country's potential critical raw material reserves and its extractive, processing, and recycling capacity.
- Defining whether the cooperation between the EU and a third country can improve the latter's capacity to guarantee the follow-up, prevention, and minimization of adverse environmental effects.
- The existence of cooperation agreements in force.

The so-called "strategic partnerships" are neo-colonial mechanisms that under the practices of international trade promote businesses that will be beneficial for the EU, but which reinforce the primary export model of the LAC countries in which the Latin American countries export raw materials while importing industrial and technological products. These partnerships are trade agreements that, following a win-win premise, obtain raw materials through transferring the socio-environmental costs to regions such as Latin America. In the aforementioned agreements and partnerships established with Chile and Argentina, although the term "sustainability" abounds as a premise of responsible extractive activity, no obligation has been stipulated to carry out socio-environmental assessments and obtain free, prior, and informed consent with affected communities, neither do these agreements and partnerships include mechanisms for sanctioning human rights violations committed by businesses.

Furthermore, the CRMA establishes the creation of strategic projects within developing economies, such as those in LAC, and emphasizes that such projects should obey the mutual benefit and interests for the EU and the country in question, besides fulfilling the same level of social and environmental sustainability. The CRMA considers that the strategic projects in the EU have public interest or a superior public interest, which implies a risk to biodiversity, protected spaces or zones and, in general, place territories under greater stress.

In order for a project to be considered strategic, it must meet specific criteria; contribute significantly to the secure supply of the EU's strategic raw materials; it should be technically viable within a reasonable time frame; it should be executed in a sustainable manner; it should include transparency policies aimed at avoiding corruption and bribery, among other criteria. In particular, these criteria suffer two deficiencies: a) they are based on socially responsible business practices, such as certification systems, rather than on ensuring binding international rights and agreements signed by the member States, and b) the presentation of evidence regarding compliance with these criteria falls upon the project promoters, i.e., the companies or development consortiums. In Latin America, the expressions and/or assessments of social and environmental impact are often developed by the same extractive companies or by consultants hired for that purpose with minimal supervision by the States. In practice, these assessments lack objectivity and not only tend to minimize the impacts caused by the extractive activity on the territories, but may also tend to exacerbate the benefits that such activities will bring.

²⁴ CRMA Regulation, par. 12

²⁵ Friends of the Earth Europe, 2023

²⁶ CRMA Regulation, Article 37

The European Commission will carry out a whole procedure to channel the strategic project applications that companies present to the EU member-states, or to the third party countries where these projects intend to be developed, until a resolution is eventually reached regarding whether the necessary requirements to become a strategic project have been fulfilled.

Once the projects have been approved, the companies must report information about progress in terms of execution and financing, which could originate from private sources, financial support received from the European Investment Bank Group or other international financial institutions, including the European Bank for Reconstruction and Development, as well as existing member State instruments and programs, including the financing programs pertaining to the EU with special emphasis on the Global Gateway initiative for strategic projects.

At present, the extractive companies in LAC are corporations with capital originating in Canada, China, the USA, and, to a lesser extent, Europe. With the CRMA in force, it is likely that this capital will strengthen and diversify, even paving the way for new European investments, since strategic projects represent opportunities to expand the market for energy infrastructure and mining. In the face of such progress, it is necessary to recognize that the extractive projects are executed with very low levels of sustainability in developing countries, given the laxity of regulations and norms, the political capture of such economies, and abuse by extractive corporations. The Responsible Mining Foundation notes that the performance of mining companies falls far below society's expectations and requires greater efforts from the companies to guarantee that their practices are managed efficiently, taking into account the expectations held by society and the SDGs.²⁷

In the case of strategic raw materials, the partnerships and strategic projects are far from representing the actual development opportunities in LAC. On the contrary, it is about mechanisms that expand the market of the mining corporations, reinforcing the primary export model, and contributing to the creation and aggravation of new sacrifice zones, thus increasing the EU's colonial debt with LAC.

²⁷ Responsible Mining Foundation, 2020

3

THE SOCIO-ENVIRONMENTAL EFFECTS

The Act recognizes that *“if not managed adequately, the increase of the demand for critical raw materials could have negative environmental and social effects.”* Upon increasing the extraction of minerals and raw materials, the use of energy, in general fossil fuels, also increases with the consequent emission of global greenhouse gases, besides generating major stress on territories with regard to water and communal commons. In addition, the Act stipulates that conflicts regarding land use can create ‘obstacles’ in the course of the deployment of raw material projects. In the face of the pressures to which Latin American territories will be subjected and the laxity of environmental regulations in various countries, there is a considerable risk of accentuating territorial conflicts and disputes, as well as deepening environmental and climate degradation experienced by the populations where extractive projects are developed.

The CRMA affirms that new critical raw material projects should be planned and executed sustainably, considering all aspects of sustainability, including the guarantee of environmental protection, the prevention and minimization of socially adverse effects, respect for human rights, such as women’s rights and transparency in business practices.²⁸

In spite of explicit acknowledgement of certain rights, the CRMA is lax on environmental affairs, stipulating that every occasion should be used in order to make sound assessments and authorizations and even group them through a comprehensive procedure to avoid unnecessary overlap, i.e., minimize the number of assessments. It sets forth only the creation of a plan to improve the state of the environment in the affected areas once the extraction has been completed, but fails to stipulate obligations to restore, remedy, and rehabilitate the environment and adequate closure of facilities, such as the closing of mines, as well as the necessary procedures upon ending the extractive operations. In addition, the Act considers strategic projects to respond to higher public interests. These projects may be authorized for the sake of a so-called higher benefit it produces and the reduction of the adverse impact they might have on the territories, besides affecting areas of biological interest and reserves of biological, cultural, archeological, and even spiritual importance.

For Latin America, the laxity in environmental regulations is not new, neither is the fact that mining facilities are located in natural protected areas, conservation areas, close to population centers and in zones in which water is scarce on an ongoing basis. Globally, 52% of the copper mines are located in areas with high hydric stress and four out of the five most important copper mines in the world are located in Chile, Peru, and México.²⁹

In social and indigenous-related matters, the CRMA fails to ensure the collective rights of indigenous peoples: the rights to land and territory, to the peoples’ self-determination, to prior, free, and informed consultation and consent. The Act is limited to acknowledging that strategic projects should ensure a commitment to negotiate in good faith, as well as carrying out consultations with the members of the local communities and indigenous peoples participating in these conversations.

The CRMA stipulates that there is an obligation to present a plan that contains measures to facilitate the public acceptance of strategic projects, including measures to facilitate the active participation of the affected communities, launching sensitization campaigns, and the establishment of possible mitigation and compensation mechanisms. With regard to projects affecting indigenous peoples, the plan should contain measures geared to consulting the affected peoples. Nevertheless, this consultation is not set forth so those people can exercise their right to consent, that is to say, to approve or reject a project, but rather, following the terms stipulated by the Act, the consultation should address “the prevention and minimization of adverse effects on their rights and, when applicable, a fair compensation should be made to the aforementioned peoples.” These measures do not guarantee the full exercise of indigenous peoples’ rights. On the

²⁸ CRMA Regulation, par. 17

²⁹ IEA, 2023

contrary, they reveal a colonializing perspective in which indigenous people are considered as mere receivers of information, which will prepare them to prevent the risks caused by resource extraction and that, in the best of cases, they could receive compensation for their populations. Furthermore, the CRMA states that, given the importance of public acceptance of the mining projects, it is crucial that the companies promoting the projects present a plan containing measures that facilitate such acceptance.

In specific cases regarding projects that may affect indigenous communities, the CRMA stipulates the obligation to have a plan with measures that foresee that they are consulted, forewarned, and when applicable, compensated for the project's adverse effects. In no way does the Act propose respecting the right to free, prior, and informed consent. Consequently, it denies them the possibility of rejecting the execution of those projects in their territories. In other words, it denies them the right to say, "No!" It should be noted that, as far as rights are concerned, consent is different from consultation. The former refers to the decision to accept or reject a project, whereas a consultation is a means by which consent may be achieved.

The Act stipulates that the EU's recycling capacity should be able to produce at least 25% of the annual aggregate consumption of the EU's strategic raw materials and could recycle increasingly significant amounts of each strategic raw material based on waste. Although this measure is positive, the recycling of raw materials and minerals seems to be a palliative regarding the demand for these raw materials, rather than an efficient measure to reduce the use of raw materials.

Finally, the CRMA stipulates that the EU will provide support to enable the companies to access the markets of the countries that are not included within a strategic partnership or a free trade agreement. *"This support can include the creation of a support network that will help them to establish contacts in the corresponding third party country and gather information about the local and regional circumstances."*³⁰ In addition, these considerations represent a violation of a country's sovereignty, the risk of corruption, political capture, and the rupture of transparency and accountability in terms of the effective governance of extractive projects. Linking political interests with the implementation of these projects, implies a considerable risk. Oxfam (2023) refers to the fact that in Latin America, 65% of the wealth of billionaires is concentrated in four sectors: finance and investment, food and beverages, metals and mining, and telecommunications. This situation therefore represents a real risk of political capture of the aforementioned processes related to the extraction of minerals.

³⁰ CRMA Regulation, par. 65

4

REGIONAL TOOLS TO AVOID THE INFRINGEMENT OF HUMAN AND ENVIRONMENTAL RIGHTS BY POSSIBLE TRADE RELATIONS ESTABLISHED BY THE ACT

There are both binding and soft regulatory instruments to ensure that extractive companies respect the highest existing socio-environmental and governance standards. The following section will describe the main tools contributing to territorial defense.

THE ESCAZÚ AGREEMENT AND THE AARHUS CONVENTION

Both instruments implement Principle 10 of the Rio Declaration of 1992 that addresses the following rights: access to information, access to public participation, and access to justice regarding environmental themes. The Escazú Agreement explicitly stipulates the human right to a healthy environment and is a binding instrument for the countries that ratified it.

In Latin America, twenty-four countries signed the Agreement and among them fifteen have ratified it: Antigua and Barbuda, Argentina, Belize, Bolivia, Dominica, Ecuador, Grenada, Guyana, Mexico, Nicaragua, Panama, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Saint Lucia, and Uruguay, whereas Chile joined as a member State in 2022.³¹

The goal of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters is to contribute to protecting the right of every person pertaining to the present and future generations, to live in an environment that ensures their health and wellbeing. It is a binding international treaty formulated within the framework of the United Nations Economic Commission for Europe.

THE OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE BUSINESS CONDUCT

Due diligence is a process through which companies may identify, evaluate, mitigate, prevent, and inform how they address the real or potential negative impacts of their activities, including their supply chain and other trade relationships (European Commission, 2024). The OECD Due Diligence Guidance is based on the OECD Guidelines for Multinational Enterprises. It refers to the non-binding recommendations made by the governments to multinational enterprises, regarding responsible business conduct. This Guidance, besides noting the positive impacts, it also acknowledges the negative impacts related to workers, human rights, the environment, bribery, consumers, and corporate government.

THE UNITED NATIONS (NON-BINDING) GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

These principles establish the States' duty to protect human rights, the responsibility of enterprises as specialized societal organizations that perform specific functions and must comply with all of the applicable laws and respect the same rights. If infringements are committed, the States must repair the damage. This applies to all States and to all enterprises, whether transnational or of another kind, regardless of size, economic sector, location, ownership, and structure.

The enterprises must establish adequate due diligence processes in human rights matters and acknowledge specific problems faced by indigenous peoples, women, national minorities, and ethnic minorities, among others.

³¹ ECLAC, Observatory on Principle 10.

THE INTERNATIONAL LABOR ORGANIZATION INDIGENOUS AND TRIBAL PEOPLES CONVENTION 169

This is a binding international instrument adopted by the ILO in 1989 and is the main international instrument regarding the rights of indigenous peoples in the world.

a) The Right to Prior, Free, and Informed Consent

This right is recognized by various international instruments, including ILO Convention 169, the United Nations (UN) and the Organization of American States (OAS) Declarations on the Rights of Indigenous Peoples, and the interpretation of the specialized bodies addressing indigenous rights matters (committees, rapporteur reports, etc.) and the recommendations and resolutions issued by the bodies of the Inter-American Human Rights System (IAHRS). ILO Convention 169 in its Article 6 stipulates some general criteria regarding the right to consultation, specifically stating that governments must:

- a) Consult the interested peoples through appropriate procedures each time legislative or administrative measures are drawn up that are bound to directly affect those peoples.
- b) Establish the means through which the interested peoples can participate freely, and
- c) Establish the means for the full development of those peoples' institutions and initiatives.

b) The Right of Peoples to Self-Determination

ILO Convention 169 in its Article 7 stipulates that indigenous peoples have the right to decide their own priorities regarding their development process, inasmuch as this affects their lives, beliefs, institutions, spiritual wellbeing, and the lands that they occupy or use, and, to the extent possible, control their own economic, social, and cultural development. Furthermore, these peoples must participate in the formulation, application, and evaluation of the national and regional development plans and programs that are bound to affect them directly. Likewise, the aforementioned article indicates that, when applicable, the governments must ensure that studies are always carried out in cooperation with the peoples in order to assess the social, spiritual, cultural, and particularly environmental impact that the foreseen development activities may have on these peoples. Article 7 notes that the governments must take measures in cooperation with the interested peoples to protect and preserve the environment in the territories they inhabit.

c) The Right to Property and Possession over Traditionally Occupied Lands

ILO Convention 169 stipulates in its Article 14 that the interested peoples' right to the property and possession of the lands they have traditionally occupied must be recognized. It states that the governments must take the necessary measures to determine what lands the interested peoples have traditionally occupied and guarantee the effective protection of their rights to property and possession. Furthermore, they must establish adequate procedures within the framework of the national juridical system in order to solve the land vindication claims filed by the interested peoples.

d) The Right to the Natural Resources on Their Lands

ILO Convention 169 stipulates in its Article 15 that the rights of the interested peoples to the natural resources existing on their lands should be especially protected. These rights include the right of these peoples to participate in the use, management, and conservation of these resources. In case the minerals and subsoil resources pertain to the State, or that the State has rights over other resources existing on those lands, the governments must establish or maintain procedures aimed to consult the interested peoples in order to determine whether the peoples' interests will be damaged and to what extent, before initiating or authorizing any prospection or exploitation program regarding the resources existing on their lands. Whenever possible the interested peoples should participate in the benefits reported by such activities and should receive fair compensation for whatever damage they may suffer as a result of these activities

THE CONVENTION ON BIOLOGICAL DIVERSITY

This binding international instrument, that has been ratified by 196 countries, is aimed at achieving "the conservation of biological diversity, the sustainable use of its components, and the fair and equal participation in the benefits derived from the use of genetic resources."³² It stipulates the obligation to create a system of protected areas or areas in which special measures must be taken to conserve biological diversity. It mandates the formulation of guidelines for the selection, establishment, and ordering of protected areas or areas in which special measures must be taken to conserve biological diversity. This Convention states that countries must promote adequate and sustainable environmental development in zones adjacent to protected areas, with an aim to increasing protection of these areas.



FINAL REFLECTIONS

On a global level, countries are betting on an energy transition. The abandonment of fossil fuels is absolutely necessary if as humankind we want to face the current climate emergency. Nevertheless, legal instruments such as the EU's Critical Raw Materials Act (CRMA)—the objectives of which are to ensure the supply of minerals for the European energy transition and other industries—must contemplate a much fairer vision than the extraction of mineral resources, and also guarantee the respect for individual and collective human rights and those of Nature.

The EU's CRMA implies certain risks that have been described throughout the length and breadth of this paper. These risks span from refocusing the national Latin American economies on the production of primary commodities, to the possible human rights violations due to the creation of sacrifice zones that will suffer the economic, social, and environmental impacts of extractive projects in which minerals will be destined to satisfy the European market. Nevertheless, there exist regulatory instruments to face these possible onslaughts of the CRMA, diverse treaties and agreements that ensure rights, such as the Escazú Agreement and ILO Convention 169, which are valuable resources that may be used by the peoples and communities, if they so choose, to defend their territories in the face of these new extractive dynamics.

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POLICY IMPLICATIONS FROM THE EUROPEAN CRITICAL RAW MATERIALS ACT

PLUNDERED SOIL – MINERAL WEALTH AND CONFLICT IN THE DEMOCRATIC REPUBLIC OF CONGO

Manuela Mattheß, October 2024

Even if we may not always be aware of it, our modern lives are based on products that would not exist without certain raw materials and rare earths. Especially in the industrialized Global North and the European Union, we can no longer imagine life without cell phones, computers, medical care technologies, battery-powered devices or electric cars. Our industries need a constant supply of valuable raw materials such as cobalt, lithium, coltan, tin and others, just like we humans need the air to breathe. This hunger for a constant supply of raw materials also has consequences for those people in the Global South who are often responsible for their extraction, but who rarely benefit from their use.

The Critical Raw Materials Act which came into force in May 2024 was created in order to secure the affordable and sustainable supply of critical raw materials as well as maintain its industrial competitiveness by reducing dependencies. This goal is to be achieved by identifying projects both within the EU and in other countries in which important raw materials are extracted, processed or recycled and by entering into strategic raw material partnerships with producer countries. Regardless of whether these targets can really be achieved, the EU has set itself very ambitious goals: By 2030, at least 10% of the EU's annual consumption of raw materials is to come from locally extracted minerals and 25% from recycled materials. 40% is to be processed in the EU itself.¹ The Critical Raw Materials Act is also closely linked to the European Green Deal which aims to pave the way for the envisaged climate neutrality by 2050 and sets targets and concrete paths in various policy areas. Even though Africa is, in general, not Europe's main supplier for raw materials, there is no way around the continent, especially for the planned transition to a sustainable future with regards to the energy sector, for example. If the European Union wants to move towards low-carbon energy and especially transport systems, it needs raw materials from the African continent, above all from the Democratic Republic of Congo.

DIGGING FOR WEALTH IN THE DEMOCRATIC REPUBLIC OF CONGO

The Democratic Republic of the Congo (DRC) is extremely rich in raw materials. The country hosts numerous major deposits of diamonds, gold, copper, tin, tantalum, lithium and more than 70% of global cobalt production.² In particular, cobalt – an indispensable raw material³ for the production of storage systems such as lithium-ion batteries, that are desperately needed in the automobile as well as the sustainable energy sector – has seen a massive rise in demand which is expected to more than double on 2023 levels by 2030. Electric vehicles alone accounted for 96% of the demand growth for cobalt in 2023.⁴ In spite of an intense search for possible replacements as well as for deposits in other regions of the world, the DRC will most likely remain the biggest primary producer of cobalt.

Mining in general is of high significance for the country's economic development and also a major source for employment – formal not so much as informal. Mining activities in the DRC comprise large-scale industrial mining as well as artisanal small-scale mining. The formal mining sector in the DRC employs roughly 120,000 people. The informal mining sector, however, employs anywhere from 500,000 to 1 million people and plays a major role in income generation in the country.⁵ In the Katanga province in Southern DRC, the mining of cobalt and copper is estimated to generate income for around 10 million people. In contrast, more than 100 mining companies in the same region employ less than one million people.⁶ The Congolese government has established legal rules for artisanal mining through the 2018 mining law. With the help

¹ https://single-market-economy.ec.europa.eu/sectors/raw-materials/areas-specific-interest/critical-raw-materials/critical-raw-materials-act_en, last accessed 04.10.2024.

² <https://www.miningreview.com/battery-metals/new-initiative-to-support-artisanal-cobalt-mining-in-the-drc/>

³ Cobalt is classified a critical raw material because it can only be extracted in a few countries in the world and secondly because it is mostly mined in regions with high state fragility.

⁴ https://www.cobaltinstitute.org/wp-content/uploads/2024/05/Cobalt-Market-Report-2023_FINAL.pdf, last accessed 04.10.2024.

⁵ https://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/Mineral-Certification-DRC/CTC_DRC_node_en.html, last accessed 04.10.2024.

⁶ https://www.inkota.de/sites/default/files/2023-08/inkota_cobalt_critical_eng_web.pdf, last accessed 09.10.2024

of cooperatives, workers should be able to unite and extract raw materials within the framework of specific concessions designated for small-scale mining. The definition of these artisanal mining areas is the task of the Ministry of Mining. In theory, organizing miners in cooperatives under the supervision of state agencies was meant to enable them to generate fair income and contribute to better working conditions, but the practical implementation remains inadequate and problematic, because cooperatives are not founded on the workers' own initiatives, but by Congolese entrepreneurs and politicians who often exploit the situation of the informal miners, sometimes in collaboration with foreign investors. A significant proportion of the resources a miner generates does not stay within the cooperative to be shared amongst all workers on a fair and just basis (as one might think when hearing the word cooperative), but rather must usually be paid directly to the supervisor of the cooperative. When selling the rest to a middleman, oftentimes directly in the mine, the miners have no opportunity to negotiate the price as it is dictated to them by the buyer. Furthermore, the workers are not better protected – neither in terms of occupational safety, nor in terms of the provision of social, accident or health insurance. They are just slightly better off than those who mine outside cooperatives, as there are not enough designated mining sites for artisanal mining available through the government agency. Under the law, as a matter of fact, it should not be possible for artisanal mining to take place in any industrial mine, but the reality tells a different story. Artisanal mining is happening pretty much everywhere, be it in official industrial mining sites or outside of those. That's why it is safe to say that it is incredibly hard to assert with 100% certainty that a raw material in the DRC comes from a clean and formal source.

Working conditions in artisanal mining – within or outside of a cooperative – can at best be described as problematic and at worst as disastrous and inhumane, falling without a doubt into the category of modern-day slavery. As Siddharth Kara, a scholar and scientist working on modern slavery and human trafficking in global supply chains, rightly put it with regards to cobalt mining: “The bottom of the supply chain, where almost all the world's cobalt is coming from, is a horror show”.⁷ Between 15 and 30 % of Congolese cobalt, for example, comes from irregular artisanal mines with hazardous working conditions.⁸ People usually mine in self-built tunnels that can collapse at any time. Miners normally do not own adequate protective clothing and usually use their bare hands and some basic tools to dig for raw materials in the ground. Despite many international campaigns and efforts to end it, child labor continues to happen in and around the informal mining sites, largely due to extreme poverty. Miners usually have no access to social, accident or health insurance, despite being exposed to serious health risks. When it comes to their wages, what they can earn daily is not even close to compensating the risks that they are taking, let alone covering the costs to support themselves and their families. Additionally, workers employed in artisanal and small-scale mining that are part of a cooperative do not have the opportunity to collectively negotiate wages due to their membership, as labor law and the associated protection of their interests through union representation does not apply here. The working and earning conditions of the people that are at the beginning of the supply chain are life-threatening and in no way meet the requirements for good and decent work. Furthermore, mining has disastrous environmental effects such as deforestation or severe pollution which further worsens the living conditions of local people.

WAR ECONOMY AND VIOLENT CONFLICTS IN THE DEMOCRATIC REPUBLIC OF CONGO

Raw materials in the DRC are usually not the cause of conflict, but especially in the east of the country they have been playing a crucial role in fueling them. Eastern Congo is a region under massive pressure. For over 20 years, more than 100 rebel groups have been fighting for territorial claims to power and for control over the region's abundant natural resources.⁹ Mining raw materials, but also providing transportation or other services related to them, is a major source of income for armed groups, as well as for state actors in the DRC, such as the national army *Forces Armées de la République Démocratique du Congo* (FARDC). Neighboring countries such as Rwanda and Uganda are further aggravating the situation in the east of the country by supporting militarized groups or middlemen to gain access to Congolese raw materials and to control trade routes.¹⁰ This illegal exploitation¹¹ of Congo's natural resources causes multiple problems. The involvement of various

⁷ <https://www.npr.org/sections/goatsandsoda/2023/02/01/1152893248/red-cobalt-congo-drc-mining-siddharth-kara>, last accessed 14.10.2024

⁸ [https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/757828/EPRS_ATA\(2024\)757828_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/757828/EPRS_ATA(2024)757828_EN.pdf), last accessed 09.10.2024

⁹ The so-called 3T minerals tantalum, tin, and tungsten, are mostly mined in relatively small-scale artisanal mines in the eastern DRC. They have been described as conflict minerals due to their connections to funding violence. Much of the financing for the war economy in Eastern DRC can directly be connected to the raw materials coltan as well.

¹⁰ https://www.inkota.de/sites/default/files/2023-08/inkota_cobalt.critical_eng_web.pdf, last accessed 04.10.2024. For more information from the UN Security Council Group of Experts on the Democratic Republic of the Congo see their latest report: <https://documents.un.org/doc/undoc/gen/n24/118/80/pdf/n2411880.pdf>, last accessed 27.10.2024 or previous reports.

¹¹ There are a number of UN resolutions as well as joint operations from the United Nations Mission in DRC (MONUSCO) together with the FARDC in place that tried to dislodge the rebels and re-establish the Congolese authorities' control over the mining regions, but none of them have been very successful for various reasons such as corruption, violence and militarization, infrastructural and operational deficits as well as clientelistic systems of governing in local areas, especially in Eastern DRC. For more information see: <https://www.crisisgroup.org/africa/central-africa/democratic-republic-congo/behind-problem-conflict-minerals-dr-congo-governance>, last accessed 10.10.2024.

armed groups, for example, massively contributes to insecurity and violence around the mines. Rebel and militia groups commit widespread human rights abuses, including rape, enslavement, torture, disappearances and killing of civilians.¹²

BIG BUSINESS AND INTERNATIONAL INVOLVEMENT

Historically, mining in Africa has been exploited by foreign forces. At the end of the 19th and beginning of the 20th century, the Belgian King Leopold II used the territory of the current DRC as his personal property, exploiting its raw materials in an incredibly cruel and inhumane manner and taking them out of the country for his own and Belgium's enrichment. The Democratic Republic of Congo became independent in 1960, but the exploitation of its natural resources by foreign actors continued. China is one of the biggest players here. In 2008, former president Joseph Kabila closed a deal with the Asian country for access to mining concessions in exchange for development and infrastructural assistance. This opened the door for massive Chinese engagement in the DRC. Today, China controls 80 percent of the world's raw mineral refining and owns fifteen of the seventeen cobalt mining operations in the DRC. This leads to the curious situation that while the DRC is the world's main source of cobalt, China refined 77 % of the world's cobalt in 2022.¹³ Although the DRC has embarked on a diversification of its mining portfolio, encouraging the presence of new countries such as Saudi Arabia and the United Arab Emirates, China remains a key player in the Congolese mining sector.¹⁴ It dominates not only mining excavation on the ground, but also the supply chain all the way through to the battery level. Canada is also very much involved in extracting natural resources from Congolese soil as is Glencore¹⁵, a Swiss company that has been very present in the DRC for years.

Most large industrial mines are run by joint ventures between a foreign company and one of the DRC's state-owned mining companies. Exploitation permits are officially granted by the DRC Mining Register. The Congolese mining sector accounts for some 95 percent of the country's export revenues and represents about 20 percent of national gross domestic product.¹⁶ Now, one could ask why the Congolese government does not try to negotiate more favorable conditions with regards to the mining concessions and why it does not try to limit foreign nation's influence in their mining sector. The answer is complex. The DRC is a war-torn, impoverished nation that has been subjected to generations of plundering and exploitation. In August 2024, President Félix Tshisekedi traveled to China to renegotiate mining contracts for the DRC's mineral reserves in order to obtain better conditions for his country.¹⁷ This was an important first step, but renegotiating unfavorable deals will not be the solution and will not lead to the Congolese population finally profiting from the rich soils in their country. Two aspects need to be considered here: Firstly, widespread corruption is a big part of the problem. A large sum of the benefits from raw material extraction and trade never reaches the Congolese people, as it is lost due to corruption, mismanagement and an ineffective tax system. Secondly, there is an immense power imbalance between Congo and foreign powers involved in the mining sector, which is further exacerbated by partnerships of any kind that are not based on equality. For example, Europe, as mentioned above, urgently needs Congolese raw materials for its industry and its energy and transportation transition. However, the country still receives far too few truly attractive offers that are aimed not only at extracting raw materials, but also at promoting local value creation. The latter, in combination with support for technology transfer and the promotion of infrastructure measures as well as good governance, would be a sensible step towards really supporting the Congolese economy. But – and this is also part of the truth – investments in these areas and for these purposes in the Democratic Republic of Congo are risky for companies due to the deficits in infrastructure, stability and legal certainty and would have to be combined with appropriate state security mechanisms.

THE EUROPEAN CRITICAL RAW MATERIALS ACT – CURSE OR BLESSING?

As mentioned above, the EU Critical Raw Materials Act wants to present a “comprehensive set of actions to ensure the EU's access to a secure, diversified, affordable, and sustainable supply of critical raw materials.”¹⁸ It also wants to reduce the EU's dependencies towards China or Russia and strengthen strategic partnerships¹⁹ with countries that can help them fulfill their needs. In an effort to secure the resources needed for sustainable economic growth and to implement the goals of the Paris Climate Agreement, all eyes are set on the continent's supply of rare earths. Now, one could argue that the European Critical Raw Materials Act does not only want to secure natural resources for its own industry, to sustain its own wealth and to be able to fight the climate crisis by transitioning towards a low-carbon economy, but also to establish strategic projects in partner countries which ideally result in benefits for them, such as “...the creation of wider economic

¹² https://www.researchgate.net/publication/265143180_Coltan_Mining_in_the_Democratic_Republic_of_Congo_How_Tantalum-Using_Industries_Can_Commit_to_the_Reconstruction_of_the_DRC

¹³ [https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/757828/EPRS_ATA\(2024\)757828_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/757828/EPRS_ATA(2024)757828_EN.pdf), last accessed 09.10.2024

¹⁴ <https://afripoli.org/navigating-critical-mineral-supply-chains-the-eus-partnerships-with-the-drc-and-zambia>

¹⁵ Glencore plc is the world's largest commodities trading and mining group.

¹⁶ <https://www.reuters.com/article/congo-mining-idUSL8N1OB52A/>

¹⁷ <https://www.africanews.com/2023/05/26/felix-tshisekedi-visits-china-to-renegotiate-mining-contracts/>, last accessed 14.10.2024.

¹⁸ 2European Commission Press Release on March 16th, 2023: “Critical Raw Materials: ensuring secure and sustainable supply chains for EU's green and digital future” : https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1661

¹⁹ The EU has already formed raw materials partnerships with Argentina, Canada, Chile, the Democratic Republic of the Congo, Greenland, Kazakhstan, Namibia, Rwanda, Ukraine, Uzbekistan and Zambia.

or social benefits including the creation of employment.”²⁰ The problem is that concrete measures and instruments for achieving and monitoring these goals are lacking. The European Critical Raw Materials Act and its impact on the mining sector in the DRC have hardly been discussed with the Congolese public. The Congolese government’s attention tends to focus on strategic trade agreements. In December 2023, the EU and the DRC closed one such strategic partnership which aimed to secure strategic and critical raw materials in a sustainable manner for the green transition. There have been encouraging movements with regards to forming strategic alliances and partnerships that could also benefit the Congolese economy and people in the end. However, the Congolese government and people were more than irritated, if not outraged, when they found out that the EU signed a Memorandum of Understanding on Sustainable Raw Materials Value Chains with Rwanda in February 2024 without mentioning the country’s role in the ongoing war-like conflict in the east of the DRC. This has led to a considerable loss of trust on the part of the Congolese government towards the EU. As a result, it appeared to be moving closer to China again in order to attract urgently needed investment into the country.²¹

In a way, the EU Critical Raw Materials Act can be seen as an instrument to occupy one of the top seats in the rush for minerals needed for the green transition and the protection of industries. More and more African countries try to take control in this race and rightfully want to fight unequal raw material deals at their expense or what they even see as the plundering of their natural resources. A rise in mineral export bans by some African countries worried the European Union, among others, but must be seen as a growing push for domestic processing and the establishment of value creation on the ground to increase local gains. More than a dozen African nations – including the Democratic Republic of Congo (DRC), Nigeria and Namibia – have restricted such exports intermittently or outright banned them.²² The DRC, for example, has intermittently banned exports of copper and cobalt concentrate since 2013 to encourage domestic processing, but it has issued regular waivers to the ban.²³ This strategy could of course backfire as it further complicates investments in an already rather unfriendly investment climate and may violate bilateral trade instruments and World Trade Organization (WTO) law, but it shows that African countries rightfully demand equal partnerships that will give them a fair share of the cake. It appears that the Congolese government does not believe in the transformative and forward-looking nature of the European Critical Raw Materials Deal or its promises regarding the potential of strategic partnerships and attaches little importance to this instrument. The European Critical Raw Materials Act is neither a curse nor a blessing for the workers in artisanal mining in the numerous tunnels of the Democratic Republic of Congo. At present, it does not appear to help improving their working conditions or the economic situation in the country.

MOVING BEYOND THE “RESOURCE CURSE” – SUSTAINABLE AND FAIR RAW MATERIAL POLICIES FOR THE BENEFIT OF ALL

Africa holds more than 40 percent of global reserves of key minerals for batteries and hydrogen technologies. Yet it is predicted that, by 2030, more than 80 percent of the world’s poor will live in Africa, and about 75 percent of them in resource-rich countries.²⁴ In combination with the disastrous and inhumane working conditions, especially in artisanal mining in the DRC, it becomes very clear that things have to change if we want to ensure that all of those working in global value chains are protected and can have a decent and dignified life and that African countries (like the DRC) can benefit from their resource rich soil. In order to be able to reach these two goals, three aspects particularly need to be taken into consideration.

First of all, it is necessary to have a closer look at the Congolese point of view. It has become very clear in the past couple of years that the DRC wants to move away from being the mere provider of raw materials and wants to put more emphasis on processing them locally, thus increasing the share of value creation in the country. This approach could create jobs and income for the State, which in turn is invested in the development and maintenance of infrastructure and state services for the benefit of all Congolese people. Economies could be diversified, reducing dependencies on raw material exports as well. On another important level, one could also effectively address the inequalities that come with the “division of labor”, that exist and can be traced back to colonial times, with African countries being the supplier and exporters of raw materials while European (or today Asian) countries are the producers and exporters of processed goods, profiting from someone else’s wealth. Massive investments in infrastructure and know-how, training and business-related services will be necessary to establish local value creation in the DRC. The country urgently needs support for this. However, it is also true that the Congolese government must do more to curb the widespread corruption, improve the rule of law and security, develop national and regional strategies for industrialization²⁵ and thus ameliorate the investment climate. It also needs to ensure that the profits are equally distributed among its citizens – something that is easier said than done. A comprehensive mineral

²⁰ ECRMA S. 62, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401252, last accessed 15.10.2024.

²¹ <https://zoom-eco.net/nation/focac-2024-la-rdc-devrait-assainir-son-climat-des-affaires-pour-tirer-profit-des-50-milliards-usd-chinois-expert/>, last accessed 15.10.2024.

²² <https://www.context.news/just-transition/no-more-plundering-can-africa-take-control-in-green-mineral-rush>, last accessed 14.10.2024.

²³ <https://www.reuters.com/article/congo-copper-idAFL2N2NF1OK/>, last accessed 15.10.2024.

²⁴ <https://foreignpolicy.com/2023/08/16/zimbabwe-china-lithium-exports-green-technology-africa/>, last accessed 15.10.2024.

²⁵ <https://www.germanwatch.org/de/91324>, last accessed 04.10.2024.

governance framework like the African Green Minerals Strategy²⁶ can help ensure that the whole continent benefits from its pivotal role in the global energy transition.

Secondly, the business sector —such as foreign and transnationally operating companies that are active in the Congolese mining sector— also have a role in the goal to achieve better working conditions for miners in the DRC as well as in ensuring that the country benefits more from its natural resources. The situation here looks rather grim. Large automobile companies like Daimler or Mercedes-Benz, for example, are caught in a dilemma: they need raw materials from African countries, above all from the DRC, for their industry, ideally at the highest possible profit. Yet, at the same time, they must also – in this case – comply with German and European laws. Both the German and the European Supply Chain Act attempt to hold companies accountable regarding their responsibility to abide by environmental standards and human rights in the global supply chain and to improve the protection of these standards through binding regulations. Despite all the challenges that still exist in this regard, the establishment of such legal frameworks for the global supply chain was an important step, because it created an instrument to draw the attention of big businesses to possible misconduct and forced companies to think about how they can set up their supply chains in a fair, socially just and climate-resilient way. Opinions are divided among German companies regarding the Corporate Sustainability Due Diligence Directive (CSDDD) – the official name of the new EU supply chain law – and the German Supply Chain Act. While some called for its implementation, others warned of excessive demands and competitive disadvantages. The mining workers in the DRC have yet to profit from these legislative frameworks. Many of the companies extracting raw materials in the DRC have fallen for the idea that certification programs or similar initiatives can ensure that only raw materials from certified and recognized official mines enter the cycle, making supply chains safer and more sustainable. Mercedes-Benz,²⁷ for example, requires its battery cell suppliers to source cobalt exclusively from audited mining sites. Such a step is certainly not problematic, but it will not help the workers in artisanal mining. For one thing, far fewer people work in formal mining, and for another, official mines often work together with artisanal miners. Due to the enormous demand, part of the artisanal mined cobalt ends up with the middlemen who trade the cobalt from industrial production and mix them both. It is quite clear that the two areas in Congolese mining cannot be clearly separated from each other. The working conditions of people in artisanal mining can hardly be improved by saying that a company will only get its natural resources from official and certified mining sites. However, this illustrates very well that we need a more thorough and robust legal framework such as the Supply Chain Act in Germany, its European version, or the UN Guiding Principles on Business and Human Rights and that we must also demand their implementation and consideration, if not enforce them through binding requirements and obligations for economic players.

Thirdly, one also needs to inspect players like the European Union. While trying to navigate through the rising demand for raw materials, it has several tools and instruments available such as the above mentioned Critical Raw Materials Act, the Global Gateway Initiative, different MoUs on sustainable raw materials value chains or financial and trade instruments, for example, the Carbon Border Adjustment Mechanism. The problem with those is that they mainly serve European interests, not uniquely, but dominantly. Supporting local value creation in African countries does not necessarily strengthen European industries or protect its wealth, but it would help in consolidating the much-wanted “partnership of equals”²⁸ by listening to the demands of African countries and helping overcome structural challenges for them. Europe still believes that their offers to partners from the Global South are more attractive than those of the Chinese, for example, but this is increasingly no longer the case.²⁹ Of course, China is also acting in its own interests, but in the DRC the Asian country is perceived as more altruistic than the European Union. This is partly because it does not put forth demands for certain reforms, that European countries would not implement themselves or instruments that were clearly created to primarily safeguard their own industry and economy. If the EU really wants to achieve win-win raw material partnerships as mentioned in the Critical Raw Materials Act, it needs to provide concrete offers and both financial and technological support. The EU also needs to make sure that economic goals are not prioritized over environmental and human rights objectives in resource-rich countries. Raw material partnerships should involve social partners and trade unions and should try to lead artisanal mining out of informality, so workers can have better working conditions and more benefits. Furthermore, partnerships like these can only be fruitful if all aspects of industrial and climate policy, development and security policies are interlinked.³⁰ This will not come at zero costs, but the EU needs to invest money, time and —above all— trust and respect. It should also reconsider its business model with regard to the enormous amounts of raw materials it will need for goods that most people in the world would consider luxury. With regards to fulfilling the goals of the Paris Climate Agreement, it is of course necessary to transform the traffic sector and to achieve that goal we need more electric vehicles. The problem is that this only makes sense if we reduce the number of cars on our streets and at the same time convert to using more public transport. However,

²⁶ <https://www.project-syndicate.org/commentary/how-africa-can-manage-mineral-deposits-by-marit-kitaw-2023-09>, last accessed 15.10.2024.

²⁷ <https://group.mercedes-benz.com/responsibility/sustainability/supply-chains/cobalt.html>, last accessed 16.10.2024

²⁸ https://www.eeas.europa.eu/node/36031_en, last accessed 16.10.2024.

²⁹ For more information on the new strategic role of the Global South in tackling global crisis and the necessity for new alliances with Global South countries see: Maihack, Henrik/Plagemann, Johannes (2023): *Wir sind nicht alle. Der Globale Süden und die Ignoranz des Westens.*

³⁰ For more information on raw material partnerships see: <https://library.fes.de/pdf-files/international/21209.pdf>, last accessed 16.10.2024.

that does not correspond with the current business plan of most automobile companies that rely heavily on building and selling more and more cars.

If we want to avoid conflict, turmoil and the reproduction of existing North-South disparities in the race for raw materials, it is imperative that we create an environment in which the fast-growing population in African countries benefits from the wealth in their grounds. Local value creation is key for achieving this goal – if not to say that with the frameworks and tools that exist today, this will not be easily feasible. In an environment of geopolitical competition and rising demand, mineral-rich African countries like the DRC are very aware of the situation around them and how pivotal their role is in achieving the global energy transition or securing Europe's industry. They will choose their partners carefully to be able to establish new and profitable collaborations and if the European Union does not want to be left behind, it needs to actively engage in negotiations and dialogue and intensify its offers. Undoubtedly, there are major challenges in the DRC that need to be addressed for creating an investment-friendly climate to establish local value chain production: starting from infrastructural deficits all the way up to political problems such as corruption, restrictions on freedom of press and media, the lack of an independent judiciary, armed conflicts and violence in large parts of the country, as well as the harming influence of big business or of a dominant Chinese ownership of mines (which also influences processing industries). The European Union can offer instruments, like financial and technological support, and it can provide investment and support packages that include social standards, participation, the involvement of strong unions, protection of human rights as well as due diligence obligations and environmental protection, which could all help truly improve the disastrous and modern-day slavery-like working conditions, especially for workers in artisanal mining. Nevertheless, it needs to engage in fair and equal negotiations and consider Congolese interests and plans for their economic future in the same way that they consider their own needs for a sustainable, independent and secure supply of desperately needed raw materials. These two levels of needs and demands can go hand in hand – to the benefit of all people.

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About the Project

The Regional Social-Ecological Transformation Project recognises the need to find new viable and sustainable development paths in both the social and ecological dimensions to address the multiple crises associated with the prevailing economic models; it accompanies debates on alternatives to

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THE EUROPEAN UNION'S CRITICAL RAW MATERIALS ACT

Implications and Challenges for Europe, Latin America and Africa



Global trade policy is increasingly linked to geopolitics, which has weakened the EU's negotiating capacity given its declining industrial competitiveness. This context, coupled with international demands to reduce the use of fossil fuels, has increased almost exponentially the demand for certain raw materials, considered critical for this transition. The EU's Critical Raw Materials Act (CRMA) seeks to reduce the region's dependence on China for such raw materials. However, this shifts the pressure to meet this demand to other regions, such as Latin



America and Africa – which, in turn, must combat the various inequalities arising from their current role in the global supply chain–. Consequently, the implementation of the Act must consider the different realities in these regions to avoid exacerbating inequalities and socio-environmental conflicts. Additionally, it may also offer a unique opportunity that could lead to a new model of cooperation in which Europe, Latin America and Africa are seen and treated as equals.



In this publication, experts from Germany, Belgium and Mexico have analysed the consequences and shortcomings of the CRMA from economic, social and environmental perspectives in the context of two regions - Latin America and Europe - and one country in particular - the Democratic Republic of Congo - in order to envisage possible benefits of the implementation of this Law, as well as to warn about the possible adversities that could arise from it.

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