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## **European Regulation on Responsible Mineral Sourcing: What are the lessons learned so far for the upcoming review and new legislative proposals?**

Views from Congolese, Colombian and European and civil societies

WORKSHOP REPORT

## Introduction

The 1st of January 2021 marked the entry into force of the European Regulation on Responsible Sourcing of tin, tungsten tantalum and gold (3TG) from conflict-affected and high-risk areas (EU CMR or Regulation). The objective of the Regulation is to oblige European companies to carry out due diligence checks on their suppliers up-to the middle of the supply chain in order to minimize and manage the risks of human rights abuse and to break the link between the exploitation of mineral resources and violent conflicts. The Regulation was accompanied by the disbursement of 20 million euros worth of 'accompanying measures' by the European Commission to assist producing countries, local communities and the most vulnerable actors in the production chains to engage with systems of accountability throughout the chain.

The Regulation represents an important first step in ensuring transparent mineral production chains that curb human rights abuses. However, it remains to be seen what the real impact is in producing countries, particularly with regards to benefits for local communities and small-scale artisanal mining operators. In this report we will focus on the producing countries of the Democratic Republic of Congo (DRC) and Columbia.

In September 2021, a three-day online workshop brought together more than fifty representatives of Colombian, Congolese and European civil society organizations (CSO) to discuss the EU CMR implementation. This workshop was followed by a public online conference where civil societies addressed their concerns to EU representatives (both from the EU Parliament and the Commission) and presented their recommendations.

The workshop and conference aimed to give the opportunity to civil society organizations from producing countries to share their analysis on the risks, opportunities and challenges offered by the Regulation. Moreover, the participants were encouraged to share experiences and good practices. Specific attention has been given to the issues of environmental protection, which is absent from the Regulation. Finally, private sector representatives also had the opportunity to take part in the discussion – to exchange with civil society, explain their own challenges with implementing the Regulation and share their best practices.

This document aims to summarize the main recommendations that have been elaborated during the workshop. Indeed, in view of the evaluation of the accompanying measures this year (2022), the review of the Regulation in 2023, as well as upcoming legislations such as a horizontal due diligence legislation (Sustainable Corporate Governance Initiative) and the Batteries Regulation, it is crucial that CSOs' voice from producing countries are heard and taken into consideration.



Since the adoption of the EU CMR in 2017, CSOs both from producing countries and Europe have underlined a number of concerns. In 2019 these CSOs organized a first workshop and subsequently published a report with key recommendations on the implementation of the EU CMR.[1] The exchanges and testimonies shared during our second workshops in 2021 have shown that important problems persist in the design and implementation of the Regulation.

The discussions did not include the limited scope of the Regulation (addressing supply chains up to refiners and smelters and excluding manufactured products) and the reliance on industry schemes. These themes were discussed in other publications [2]. The exchange focused on four main issues that need to be addressed:

- Smuggling, fraud, money laundering and high corruption;
- Access to market and costs distribution for due-diligence;
- Criminalization of artisanal miners and high obstacles for them to comply with the Regulation (lack of financial, personal, and educational resources, no access to markets, high thresholds);
- Environmental standards are of great importance both for Colombia and DRC and should be included into the regulation.



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[1] EURAC, "The EU Regulation on responsible mineral supply accompanying and its measures: from civil society from producing countries", Workshop Report, December 2019, URL : [https://www.eurac-network.org/sites/default/files/2019\\_eurac\\_report\\_workshopresponsiblemineralsourcing\\_vf.pdf](https://www.eurac-network.org/sites/default/files/2019_eurac_report_workshopresponsiblemineralsourcing_vf.pdf)

[2] EURAC, EUROPEAN NGO COALITION ON MINERALS, PAX, "The EU Conflict Minerals Regulation", June 2021, URL : [https://www.eurac-network.org/sites/default/files/202106\\_coregroup\\_reviewpaper\\_3tg\\_implementation\\_memberstates.pdf](https://www.eurac-network.org/sites/default/files/202106_coregroup_reviewpaper_3tg_implementation_memberstates.pdf)

EURAC, (and Core Group on conflict minerals), "Ensuring transparency in the implementation of the European Union's Regulation on the supply of 3TG minerals", March 2020, URL: [https://www.eurac-network.org/sites/default/files/policy\\_note\\_transparency\\_v6\\_0.pdf](https://www.eurac-network.org/sites/default/files/policy_note_transparency_v6_0.pdf)

EURAC, (and Core Group on conflict minerals), "Ensuring the proper implementation of the EU Regulation on the responsible sourcing of minerals from conflict-affected and high-risk areas", April 2019, URL:

[https://www.eurac-network.org/sites/default/files/joint\\_policy\\_note\\_-\\_ensuring\\_the\\_proper\\_implementation\\_of\\_the\\_eu\\_regulation\\_on\\_the\\_responsible\\_sourcing\\_of\\_minerals\\_from\\_conflict-affected\\_and\\_high\\_risk\\_areas.pdf](https://www.eurac-network.org/sites/default/files/joint_policy_note_-_ensuring_the_proper_implementation_of_the_eu_regulation_on_the_responsible_sourcing_of_minerals_from_conflict-affected_and_high_risk_areas.pdf)

EURAC, (and Core Group on conflict minerals), "ADVICE NOTE TO COMPANIES, MEMBER STATES, AND THE EUROPEAN COMMISSION", March 2018, URL: [https://www.eurac-network.org/sites/default/files/civil\\_society\\_note\\_on\\_eu\\_responsible\\_mineral\\_sourcing\\_regulation\\_eng\\_0.pdf](https://www.eurac-network.org/sites/default/files/civil_society_note_on_eu_responsible_mineral_sourcing_regulation_eng_0.pdf)

# I. The Regulation in practice: shortcomings and impact in producing countries

While efforts have certainly been made in the DRC to promote due diligence and ensure traceability of minerals, the fact remains that vast amounts of minerals are still illegally exported to neighboring countries such as Rwanda and Uganda. Several factors explain the persistence of this illicit trade and various recommendations should be taken into consideration to mitigate and eliminate it. The situation in Colombia is similar. The clearest example is related to gold exported to Panama. On the one hand, Colombia's records show that between 2010 and 2018, around 4.3 million dollars' worth of gold was exported to that country. However, Panama's records show an amount close to 60.8 million dollars in the same period.

## I.1. The CAHRA list

The CAHRA list (indicative and non-exhaustive list of conflict-affected and high-risk countries) is drafted by RAND Europe and commissioned by The European Commission Directorate General for Trade (DG TRADE). Companies which import minerals sourced from areas on this list are strongly encouraged and, in some cases, now obligated by law to carry out supply-chain due diligence. As mentioned, the list is indicative and non-exhaustive, new countries and regions can be added to and deleted from the list over time.

According to Congolese civil society representatives, the CAHRA list discriminates against the DRC and contributes to mineral smuggling. While on the one hand the inclusion of the DRC in the list pushes some companies to disengage from their territory, the non-inclusion of Rwanda and Uganda in the list allows these countries to be considered safe by importing companies. This differential treatment under the CAHRA list has a negative effect on the region as it provides an incentive for mineral smuggling. Indeed, it appears that DRC minerals from conflict zones are illegally exported to neighboring countries, where the minerals then benefit from an image of clean minerals and a less rigorous assessment of their origin by buyers.

Although the EU insists on the indicative nature of the CAHRA list and stresses that companies operating in areas not included in the list are in no way exempted from complying with due diligence obligations, these clarifications do not seem to be respected and well-known in practice. The smuggling of minerals from conflict zones continues to fuel human rights abuses and armed conflict, while undermining the efforts of companies in the region to regulate the mineral trade.

It is therefore clear that the CAHRA list in its current form remains flawed and does not appear to meet its primary objective of facilitating the exercise of due diligence by companies importing minerals from conflict or high-risk areas.

## I.II. Disparity in tax regimes and prices for certification programs between states in the Great Lakes region

A second element that has to be taken into account while analyzing the causes of illicit mineral trafficking, is the different approach to mining taxation by the countries of the Great Lakes region as well as the different tariffs for compliance programs.

With regard to taxation, the regimes applied by neighboring countries are clearly unfavorable to the DRC [3]. In general, export taxes in neighboring countries are much lower than those applied on the Congolese territory. This fiscal disparity provides an obvious economic incentive to move minerals illegally to neighboring countries rather than selling them legally in the DRC.

If the disparity in tax regimes encourages illicit mineral trafficking, a similar trend should be considered with regard to tariffs for compliance programs. Indeed, Congolese civil society has repeatedly pointed out that the national and regional disparity in the costs of traceability programs contributes to illicit mineral trafficking.

Taking together these two elements have a significant influence on the price of minerals. If a trader or exporter wishes to comply with the relevant legislation, the amount of money they will have to pay will be much higher than if they decide to buy or move the minerals illegally. In such a context, it is worth asking what incentives exist for a trader or exporter to switch to the legal mineral trade. Promoting harmonization of mining taxation and certification costs would have the advantage of simplifying the rules of the game and would help to reduce the already existing incentives for illegal trade.

## I.III. Unequal sharing of costs and access to market

In CAHRA's, the illegal route is often the cheapest for the supply chain parties and can therefore be the preferred choice. Upstream actors of the value chain such as miners are the first to be impacted by this market logic as they are the first to bear the costs of compliance, traceability and export taxes. The lack of legal knowledge and the absence of selling opportunities that do not place a heavy burden on their income are therefore important elements to take into account while assessing the persistence of illicit trade.

EU importers as well as the other downstream actors have a clear responsibility to share the costs of legal trading and traceability. Financial and structural help to miners and mining cooperatives in order to comply with the Regulation and traceability schemes are part of the solution to improve access to legal selling opportunities. This will have the effect of spreading the costs of legal mineral trade more evenly among the actors and thus significantly reducing the incentives to smuggle.

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[3] IPIS, LEVIN SOURCES in MADINI, "Comparative analysis of the fiscal regimes and implications for mineral trade of ASM 3TGs in Rwanda, Uganda, Burundi and the DRC", February 2022, URL: <https://ipisresearch.be/publication/comparative-analysis-of-the-fiscal-regimes-and-implications-for-mineral-trade-of-asm-3tgs-in-rwanda-uganda-burundi-and-the-drc/>



## I.IV. Industrial versus artisanal sector mining

CSO representatives from DRC and Colombia expressed that the compliance of the due diligence requirements poses challenges to the artisanal miners. The artisanal sector mining (ASM) often has neither the financial means nor the structural and personal resources to compete with the large-scale mining sector (LSM), particularly in terms of due diligence compliance. Up to now, the formalization of the artisanal mining sector has remained one of the main challenges of the mining sector both in Colombia and DRC.

In the DRC, ASM mined minerals are often not appreciated as it is still seen as an informal sector which does not contribute to the economic growth of the country. In consequence, the ASM is excluded from governmental fundings or other support for the mining sector. Mining titles were only given to the industrial mining sector even when the artisanal sector was already present there. Therefore, artisanal miners were often pushed into illegality or have to work for bigger companies to earn their living. There are huge difficulties for formalization and the ASM sector in Colombia has not been formalized yet.

Civil society actors in both countries report that the local population often does not benefit from the LSM (e.g. through the provision of public services such as roads, hospitals, schools etc.). Moreover, LSM activities often do not engage with the local population in a meaningful way. Local communities are rarely consulted prior to the beginning of mining operations, or worse, communities are forcibly expropriated and displaced without any re- settlement nor compensation.



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## I.V. Accompanying measures

Supply chains in conflict-affected and high-risk-areas are often marked by a high level of illicit activities, weak state institutions, widespread poverty for local communities and predatory behavior by both public and private entities. For these reasons, the Commission has introduced a series of non-legislative measures to accompany both downstream companies and upstream economic and public actors in ensuring responsible and transparent supply chains (referred to as the 'accompanying measures').

If the initiative of accompanying measures must be seen as a real lever of action to meet the challenges of the producing countries and especially ASM challenges, it remains that their potential is under-exploited as of today. There is a clear lack of visibility and awareness on their existence and way to have access to these measures among the stakeholders in producing countries. Moreover, the measures should better contribute to the awareness of the Regulation and strengthen its impact on the ground. Therefore, it is important that the EU continues to support the ASM by promoting, financing, and developing strong accompanying measures as well as practical tools and guidance.

## I.VI. Thresholds

Below a certain threshold, European importers of 3TG minerals are not required to comply with the EU CMR. This choice was made by the legislator in order to avoid a compliance burden on small and medium-sized enterprises (SMEs). There is a risk, however, that they could end up exempting some of the highest risk materials entering the EU from due diligence obligations. The thresholds are set so as to exclude around 5% of the imports of the EU, the single largest trading block in the world. The thresholds are calculated by reference to the EU's total imports, without taking account of the value of these imports or the significance of these imports in specific external contexts, such as in a conflict-affected and high-risk area. The thresholds are hence not calculated on a risk-based approach. To illustrate this, the threshold for gold (CN code 7108) is set at 100 kgs. Depending on its purity, a 1kg gold dore bar is worth as much as 57.000 euros at current market prices. A trader could therefore import gold worth as much as 5,7 million euros annually into the EU, direct from a conflict zone or a country on the EU's CAHRA list, without completing any due diligence.

The implicit assumption behind the thresholds and method for setting them is that the risks associated with an importer do not vary with that company's size. The high-risk ores and metals most relevant to the impact of the Regulation and effective use of the EU's commercial leverage are assumed to be evenly distributed across importers of different sizes or concentrated in larger importers. There may, however, be good reasons to suspect that higher risk imports are more prevalent among smaller importers. By excluding smaller importers, therefore, the EU may also exclude much of the highest risk material that enters the EU from the requirements of the Regulations, substantially undermining its effectiveness and misapplying the EU's commercial leverage to parts of the market where it will have less impact.



Moreover, a great deal of material from conflict affected and high-risk areas will, of course, also enter the EU indirectly through trading hubs, such as the United Arab Emirates. It is even more difficult to assess the likely impact of the thresholds on these trading centers, which are responsible for very large volumes, but often through a large number of small trading companies. The 100kg threshold for gold (7108), for example, indicates that hundreds of millions of euros worth of gold is traded by relatively small EU importers.

Finally, it is currently difficult for civil society to anticipate whether direct EU imports from specific countries, such as DRC and Colombia, will be affected by the Regulation. The relatively low direct imports suggest that many may fall below the Regulation's thresholds, but this cannot be determined with certainty. This, in turn, will make it difficult to design and implement on the ground programming aimed at supporting the implementation of the regulation and/or mitigating its potential adverse impacts on certain communities, such as artisanal miners.





## II. The environmental impact of mining : urgent need for better regulation

The environmental impact of mining for example on rivers and forests is declared a huge problem both in Colombia and the DRC. In Colombia for example mercury contamination and the disappearance of wetlands in the context of alluvial mining leads to the loss of livelihoods of fishers and local farmers[4]. Moreover, LSM leads to severe health issues such as increase cancer rates through the pollution of water, soil and air[5]. Similar observations are made in regard to the DRC. Large-scale mines lead to high pollution levels of water, soil, air and noise pollution with impact on the health of the local population. There is evidence but at the same time also lacking data and missing measurement about pollution levels. Regarding the DRC, the Congolese Environmental Observatory reports that the governmental staff is not well trained and there is no follow up on destruction of the environment.

Enhanced by the conflict setting, environmental governance is very weak. If there are any standards, they are often not enforced and even if court cases are started (as in the case of the mine in Colombia Cerro Matoso [6]) it is very difficult to use local courts to link environmental abuses to human rights violations and to make corporate actors accountable for human rights violations caused by the noncompliance with environmental standards. One reason for this, are lacking independent baseline studies that could help to show and prove the changes on water, air and soil in court. Environmental Impact Assessments are not independent as they are not independently financed and are not publicly available which makes it very difficult for local actors to know what impacts the operation will have and what mitigation strategies are planned. There is a strong demand to use the supply chain to change these practices. Moreover, civil society both from Latin America and from the DRC state that it is very important for local communities to get support for independent community monitoring to be able to conduct an independent baseline and a regular monitoring. Indeed, they underline that local authorities do not fulfill their duties in this regard with huge impacts on the environment and local population access to water or health, amongst others. Independent monitoring can be an important means to improve the performance of a corporation. The data could also be useful for downstream actors within the supply chain to get information about mine site's main impacts. The private companies which participated in the workshop state interest in supporting the idea of independent community monitoring.

[4] This can be seen for example on the example of Mineros S.A in Colombia where alluvial mining in the river basin and its wetlands has led to mercury contamination, disappearance of wetlands, destruction of flora and fauna and the loss of livelihood of fishers and local farmers. See also Betancour María Soledad, "Producción minera, territorio y conflicto en Colombia. Retos globales y locales para la protección de los derechos humanos", November 2019 and Gold Mining, Human Rights and Due Diligence in Colombia: <https://www.germanwatch.org/sites/default/files/Gold%20Mining%2C%20Human%20Rights%20and%20Due%20Diligence%20in%20Colombia.pdf>

[5] GERMAN WATCH, "Why environmental due diligence matters in minerals supply chain : the case of Cerro Matoso in Colombia, February 2021, URL: <https://www.germanwatch.org/en/19845>

[6] Ibid

Civil society from both countries stressed that the Regulation on responsible Sourcing has an essential shortcoming by missing environmental requirements along the supply chain. This negligence leads de facto that also locally too little attention is put on environmental damage. Indeed, this indirectly induces local authorities not to consider environmental damage as a priority and enables large scale corporations destroying livelihoods to access the market. A review of the regulation and further due diligence legislation need to address this issue.

In this context a European regulation needs to push for environmental standards in line with international agreements and European standards. This could most effectively be done by the inclusion of general clause in reference to environmental goods and a possible concretization by reference to international agreements. The continued lowering of environmental standards in host countries to attract investment at the expense of the health and livelihoods of local people and future generations, as the example of Peru [7] perfectly illustrates, is no longer acceptable.

## II.I. Missing independent and solid information

In the context of environmental impact assessment, monitoring of the water quality and regarding the formalization processes we observe a crucial lack of available independent data. This shortage of information makes it very difficult to monitor the impact of mining operations and to suggest alternatives to local governments about the implementation and the enforcement of local legislation. This was a huge issue during the workshop and more support for civil society is demanded to help to close this information gap. Independent data is important to contrast company information, prevent health issues, file complaints, improve corporate conduct and to access justice.

## II.II. Murdering of environmental defenders and conflict definition outdated

It has to be emphasized that it is not only about armed conflict between guerrillas, paramilitaries and the military in Colombian mining territories, but also from the perspective that economic development also generates conflicts in communities that have had to protest to assert their rights, often to the detriment of voices that question the actions of the companies. According to the Global Witness, in 2020, 65 water and land defenders were murdered in Colombia, making it the country with the highest environmental murder rate in the world.

These conflicts are not tackled by the regulation on responsible sourcing as environmental conflicts are not included in the “conflict” definition of the regulation.

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[7] Aquino Pavel, “An Example of the Need for Binding International Reference” in: Standards Environmental responsibility through supply chains – what is needed from the perspective of Latin American civil society, 2021, URL : <https://www.germanwatch.org/en/21318>



### III. Recommendation

With reference to the observations described above, the CSOs formulated during the workshop, a series of recommendations to strengthen the EU CMR, to improve its implementation and the impact aimed in the producing countries. The following recommendations are also to be considered as useful lessons learned from the EU CMR for upcoming European policy processes. The recommendations are addressed to European decision-makers, to the Colombian and Congolese authorities, as well as to private companies.

#### Key recommendations to EU policies and decision-makers

##### EU REGULATION ON RESPONSIBLE SOURCING

##### ► CAHRA list

The EU should engage in a deepened discussion about the CAHRA list and its link to smuggling issues, including:

- The CAHRA list should be extended to neighboring and transit countries such as Rwanda and the UAE;
- The list's non-exhaustive character should be better underlined ;
- The definition of the OECD red zones should be used as a reference for the CAHRA list;
- Differences between the different regions of a same country should be recognized and better integrated in the list (as each region has its special conditions and risks);
- Information collected by civil society actors should be taken into account to feed the CAHRA list for each region;
- The collection of data by civil society should be supported by accompanying measures (see below);
- The regional cooperation between different law enforcement agencies to detect trade discrepancies and customs practices that encourage smuggling must be promoted.

##### ► Threshold

At the heart of the Commission's methodology for calculating the thresholds is a ranked list, by annual volume, of all EU importers for each CN code covered by the Regulation. This data is not publicly available, and the Commission has stated that it is confidential and commercially sensitive. As a consequence, it is not possible to determine the value of material exempted by the thresholds, determine where exempted material will likely be imported from, nor identify the number of companies importing below the thresholds. It is hence difficult for civil society to assess the broader impact of the thresholds on the effectiveness of the Regulation.

This may impede the ability to participate in the implementation of accompanying measures, assess whether the thresholds are being used as a loophole to avoid the requirements of the regulation, and assess whether and how they may be undermining the impact of the Regulation during the review period. Such assessments would benefit both from a baseline dataset from 2021 (prior to the Regulation coming into force) and data collected during the initial years of the Regulation's implementation. We therefore ask the Commission to:

- Create and publish a baseline dataset (in anonymized form) that identifies the number of companies that fall below the thresholds prior to the Regulation coming into force. This is critical to assessing whether the thresholds are later exploited as a loophole to evade the requirements of the Regulation;
- Create and publish a baseline dataset with the total value of material exempted under the thresholds for each CN and where the exempted materials would have come from if this threshold had been applied to imports in 2018 and 2019.
- A proper analysis should be made (based on the above-mentioned dataset) on the risks and possible loopholes of the thresholds during the review period of the Regulation. Based on the outcome of this analysis, the existence of the thresholds should be reconsidered and removing them altogether should be a serious option.

### ► Traceability, certification and cost sharing

The EU, together with producing countries' authorities, must work together in order to:

- Encourage private companies to source and effectively integrate artisanal and responsible small-scale mining in their purchases due to its important potential positive impacts on livelihoods due to the lack of alternatives;
- Ensure that all supply chain actors are responsible in sharing the costs for traceability through specific mechanisms;
- Evaluate the relevance and effectiveness of the traceability and certification systems;
- Encourage the development of competition between traceability service providers in order to avoid monopolies;
- Recognize the added value of experimental status, such as the "Blue Status certificate system" in the DRC as a transitional system (ex: see the implementation in Eastern DRC through the ICRGL guidelines);





## ► Accompanying measures

The EU must continue to finance accompanying measures and ensure their promotion among the different stakeholders in producing countries and private sectors in order to:

- Improve the working and safety conditions of artisanal miners;
- Improve the ownership of the Regulation among the different stakeholders:
  - Better accompany mining production sites, with a special focus on ASM to ensure that they are aware of the regulation, that they comply with it and to prevent a possible boycott of ASM;
  - Help private companies to better understand and apply the provisions of the regulation;
- Work with structures that support artisanal miners, such as cooperatives, to strengthen their control and power in the supply chain:
  - Develop capacity building of relevant actors (artisanal miners' cooperatives, state services, CSOs, services that oversee the artisanal mining sector, etc.);
  - Support CSOs in producing countries engaged in advocacy for the adoption of public policies that promote the formalization and professionalization of artisanal mining.
- Financially support fragile upstream actors:
  - to implement the rules and standards of the OECD Guidance;
  - to cope with the costs of traceability;
  - to help the small miners and cooperatives having better access to transparent financing (micro-credits) to finance and pre-finance their activities.
- Financially support local civil society organizations to enable them to fully play their role, especially for:
  - Raising awareness about land grabbing, illegal trafficking and environmental issues related to mining activities;
  - Supporting and defending the rights of artisanal miners and populations affected by mining projects;
  - Monitoring and collection of data to report on activities along the chain and to denounce abuses or breaches where necessary;
  - Participating and representing CSOs and miners in international forum such as OECD forum;
  - Empower civil society in conflict areas to carry out, at least annually, a thorough and independent investigation in the territories where most gold has been exported. This diagnosis should include an investigation of the trading companies and multinational companies established in those territories where illegal armed groups still produce "grey gold". This information should feed into risk profiles in the CAHRA list.
- Improve the effectiveness of the EPRM by facilitating collaboration with CSOs, including those from producer countries, in the governance of the EPRM.

## ► EU diplomacy

Besides financial support, the EU and the member states must adopt a broader approach and use the diplomatic channels and tools at their disposal to support and better respond to the issues arising from 3TG mining in conflict-affected and high-risk-areas countries. In this light:

- The EU must adopt a coherent position vis-à-vis its various interlocutors in the Great Lakes region, in Columbia and more broadly in the overall coherence of its external action with its fundamental principles and values;
  - The EU should push producing states' authorities to respect international standards in mining and to better involve local communities in decision processes;
  - The EU should remind its counterpart their responsibilities and obligations to protect communities from human rights violations by companies;
  - Political dialogues must allow for frank discussion on sensitive issues such as corruption, illegal trafficking, impunity, tax harmonization and broader conflict resolution with national authorities in DRC and Colombia;
- *Ex : The EU must urge Colombian Government to proceed in compliance with the agenda established in the Agreement for a Stable and Lasting Peace as a minimum condition to ensure that the minerals exported do not come from conflict zones;*
- *Ex: The EU should encourage the states of the Great Lakes region to reach a harmonization of tax levels and legislation at the regional and the national level and support the role of the International Conference of the Great Lakes Region in this context;*
- The European Union must use the binding means and tools at its disposal to sanction those responsible for corruption, embezzlement, and illegal trafficking of resources - such as economic sanction and travel ban.
- *Ex: The EU must urge Colombian Government to urgently increase its efforts to protect human rights and environmental defenders, as well as former FARC combatants, and that it implements the Regional Accord on Access to Information, Public Political Participation and Access to Justice on Environmental Affairs in Latin America and the Caribbean (The Escazú Convention).*

## ► The environmental due diligence

The EU legislators must take into account the environmental damages of mining activities and fully integrate it to the responsible sourcing requirement for private companies. Indeed, the European decision-makers should not neglect the high risk of conflict arising from environmental degradation (population displacement, soil quality and availability, food security and water availability just to mention some).



- Support the reform of the OECD guidelines especially regarding companies' responsibility to repair environmental damages due to extractive activities.
- Promote the formal constitution of initiatives for independent environmental monitoring, implementing revolving participation mechanisms and democratic elections for its members, according to criteria from the communities involved;
- Create mechanisms so that data generated by independent monitoring can be provided as evidence in court in case it is necessary to initiate judicial processes in the context of environmental conflicts;
- Contribute to the formation of an independent monitoring network with resources for technical support and for capacity building to fulfill the functions of coordination, training, and exchange of best practices, among others;
- Access to justice must be developed, strengthen and further accessible;
- Create the appropriate tools to hold EU operators legally responsible for not having acted with the necessary precaution regarding due diligence (human rights and environmental).

## CORPORATE SUSTAINABLE DUE DILIGENCE DIRECTIVE (CSDDD)

The EU Regulation on supply chains (CSDDD) has to learn from the EU Regulation on Responsible Sourcing and other existing national due diligence legislations. It needs to combine the strong aspects found in the different national legislations. These requirements are only partly met by the current proposal presented in February 2022 by the EU Commission [8]. CSOs underlined during the workshop and from their knowledge and expertise on the EU Regulation on responsible sourcing, that the EU legislation on supply chain (CSDDD) must pay a specific attention to the following elements:

- Responsibility to conduct due diligence must not rely on industry schemes;
  - The CSDDD should define environmental due diligence with a general clause. The environmental due diligence needs to be based on European and international standards, not only national or local standards in regions of extraction. Moreover, legislators must closely monitor and control the private companies.
  - Regulations should relate both to the upstream and downstream part of the supply chain.
- Ex: *a European company that sells machinery to a mining company must perform a risk analysis regarding the Environmental Impact Assessment process. Additionally, corporations must verify that all mitigation measures regarding Environmental Impact Assessment are accurately implemented.*
- In order to guarantee responsible business conduct in the supply chain, it is necessary for EU supply chain Regulations to ensure that companies consider the weaknesses in processes of environmental impact studies in each jurisdiction where they extract raw materials and that they take all possible measures to improve their quality.

[8] ECCJ, "European Commission's proposal for a directive on Corporate Sustainability Due diligence – A comprehensive analysis", April 2022, URL: <https://corporatejustice.org/wp-content/uploads/2022/04/ECCJ-analysis-CSDDD-proposal-2022.pdf>

In line with the CMR the CSDDD should foresee accompanying measures not only for companies put also to strengthen civil society in this process. The accompanying measures should strengthen civil society and local communities in producing countries to support the efforts of due diligence in a way that it protects their livelihoods. The accompanying measures should include:

- Support and help to strengthen independent community monitoring on e.g. the impact of mining companies;
- Securing independence in financing monitoring activities: It is recommended that public organizations promote the establishment of funds with resources derived from companies or states, nongovernmental and international cooperation organizations, with transparent and efficient fiduciary administration;
- Facilitating the definition of criteria for certification and technical accompaniment for independent monitors to make the results of community monitoring valid in front of courts;
- Promoting the creation of databases for independent monitoring, offering the public monitoring data in real time through digital platforms similarly to already existing ones.

► **The upcoming regulations should demand corporations to:**

- In case a company in the supply chain identifies in its risk analysis the absence of independent monitoring in an extractive project and the need or desire of the communities to carry out one, they should demand that the company performing the extraction supports the initiation of an independent monitoring process;
- Companies should use all available information from community monitoring for risk analysis, utilizing the international standards of the United Nation (UNGPs) and the OECD and acknowledging the cultural diversity of independent monitoring participants in terms of local knowledge, gender, and ethnicity.

## EU - BATTERIES REGULATION

The EU-Batteries Regulation is the second legislation after the Regulation on Responsible Sourcing that targets raw materials supply chains specifically. It has learned from many shortcomings of the EU-Regulation on Responsible Sourcing but again makes the mistake being very narrow in terms of raw materials it covers and regarding the potential role of industry schemes.

- EP, EC and Parliament have to make clear that the responsibility of due diligence requirements may never be transferred to industry schemes. Industry schemes can only be one instrument in the context of the implementation of due diligence.
- If industry schemes play a role, thorough and transparent requirements regarding the quality of industry schemes have to be developed and required by the EC regarding 1) participation of civil society and right holders within audits, corrective action plan, development of the standard and the governance mechanisms; 2) the prevention of conflict of interests and 3) grievance mechanisms.

## Key recommendations to producing countries' authorities

### CONGOLESE GOVERNMENT

- Incorporate measures into the mining policy plan that protect local mining communities and mitigate unintended economic and social effects, including the effect on the behavior of armed actors.
- Implement the mining code for the ASM and integrate the ASM in the supply chain of minerals:
  - Improve the access conditions to markets especially for ASM ;
  - Support the strengthening of cooperatives ;
  - Define and expand the legal mining zones more clearly;
- Facilitate the implementation, recognition and promotion of the ICRGL "Blue Status Certificate System" as a transitional system;
- Commit to reach a harmonization of tax levels and legislation at the regional and the national level and support the role of the International Conference of the Great Lakes Region in this context.

### COLOMBIAN GOVERNMENT

- Assist artisanal and small scale miners in the process of recognition and inclusion into the formal supply chain so that they can deepen their knowledge of mining practices that respect the environment and demonstrate social responsibility, strategies they are willing to develop;
- Develop new mining policy in a democratic manner and with a specific focus on non-repetition of the tragedy caused by the conflict, territorial autonomy and the inclusion of local producers into the legal supply chain. That also includes the right to construct other models of life that go beyond extractivism. This requires the recognition of the value created by medium-scale and small-scale miners, as well as barequeros;
- Promote and support the defence of territories that are of fundamental importance.

