

Call for inputs: Extractive sector, just transition and human rights –contribution by the European Union

The European Union would like to thank the Working Group on Business and Human Rights for the opportunity to contribute to the upcoming thematic report on “Extractive sector, just transition and human rights. The contribution is structured on the basis of the questionnaire proposed and includes inputs from the European Union (the European External Action Service and the European Commission).

State duty to protect human rights

- 1. How can States better advance human rights-compatible energy transition laws and policies that ensure responsible business conduct in all aspects of energy transition efforts and programs (e.g., including, but not limited to, design, approval, financing, implementation, and reporting of energy transition programs)?**

The EU is committed to the just transitions towards climate neutral and resilient economies and societies. Climate change, biodiversity loss, desertification, pollution and environmental degradation represent increasing risks to human security, particularly affecting the most vulnerable, increasing poverty and inequality and affecting stability¹.

A socially just and inclusive energy transition will have an overall significant positive impact on the full enjoyment of human rights by communities, workers, other stakeholders and future generations.

The EU is committed to ensuring the respect of human rights by business and responsible business conduct in all sectors of the economy, including energy-related policies and programmes.

The [Council Recommendation of 16 June 2022 on ensuring a fair transition towards climate neutrality \(2022/C 243/04\)](#) provides a non-binding policy framework for EU Member States to adopt and implement, in close cooperation with social partners as relevant, comprehensive and coherent policy packages, addressing the employment and social aspects of the European Green Deal to promote a fair transition across all policies, notably climate, energy and environmental policies, as well as to make optimal use of public and private funding. As regards business conduct, Member States are invited to ensure the effective implementation and enforcement of existing rules on working conditions, in particular concerning occupational health and safety, work organisation and involvement of workers; and to provide for the full and meaningful involvement, including information and consultation, of workers at all levels and their representatives as regards the anticipation of change and the management of restructuring processes, including those linked to the green transition.

¹ Council conclusions on Climate and Energy Diplomacy “Bolstering EU climate and energy diplomacy in a critical decade”

- 2. Are you aware of any measures, both mandatory and voluntary, at national, regional, and international levels to foster business respect for human rights in the extractive sector, especially in the context of energy transition plans, programs and activities? If so, are these measures effectively enforced and do they provide the necessary coverage in light of evolving circumstances, including energy transition plans? Is greater clarity necessary in some areas of law and policy? What measures may reasonably correct this situation?**

The EU has established policies to regulate the extractive sector, to ensure that these industries operate in a socially responsible and environmentally sustainable manner. They apply to extractive activities in the context of energy transition plans, programmes and activities, and beyond. The **main relevant EU policies and legislations**, in chronological order, include:

-The [EU Extractive Waste Directive](#) (Directive 2006/21/EC), in force since 1 May 2006, which sets out sets out high requirements of environmental and human health protection for the waste management of the extractive industry.

-The [EU Conflict Minerals Regulation](#) (Regulation 2017/821) often referred to as “Responsible Minerals Regulation”, the essential elements of which apply since 1 January 2021. The regulation applies to four specific minerals and metals, requiring EU importers above certain thresholds to conduct mandatory due diligence and, in this way, source conflict-free tin, tungsten, tantalum and gold (some of which are particularly relevant for the green transition). The regulation builds on the international standards, notably the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (CAHRAs). The EPRM (European Partnership for Responsible Minerals) is a multi-stakeholder platform designed as an accompanying measure to the Conflict Minerals Regulation that gathers Governments, Industry and Civil Society. Through the implementation of concrete projects on the ground, it aims at supporting both producing countries and downstream companies to comply with the requirement of the Regulation, thus avoiding disengagement of businesses from CAHRAs.

-The [EU Principles for sustainable raw materials](#), issued in 2021, which aim to align Member States’ understanding of sustainable extraction and processing in Europe in terms of social-environmental- and economic performance. Building on existing EU legislation in this area, the 8 EU Principles for sustainable raw materials are a mandatory initiative. They include references to human rights, engagement with communities of interest, employment, health and safety.

-The [EU Global Gateway strategy](#), adopted by means of a joint Communication by the HRVP and the European Commission on 1 December 2021, which seeks to boost smart, clean and secure links in digital, energy and transport and strengthen health, education and research systems across the world. Global Gateway projects i.a. support the just energy transition in partner countries by investing in infrastructure and supporting regulation.

Global Gateway projects are developed and delivered through Team Europe Initiatives bringing together the EU institutions, Member States, and European financial institutions, working together with European businesses as well as governments, civil society and the private sector in partner countries. Global Gateway projects channel EU spending on global infrastructure development in accordance with a number of key principles i.a. adhering to the rule of law, upholding high standards of human, social, and workers' rights. This means

selecting investments that are sustainable – for local people, local environment and local economies, and taking an ethical approach so that infrastructure projects do not create unsustainable debt or unwanted dependencies. Those most affected by potential projects – local communities, businesses and partners – must have their full say through proper public consultations and civil society involvement. Projects should ensure affordable and equal access to the services and benefits they will deliver, notably for women and girls and those at risk of disadvantage or exclusion. It is foreseen that Global Gateway projects may also be mobilised to support the above-mentioned Strategic Partnerships on critical raw materials.

-The [Corporate Sustainability Reporting Directive](#) (Directive 2022/2464) in force since 5 January 2023, which modernises and strengthens the rules on social and environmental reporting by requiring corporates to report according to European sustainability reporting standards (ESRS). Such standards will cover the full range of sustainability issues including social and human rights under a double materiality perspective. ESRS include disclosure requirements on corporates' sustainability policies and due diligence.

-The [Regulation on batteries and waste batteries](#), on which EU institutions reached a political agreement and is expected to be published in mid-2023, sets mandatory due diligence obligations on economic operators that place batteries on the EU market. The obligations address social and environmental risks in relation to the supply of lithium, cobalt, nickel and natural graphite for batteries, with respect to a number of risks categories, including human rights, labour rights and community life, including that of indigenous peoples.

-The proposal for a [Directive on Corporate Sustainability Due Diligence](#), adopted by the European Commission in February 2022 and currently undergoing legislative process, which foresees mandatory human rights and environmental due diligence obligations for large EU companies as well as large non-EU companies operating in the EU market. Under the Proposal, the extractive industry should be considered a high impact sector and as such subject to lower thresholds for the purposes of identifying companies mandated to undertake due diligence of their operations and supply chains.

-The proposal for a [Regulation on prohibiting products made with forced labour on the EU market](#), adopted in September 2022 by the European Commission and currently undergoing legislative process. It covers all products extracted, harvested, produced or manufactured with forced labour, both those made in the EU for domestic consumption and exports, as well as imported products across various sectors, without targeting specific companies or industries. The proposed regulation builds on international standards and complements other EU initiatives in the area of business and human rights, notably on corporate sustainability due diligence and reporting. The proposal also builds on the existing market surveillance system in the EU and guidance on due diligence to help EU companies to address the risk of forced labour in their operations and supply chains (adopted in July 2021).

-The EU alongside OECD adherent countries adopted on 15 February 2023 the **Ministerial Declaration on Promoting and Enabling Responsible Business Conduct in the Global Economy**. The Declaration inter alia includes language on resilience and sustainability of global supply chains as well as environment and climate change, and specifically the commitment by adherents to promote Responsible Business Conduct in global mineral supply chains.

-The **Critical Raw Materials Act**, including a [proposal for a Regulation](#) accompanied by a [Communication](#), which were adopted by the European Commission of 16 March 2023 and currently undergoing legislative process. The Act sets out a comprehensive strategy for ensuring a secure and sustainable supply of critical raw materials. Under the proposal, actions to improve the security and affordability of critical raw material supplies go hand in hand with increased efforts to mitigate any adverse impacts, both within the EU as well as in third countries, with respect to labour rights, human rights and environmental protection. Specifically, the proposal foresees that Strategic Projects receiving support under the Regulation should be environmentally sustainable and respect the human rights set out in international instruments, guidelines and principles. Projects should also ensure engagement in good faith as well as comprehensive and meaningful consultations with local communities, including with indigenous peoples in line with the Aarhus Convention. Furthermore, as proposed, strengthening national measures on circularity to increase the re-use of products and components with high critical raw materials recovery as well as recovering and recycling critical raw materials, will be key to reduce environmental and social impacts of critical raw materials mining.

To show compliance with sustainability requirements, promoters may refer to that the project is certified as part of a recognised scheme, covering a broad range of sustainability aspects, including human rights. Scheme owners that have developed and oversee these types of certification schemes may apply to have them recognised by the Commission.

Moreover, under the Proposal, Strategic Partnerships with non-EU countries on critical raw materials will be prioritised depending i.a. on whether partners' regulatory framework ensures the monitoring, prevention and minimisation of environmental impacts, the use of socially responsible practices including respect of human and labour rights and meaningful engagement with local communities, the use of transparent business practices and the prevention of adverse impacts on the proper functioning of public administration and the rule of law. Finally, in the context of the proposed Critical Raw Material Club, the EU will work with partners on the development of international ESG principles, which could then pave the way to the development of international ESG norms, preferably through international bodies such as ISO, ILO, UN or the OECD and, wherever possible, building on existing international initiative. This covers human rights including labour rights as mentioned in UNGP 12.

-All recently trade and investment agreements concluded by the EU include ambitious **Trade and Sustainable Development (TSD) chapters**. TSD chapters bind trading partners to international agreements and standards, including in the area of labour rights, and establish close cooperation amongst partners in the field of corporate social responsibility and accountability. The Commission has recently published a Communication on "[The power of trade partnerships: together for green and just economic growth](#)", setting out how to further enhance the contribution of trade agreements to sustainable development. Furthermore, some recently concluded Energy and Raw Materials (ERM) chapters of EU Free Trade Agreements contain specific sustainability provisions.

The EU also supports a number of **projects relevant to responsible extractive industries in partner countries**.

-The project "Promoting Responsible Mineral Supply Chains in conflict-affected and high-risk areas" implemented by the OECD and currently in its third phase aims to promote responsible sourcing and trading of minerals through the dissemination, adoption and use of the OECD

Due Diligence Guidance. It builds on the successful implementation of two previous EU contributions to the OECD Initiative for Responsible Mineral Supply Chain. This initiative also engages with EU enterprises and promotes corporate responsibility policies. The third phase of the action focuses as well on supporting the EU and the National Competent Authorities in practical implications of complying with the EU Regulation on conflict minerals and subsequently with the OECD Due Diligence Guidance.

-The project “Addressing drivers of conflict, and promoting the fulfilment of human rights, sustainable governance of natural resources, climate justice and environmental protection through evidence-based research and grassroots collaboration” implemented by the International Peace Information Service and currently in its 2nd phase aims to provide relevant information, knowledge and updated recommendations in order to better understand the process and pitfalls and operate in alignment with principles of responsible sourcing and trade of diamonds and other minerals. This is done, among others, through research and follow up of the EU Responsible Minerals Regulation, research on environmental impacts of resource extraction as conflict multiplier. Civil society is capacitated and empowered to actively participate in the Kimberley Process Certification Scheme and due diligence initiatives.

-The project “Strengthening responsible supply chains of conflict minerals, including the regional approach to the Kimberley Process, to enhance sustainable development and livelihood aspects of artisanal mining in the Mano River Union” implemented by GIZ and also in its third phase, aims to contribute to peace building and stabilisation efforts in mineral-rich high-risk areas. This is being done through supporting regional approaches to the implementation of the Kimberley Process as well as responsible production and trade of gold and other conflict minerals such as the “Three Ts” in the four Mano River Union countries² to enhance the development and livelihood aspects of artisanal mining. More specifically, collaboration with three newly established platforms of civil society organisations, ASM Corporations and law enforcement agencies will continue to be supported. At the same time, the Mano River Union countries are supported to improve the governance of their artisanal mining sector while ensuring traceability and compliance with social and environmental standards to maintain stability, peace and access to international markets.

Additional projects are currently in preparation.

3. How do States encourage and regulate communication of energy transition efforts by business in the extractive sector, including State-owned enterprises (SOEs), to avoid the publication of misleading or unsubstantiated claims or reporting of an entity’s energy transition programs? Do these measures sufficiently ensure the adequacy, accessibility, reliability, and accuracy of information?

The above-mentioned **Corporate Sustainability Reporting Directive** in force since 5 January 2023 requires all large and all listed companies, as well as some non-EU companies that exceed certain thresholds for revenue generated on the EU, to report about their sustainability risks and impacts in accordance with EU sustainability reporting standards to be adopted by the Commission. The reporting covers the full range of sustainability issues including environmental, social and human rights, and governance.

²Côte d'Ivoire, Guinea, Liberia, and Sierra Leone

A **Proposal for a [Directive on substantiation and communication of explicit environmental claims](#)** (Green Claims Directive) was adopted by the European Commission on March 2023, complementing and further operationalising the proposal for a Directive on empowering consumers in the green transition that was adopted in March 2022. The Green Claims Directive proposal includes clear criteria on how companies should prove their environmental claims and labels, requirements for these claims and labels to be checked by an independent and accredited verifier and new rules on governance of environmental labelling schemes to ensure they are solid, transparent and reliable. The proposal targets explicit claims that are made on a voluntary basis by businesses towards consumers, cover the environmental impacts, aspects or performance of a product or the trader itself, and claims that are not currently covered by other EU rules.

4. How can States harness the potential of energy transition to accomplish important policy objectives related to human rights, such as achieving local empowerment, gender equality, protection of the environment, mitigation of climate change and realising the Sustainable Development Goals

Policies at all levels are key for realising opportunities and addressing the challenges of the green transition.

Sustainable and just solutions to the climate crisis must be founded on meaningful and effective social dialogue and participation of all stakeholders as affirmed in the Sharm el-Sheikh Implementation Plan.

ILO research indicates that the employment created in a just transition scenario will offset the risks of job losses and result in a net gain in jobs. There is however a need to support workers and businesses to adapt to the changes, promote innovation and ensure that the transition is socially just and inclusive. A wide range of investments in human capital is important, including skill development and the development of an inclusive labour market to promote quality jobs, enable decent work, including along global supply chains, and leave no one behind.

In order to enable workers to adapt flexibly to structural industrial changes brought about by digital transformation, green transformation and demographic change, and to ensure a just transition that benefits both workers and enterprises, there is a need to work with the social partners and other relevant stakeholders to promote adequate wages and help workers transition to sustainable growing and emerging sectors.

Inclusion and equity remain an important concern for groups already facing socio-economic vulnerabilities, such as vulnerable women, persons with disabilities, indigenous peoples, and migrants and refugees.

Pursuit of a just transition to foster resilient decarbonised economies and societies that are diverse, inclusive and equal must be in tandem with a transformative agenda for gender equality, diversity and inclusion, as called for in the ILO Centenary Declaration.

[The EU has developed a Just Transition Fund](#) (JTF), which represents the first pillar of the **[Just Transition Mechanism](#)** (JTM), as a key tool to support territories within the EU that are most affected by the transition towards climate neutrality providing them with tailored support. It is implemented under shared management, under the overall framework of the EU Cohesion policy, which is the main EU policy to reduce regional disparities and to address structural

changes in the EU. The Just Transition Mechanism is part of the [European Green Deal](#), which aims to make Europe the first climate-neutral continent by 2050.

The [Council Recommendation on ensuring a fair transition towards climate neutrality](#) adopted in June 2022 aims to encourage Member States to fully exploit the benefits and opportunities associated with the green transition while fairly spreading the cost of tackling and adapting to climate change. It delivers on objectives of the Green Deal and contributes to implementing the European Pillar of Social Rights while also building on existing tools and ILO Guidelines for a just transition.

The EU and its Member States are also, together with G7 partners, engaging in a new model of long term partnerships, called **Just Energy Transition Partnerships (JETP)** with fast growing developing countries, providing financial support to enable a shift to clean energy sources and an ambitious Nationally Determined Contribution, with central emphasis on a socially just transition. This will lead to new opportunities in the economy and phase down dependencies on fossil fuel, primarily coal while catering for the impact on key societal groups.

9. Have you seen extractive sector investors play a role in preventing and mitigating, or in exacerbating, negative impacts of energy transition efforts on human rights? Should investors be required to conduct gender responsive HRDD in meaningful consultation with local communities, civil society organizations, Indigenous Peoples, and human rights defenders? What remediation responsibility should investors have?

As mentioned above, the **EU Principles for sustainable raw materials**, include reference to social principles, including the respect of human rights, cultures, customs and values of people, including indigenous populations, affected by extraction and processing activities, the constructive and active dialogue with communities and workers concerned, including those of indigenous people, the commitment to ensure safe living conditions in communities concerned, support to Decent Work of the workforce.

The Commission [Proposal for a Regulation on the Critical Raw Materials Act](#), of 16 March 2023, accompanied by a [Communication](#), foresees that the Strategic Projects receiving support under this Regulation should ensure engagement in good faith as well as comprehensive and meaningful consultations with local communities, including with indigenous peoples. To provide project promoters with a clear and efficient way of complying with this criterion, compliance with relevant Union legislation, international standards, guidelines and principles or participation in a certification scheme recognised under the Regulation should be considered sufficient.

10. What role can the informal economy (e.g., artisanal and small-scale mineral exploitation, including supply chains) play in advancing a just and human rights-based energy transition?

As an accompanying measure to the EU Conflict Minerals Regulation, the [European Partnership for Responsible Minerals \(EPRM\)](#) was set up. The EPRM is a multi-stakeholder partnership with the objective to increase the proportion of responsibly produced minerals from conflict-affected and high-risk areas (CAHRAs) and to support

socially responsible extraction of minerals that contributes to local development. The EPRM's mission is to improve local mining practices especially in artisanal and small-scale mining (ASM), bringing better social, environmental and economic conditions for mine workers and local mining communities. In addition, the initiative aims to increase the proportion of responsibly produced and sourced minerals especially in ASM in line with international frameworks and standards, in particular the EU Regulation and the OECD Guidelines. To date, the EPRM has financed 17 projects³ supporting ASMs in CAHRAs to produce their minerals more responsibly so they can access formal markets with the ultimate goal of contributing to the social well-being of mine workers and their communities.

11. Should concessions, contracts, and legislation require all business enterprises producing, purchasing, processing, and distributing transition minerals to apply and implement human rights-based impact and risk assessments and due diligence standards, including gender-responsive HRDD and heightened HRDD for conflict-affected areas? If so, how could such processes ensure meaningful participation of impacted communities, particularly vulnerable and historically excluded groups?

The **Commission Proposal for a Directive on Corporate Sustainability Due Diligence**, adopted in February 2022, foresees mandatory human rights and environmental due diligence obligations for large EU companies as well as some non-EU companies. Under the Proposal, the extractive industry are included among high impact sectors and as such subject to lower thresholds for the purposes of identifying companies in the personal scope.

Access to remedy

15. What measures and mechanisms should be provided by extractive sector legislation, bilateral investment treaties, concessions, and contracts to allow individuals or communities affected by extractive activities to seek effective remedy for business-related human rights abuses? What remedies are best suited for this sector?

The **Commission Proposal for a Directive on Corporate Sustainability Due Diligence**, adopted in February 2022, foresees mandatory human rights and environmental due diligence obligations for large EU companies as well as some non-EU companies. The Proposal includes provisions to improve access to remedies for those affected by adverse human rights and environmental impacts of corporate behaviour.

³ [EPRM Projects · The European Partnership for Responsible Minerals \(europeanpartnership-responsibleminerals.eu\)](https://europeanpartnership-responsibleminerals.eu)