

Friends of the Earth Europe - Analysis of key parts of the EU's Critical Raw Material Regulation

What are the key issues and our analysis?

Overall aims and targets of the Regulation – missing demand reduction!

Supply-focused targets: The new laws list the following targets for the EU's annual consumption of strategic raw materials by 2030:

- domestic extraction will supply for 10% of this consumption;
- domestic processing will supply at least 40%;
- domestic recycling will supply at least 15%;
- Max 65% of each strategic raw material at any relevant stage of processing originates in a single third country.

Our analysis: Concrete targets to limit overall EU demand and consumption of strategic raw materials are missing. The EU consumes more than double a sustainable and just level of materials and energy. Continuing this level of consumption means more extraction and more impacts on the environment. A certain amount of raw materials will inevitably be needed in green transition technologies, yet the Regulation needs to clearly outline ways of limiting this demand and demand for raw materials across the economy through reduction and sufficiency measures, such as renovating buildings to save on energy, prioritising public transport over private cars, and reducing unnecessary uses such as space exploration and armament. A target of 15% sourced from recycled materials is a positive step in reducing demand, yet ambition needs to be increased here with specific targets per material laid out, including on reuse, and more concrete measures on how to achieve them, beyond leaving it up to Member State plans (see more below under “Sustainability” section).

Escalating raw materials extraction across the EU: The new laws state that each Member State shall draw up a national programme for exploration targeted at critical raw materials and that national, regional and local authorities responsible for preparing plans, including zoning, spatial plans and land use plans, include in such plans, where appropriate, provisions for the development of critical raw material projects. It is added that priority shall be given to artificial and built surfaces, industrial sites, brownfield sites, and, where appropriate, greenfield sites not usable for agriculture and forestry.

Our analysis: This is basically mandating Member States full steam ahead on exploration for new mining. The fact that zoning laws could change or, for example, a future protected area at national level could be overridden because it is a potential mining area is extremely worrying. The language on priority of land use is of some reassurance but is not legally binding in any way.

Strategic Projects – lack of clear safeguards for environment and communities

A large part of the Regulation is focused on the development of Strategic Projects both in the EU and in third countries. Some of the language about the projects and their proposed selection is concerning.

Weak involvement of affected communities: That potential projects should have “*meaningful engagement with local communities*” and include “*a plan containing measures to facilitate public acceptance.*”

Our analysis: These are weak commitments which seem focused on facilitating extractives’ development, with the premise that companies will eventually start mining, and that local communities do not have a genuine right to have a concrete say in the matter. Strategic projects for mining, like all projects, should only go ahead with community consent. All projects linked to the EU market, to EU funding or EU trade deals must respect the right of Indigenous peoples to give or withhold their Free, Prior and Informed Consent (FPIC), and should seek the consent of all frontline and affected communities.

Environmental Impact Assessments not mandatory: The projects should meet conditions set out in the Water Framework Directive and the Habitats Directive, but Environmental Impact Assessments (EIAs) are not mandatory.

Our analysis: Many of the root causes of mining conflicts in the EU stem from companies not adhering fully to EU laws, including EIAs. EIAs should be mandatory for Strategic Projects involving mining and processing, and for all of these kinds of projects. In addition, as recommended in a European Parliament research study¹, Social Impact Assessments and Human Right Impact Assessments should be mandatory for mining projects.

Doing away with due diligence: The projects will need to comply with the upcoming final EU Corporate Sustainability Due Diligence law. However, this law does not cover SMEs, which make up most of the companies operating and proposing new raw materials mines in Europe. The other option is for these projects to be individually certified as part of a recognised certification scheme (or even simply with a commitment to obtain certification), as an alternative to complying with the EU law on due diligence.

Our analysis: Due diligence law needs to apply to all Strategic Projects, whether large companies or SMEs. Certification should not be promoted. Companies cannot be allowed to hide behind certification or the EU to substitute the company’s responsibility as regards due diligence. Current certification schemes are self-regulated by industry in an intransparent way, cannot guarantee community consent, and they often are used for greenwashing.

¹ [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/729156/IPOL_STU\(2022\)729156_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/729156/IPOL_STU(2022)729156_EN.pdf)

Fast-tracking permits: A speeding up of the permit granting process (to 24 months for projects involving extraction) and that some projects will be considered of “*overriding public interest*”.

Our analysis: We are concerned that these will lead to weakening of social and environmental safeguards. Most permitting speed-up seems to be on improving administrative functions, however the option for projects to be labelled “*overriding public interest*” may put at risk biodiversity and pose other environmental concerns as we see in RePower EU. Exploration and extractive projects should never take place in protected areas, Natura2000 sites, the arctic, and the deep sea.

Friends of the Earth Europe’s further demands on Strategic Projects include:

- That at least 30% are secondary raw materials projects, for example, urban, landfill or waste re-mining, and recycling plants.
- That there is an assessment of the company/companies involved and its/their past performance.
- That the process and selection is done in a transparent and democratic manner involving all EU institutions and stakeholders, not just the new Board.

Sustainability – positive focus waste re-mining and tackling products not addressed in other EU laws, but more clarity needed

Overall aim: The overall aim is that domestic recycling will meet at least 15% of the EU’s annual consumption of strategic raw materials.

Our analysis: Specific targets for different strategic raw materials are needed to provide more clarity and ability to draw up corresponding actions. Some materials already have quite high recycling and easy potential to increase like copper, and some low. Specific targets and measures on reuse are also needed - reuse is above recycling in the waste hierarchy and dealing with products for reuse involves a different process to recycling.

Ramp up recycling and reuse: Member States will have to design “national programmes” by March 2026 with the aims to increase recycling and reuse of waste products and components containing relevant amounts of critical raw materials, increase the use of secondary critical raw materials in manufacturing, including by taking recycled content into account in award criteria related to the public procurement of relevant products, and to promote material substitution. which may consist of the introduction of financial incentives to oblige distributors of relevant products to take back products. Measures shall cover in particular products and waste which are not subject to any specific requirement on collection, treatment, recycling or reuse under Union legislation (e.g. large section in Regulation on permanent magnets).

Our analysis: These measures have the potential to be positive, if paired with more specific and potentially higher secondary sourcing targets, but remain vague and a lot is up to Member States to outline. It is critical that circularity measures apply to all products using strategic and critical raw materials and not a limited list. In award criteria for public procurement, other measures could also be taken into account such as product longevity and ability to disassemble.

Making use of mine waste: Member States will have to promote the recovery of critical raw materials from extractive waste, in particular from closed waste facilities. They will have to establish a public database of all closed waste facilities, including abandoned ones, located on their territory.

Our analysis: This is largely positive. Much possibility lies in these stocks. For example, two mines in northern Sweden (Kiruna and Gällivare/Malmberget) have the potential to recover rare earth metals which would be equivalent to supplying 30% of EU's current rare earth imports, and recover phosphorus five times the level of Sweden's current demand. Yet waste re-mining can at the same time cause significant impacts to local biodiversity and impact local communities. There is no mention of updating the EU Extractive Waste Directive which is disappointing (if it is updated, it should be made in a Regulation).

Other Commission commitments on circularity: In the accompanying communication to the regulation, there is a longer list of specific commitments in the area of circularity. These give some more details on what the Commission will act on, such as providing recommendations for Member States on take-back of old e-waste, developing codes to increase recycling of lithium batteries and "black masses", investigating as part of ecodesign rules requirements in new products to help the substituting, dismantling, recycling and reuse of CRMs products, harmonising waste management rules for certain waste streams with significant CRM recovery potential and assessing the integration of CRM rich products into the EU waste legislation which are currently not covered (like wind turbines), and financing new Hubs for Circularity.

Our analysis: It is positive to see this list of more specific commitments, although having it in the communication rather than the regulation is puzzling and questions how binding it is. More concrete measures on reuse should also be proposed.

New European Critical Raw Materials Board – holding a lot of power

Board assessing Strategic Projects, stockpiling and exploration programmes: There will be a new Board set up composed of one representative per Member State and one representative of the Commission. Their work will include assessing applications for Strategic Projects, the development of monitoring for risk mitigation, facilitating strategic stockpiling, and the progress of national exploration programmes. There will also be

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

Our analysis: This group will hold a lot of power and it is concerning to see no specific mention of civil society included in consultations or decision-making.

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