



CIRAN

Fitness-for-Purpose Assessment of Regulatory Frameworks

Deliverable D3.1



The report presents the findings of the fitness for purpose of regulatory frameworks assessment in the CIRAN partners' countries. As the starting point, this deliverable assumed that a fit for purpose regulatory framework is a framework that:

1. Protects environmentally sensitive areas; and
2. Enables the sustainable extraction of materials

The EU CRMA and the “decision to mine”

Balancing environmental protection with the requirement for Critical Raw Materials (CRMs) effectively involves a series of factors, trade-offs and stakeholder inputs. This systematic approach can be expressed in a *bow-tie* format where the aim is to develop regulatory policy frameworks that balance environmental protection with the need to extract CRMs. The various factors for both environmental protection and CRM extraction at an EU, national, and regional/local levels are illustrated in the figure below.

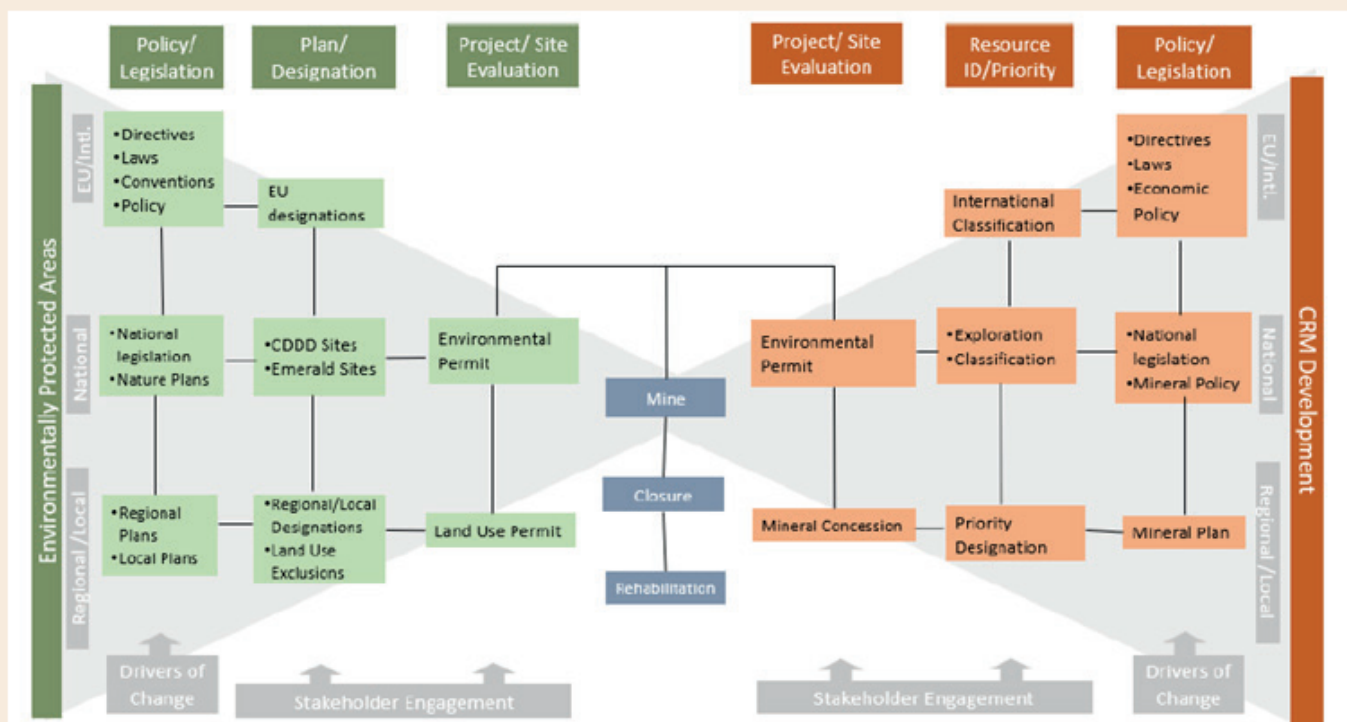


Figure 1: Bow-tie of decision-making

The earlier the decision to mine is made (i.e. the decision knot), the more effective the decision-making process is. D3.1 notes that the EU Critical Raw Material Act seeks to bring forward the decision to mine, to ensure certainty for investment decisions, and allowing all stakeholders to effectively engage in the process, and to avail of benefits.

A systemic, cross-sectoral approach allows to assess risks and impacts in a balanced and integrated manner during the approval, permitting, and securing strategic resource management processes. This helps balancing often divergent objectives feeding into the decision to mine. Conversely, there may also be a *decision not to mine* for environmental or other reasons.

A high-level risk assessment approach has been developed for CIRAN. It considers the overall balance of risks in relation to the two key objectives of protecting designated areas and ensuring the extraction of CRMs.



Overall, the appraisal found that most countries were applying a balanced approach to reconciling mining and environmental protection. Some appear to moderately favour environmental protection. The report gives a representation of the 'AS IS' situation. As of the first half of 2024, no countries had applied the requirements of the CRMA nor had been required to apply those derived from the EU Nature Restoration Law. It is thus expected that the situation will be exacerbated over the coming years, with increasing requirements to search, identify, and mine CRMs, but also to protect environmentally sensitive sites if regulatory frameworks were to remain the same.

The EU Birds and Habitats Directive (“Nature Directives”)

The EU Nature Directives are largely coherent internally and with each other. They provide opportunities for adequate implementation via close cooperation between different stakeholders. However, the CIRAN Case Studies (WP2) indicate the challenges of bringing forward mining projects in protected areas. The MINLEX study further indicated that the industry has reported implementation problems such as, inter alia, “overly restrictive” approaches in the implementation of the Directives’ provisions by Member States (MS), particularly in relation to Natura 2000 sites.

Future impact

These points can be taken as inputs into decision-making strategies with a view to establishing how systems can be better streamlined and deliver efficient policymaking.

Any policymaking recommendations must have regard to the constraints imposed by the EU treaties, the principles of subsidiarity, and the proportionality of the actions as outlined in the working document to support the CRMA (EC, 2023).

Key Observations

The report identifies barriers preventing faster and more effective decision-making regarding mining in environmentally protected areas using the themes considered by the CRMA (EC, 2023) and CIRAN Case Studies and findings from CIRAN, MINLEX, and MINLAND projects. The results of the fitness-for-purpose assessment confirm many of these barriers. It further reveals other factors that may hinder the extraction of CRMs while environmental protection is preserved.

The impact of these barriers is likely to be exacerbated with increasing demands on the European national regulatory systems which must deliver greater levels of CRM extraction in shorter timeframes as required by the EU CRMA.

The barriers identified are grouped by themes:

- Governance frameworks;
- Resource identification, spatial planning, and designations, including planning for CRMs in land use planning and mineral planning; the designation of protected areas, issues around Strategic Environmental Assessment (SEA), Habitats Directive Assessment, and Water Framework Directive (WFD), and planning for shared use and compensations;
- Streamlining administrative procedures which consider issues of fragmentation, timelines, strategic project definition; environmental assessment procedures, roles and responsibilities, documentation, one-stop-shop, pre-planning and legal challenges;
- Stakeholder engagement and social acceptability, including forms and approaches to engagement, securing stakeholder acceptance and inclusive participation;
- Spatial data, reporting, and expertise.

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