

To:

Ursula von der Leyen, President of the European Commission
Frans Timmermans, Executive Vice-President of the European Commission
Margrethe Vestager, Executive Vice-President and European Commissioner for Competition
Valdis Dombrovskis, Executive Vice-President and European Commissioner for Trade
Thierry Breton, European Commissioner for the Internal Market
Virginijus Sinkevičius, European Commissioner for Environment
The Swedish Presidency of the Council of the European Union

Cc:

Member State Ambassadors to the Council of the European Union
Hildegard Bentele, Member of the European Parliament
Mohammed Chahim, Member of the European Parliament
Pascal Canfin, Member of the European Parliament
Bas Eickhout, Member of the European Parliament

Brussels and London, 27 February 2023

Honourable European decision-makers,

As you develop the new EU Critical Raw Materials Act, we urge you to act decisively to protect human rights and the environment. Any acceleration in raw materials extraction risks exacerbating the human rights violations and environmental destruction that have long been the hallmarks of the extractive sector. Yet, there is no time to repeat its past and current failures in preventing harmful impacts on affected communities.

The Critical Raw Materials Act must establish strong human rights and environmental safeguards for new and expansion projects in the EU, with respect for communities and traditional or custodial land holders front and centre, and it must ensure that strategic partnerships with non-EU countries have an equity dimension. Furthermore, a just transition must happen in parallel with a change in *how* the EU produces and consumes: this means urgently introducing systemic measures that decrease demand for virgin raw materials, including ambitious secondary raw materials targets and re-mining materials from legacy mining waste sites.

All raw materials, including those necessary for the green and digital transitions, are connected to [risks of abuses to human rights](#). Violations of land rights and of the rights of Indigenous communities to choose to give their Free, Prior and Informed Consent (FPIC) feature prominently in allegations of human rights abuses in relation with the extraction of cobalt, copper, lithium, nickel, zinc and manganese as recorded by [the Business & Human Rights Resource Centre](#) over a decade. **The extractive sector is also the [most dangerous sector for human rights defenders](#)** (HRDs).

Such risks are not confined to mining operations outside of Europe. Robust and legitimate consultations and Indigenous community consent are a must – yet there is evidence that even in countries where clear licensing processes are in place, this is not always the case. Communities across Europe are opposing new and expansion projects due to serious concerns about the environmental and social impacts and lack of sufficient safeguards. For example, in Serbia, the Jadar lithium project was met with [widespread community opposition](#) and its licence

eventually annulled in January 2022 due to insufficient information provided by the company. In Portugal, [communities have recently filed legal action](#) in relation to a planned lithium mining project. [UN Special Rapporteurs have urged Sweden](#), a country that has not ratified ILO convention no°169, to stop mining on the land of Indigenous Sami people.

The upcoming Critical Raw Materials Act must ensure that it guarantees the protection of human rights and the planet through a three-pronged approach:

(i) Establishing strong human rights and environmental safeguards for new and expansion projects in the European Union

- Member States considering extension of existing projects, or approval of new mining projects, and where Indigenous populations inhabit, should ratify ILO convention no°169.
- Exploration and extraction projects should not take place in specified “no-go” zones, e.g. protected areas. This should not be limited to UNESCO World Heritage Sites but include fragile ecosystems, areas of important biodiversity as well as areas that are essential for the livelihoods of local Indigenous and non-Indigenous communities, Natura 2000 sites, the Arctic, and the deep sea. Projects must use 100% renewable energy sources and their carbon footprint be minimised.
- Environmental Impact Assessments (EIA) need to be conducted in a meaningful, inclusive and legitimate manner, integrating and legitimising local knowledge that reflects community value systems. Legal loopholes that allow authorities to grant weak or incomplete EIA permits should be closed and EIAs for underground mining should be made mandatory, not left up to Member State discretion.
- Social Impact Assessments (SIA) and Human Rights Impact Assessments (HRIA) should be mandated to contribute to the full realisation of public participation rights.

(ii) Ensuring mining companies respect human rights and the environment, in Europe and globally

The CRMA must include provisions to establish a robust corporate accountability framework.

- 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.
- Affected communities, workers and other stakeholders (such as organisations defending the environment) must have access to effective judicial remedy in the home country of companies and financiers involved in a mining project in case of infringements to human rights including FPIC, harm caused to people or the environment.
- Beyond the requirements of the yet to be finalised Corporate Sustainability Due Diligence Directive, companies involved must commit to mandatory human rights and environmental due diligence, in compliance with the United Nations Guiding Principles on Business and Human Rights (UNGPs), including the adoption of dedicated policies to address the most salient risks of the sector, such as land rights, the rights of Indigenous Peoples and zero tolerance for attacks against HRDs. In the selection of strategic projects, companies’ human rights track record must be examined, and whether they have caused, contributed to or been linked to abuses.

- In the selection of strategic projects, the EU should prioritise those that cover secondary raw materials and those that support local development and sustainable access to energy through [community ownership programs](#) in which local communities acquire an equity stake in the project.

(iii) Ensuring strategic partnerships with non-EU countries have an equity dimension

The EU must ensure that resource rich countries truly benefit from the extraction of their minerals, and that such partnerships do not result in locking-in economic development pathways.

- Trade agreements need to include strong and enforceable environmental, human rights and labour provisions, including access to the regular dispute settlement mechanism of the agreement.
- The EU should not restrict other countries’ policy space for developing their own value chains and should refrain from using its trade instruments to challenge other countries’ duties, local content requirements, taxes or fees on export of raw materials that are critical to develop upstream and value-adding activities in such countries.

We call on your leadership to ensure the Critical Raw Materials Act does not come at the cost of increased risks of human rights violations and environmental destruction as a result of a failure to scrutinise and legislate corporate conduct.

We hope you consider these recommendations and we remain at your disposal for any further information.

Yours sincerely,

