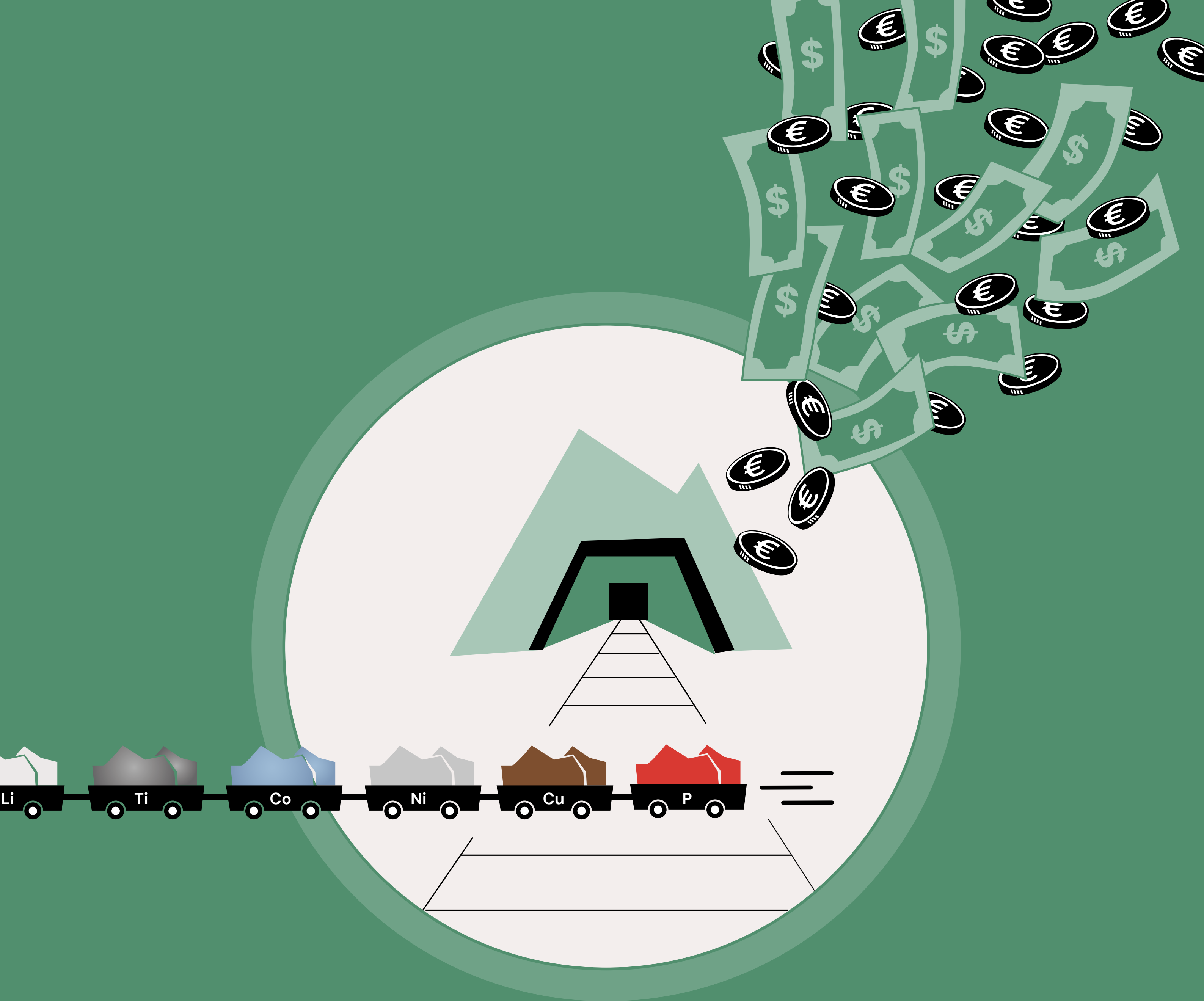

THE CRITICAL RAW MATERIALS ACT:

THE CONTRADICTIONS IN THE ROLE OF THE EUROPEAN UNION

Colofon

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THE CRITICAL RAW MATERIALS ACT: THE CONTRADICTIONS IN THE ROLE OF THE EUROPEAN UNION

In 2023, the European Union (EU) passed the Critical Raw Materials Act (CRMA), which was driven by fears about the security of the EU's supply of raw materials, especially given the geopolitical changes and increased jostling for access to essential resources for the energy transition. Currently, the processing and extraction of raw materials for the energy transition, as well as for the EU's defence and technology sectors, are largely dominated by China. Russia's full-scale invasion of Ukraine in 2022 further underscored the EU's vulnerability to disruptions in its energy supply chains. The CRMA sets targets for how much extraction and refining of raw materials should take place within the EU or partner countries, but for the foreseeable future the EU aims to expand its free-trade agreements (FTAs), and to include new chapters specifically on raw materials. It also wants to implement a new measure: the Strategic Partnership (SP).

In this form of partnership, the EU claims it will ensure a win–win cooperation with partner countries that export raw materials by stimulating projects in those countries that enable them to move up the value chain and derive economic value from the extraction of their raw materials. These projects may take different forms, such as infrastructure investment or investment in the extraction or refining of raw materials.

The SPs introduced in the CRMA mark a shift towards a form of industrial policy, whereby a government assists economic actors (potentially both private and public) to boost or reshape specific economic activities with the aim of addressing important economic, strategic or environmental challenges that the market alone cannot address. While industrial policies usually refer to governments stimulating activities in their own countries, the EU's SPs and related programmes follow the same logic and thus constitute a form of international-level industrial policy.

With SPs, the EU will aim to incentivise companies' extraction and processing in countries that pose no threat to the security of its supply of raw materials, reduce the need for such materials in the first place (dematerialisation) and, according to the official narrative, create local value in exporting countries. This industrial policy goes alongside the expansion of FTAs. The EU wants to sign trade

deals that ensure the steady supply of raw materials through a form of industrial policy to ensure that the extraction and processing of these materials is done by companies that do not potentially threaten this security.

This paper argues that although this approach contains some good features, is not sustainable and may well face local resistance in the resource-rich countries concerned. This is because of the EU's dual role in the raw material trade. While the EU claims it wants to use Strategic Projects to increase value in countries that rely on exporting raw materials, it makes no mention of its own role in the outflow of the value that is generated by the extraction industry. Exporting countries often retain little of the value of the materials that are extracted. This paper finds that much of the created value finds its way into the European financial system.

Although the industrial policy the CRMA represents could potentially contribute to creating local value in exporting countries, the EU does not address the role of its own financial centres in enabling the outflow of this value. It shifts the financial burden of the projects that supposedly promote industrial policies led by private corporations to European taxpayers, who are expected either to provide direct finance or to conceal the risks these projects present. Meanwhile the profits in the raw-materials sector will continue to flow to the financial elite. This is much like giving with one hand and taking with the other, which is likely to be resisted since it amounts to transferring wealth from citizens across the EU to the benefit of the financial elite.

This paper argues that a successful EU industrial policy in the raw-materials sector should strive for a form of climate justice based on four interrelated pillars: economic reform, public investment, reducing the need to import raw materials (dematerialisation), and the creation of local value in the exporting countries. In the absence of any one of these four pillars, the industrial policy would become unsustainable, either because it would overstress limited natural resources, transfer wealth from the general population to the financial elite, or become a form of green colonialism – or, indeed, all three. Currently, the CRMA does not remotely encompass economic reform, and the three other pillars are inadequately addressed.

The paper proceeds as follows. In section 1, we explore the CRMA and how it fits into the wider framework of EU policy on trade and raw materials. Section 2 analyses how the raw material economy functions, who profits in this sector and the role of European countries in this regard. Section 3 explains why the dual role of European countries as investors in projects meant to create local value, while simultaneously playing a major part in enabling the outflow of local value is unsustainable, and what might be a better model for an industrial policy, ending with some recommendations on how to achieve it.

SECTION 1. THE CRITICAL RAW MATERIALS ACT AND ITS RELATION TO OTHER EU POLICIES

The 2023 Critical Raw Materials Act (CRMA) is the EU's key legislation to increase the security of its supply chains for raw materials. The CRMA was part of the European Green Deal, specifically the EU Green Industrial Plan, which was meant to incentivise the European green tech industry. The CRMA was specifically to provide a legislative framework for the EU to increase the stability of the supply of raw materials.

Supply chain security has become increasingly important in international politics over the last decade. Starting in 2016 with the election of Donald Trump, whose administration placed tariffs and other trade barriers on Chinese products, trade tensions between major international powers have increased. Against this backdrop, the control of vital economic sectors became a critical expression of power, for example when the US sanctioned the export of advanced semi-conductors to China. Russia's full-scale invasion of Ukraine in 2022 further increased the EU's sensitivity to supply chain security, especially in the energy sector. EU member states abruptly stopped importing Russian gas, which until 2022 was a major source of energy, leading to soaring energy prices across Europe.

This section will first analyse the CRMA and then examine how it fits into other EU legislation such as the Global Gateway (GG) programme and Free Trade Agreements (FTAs). It concludes that following the EU's implementation of the CRMA, its raw material policy consists of expanding FTAs, accompanied by a form of industrial policy meant to use public investment to increase supply chain security, while simultaneously creating local value in exporting countries and reducing the need to import such materials.

The Critical Raw Materials Act

Given the increased trade tensions between major international powers, specifically the US and China, control over the supply chain of raw materials has become a top priority for the EU. The EU's economy is currently heavily dependent on imported raw materials for its energy transition, the defence industry and the technological sector. Chinese companies control much of the mining and processing of these minerals. The CRMA was meant to increase the presence of European or Europe-friendly companies in this sector, ensuring the EU's strategic autonomy by being less reliant on other countries.

The CRMA identified 34 minerals as 'strategic'. It aims that by 2030, these minerals should be at least 10% mined, 40% refined and 25% recycled by an EU member state or by a country with which the EU has signed an official partnership. These goals are to be achieved in two ways. First, the EU wants to expand its FTAs, both by signing new FTAs with countries rich in raw materials, as Chile, Mexico and Indonesia, and by including chapters on raw materials in these FTAs. Second, with Strategic Partnerships (SPs) and the Global Gateway (GG) programme, the EU wants to implement a form of industrial policy whereby it supports businesses to invest in the raw materials sector, using public investment to create security in the supply chain, local value-addition and a reduction in the need for raw materials in the Union.

Free Trade Agreements

A 2024 TNI report analysed the role these FTAs will play in the EU's raw material policy.[1] It argued that, in contrast to other policies such as SPs, these FTAs grant the EU enforceable rights over raw materials mined in these countries.[2] Currently, the EU has already signed FTAs with raw material chapters with Chile and Mexico, and is negotiating new FTAs with Australia, India and Indonesia.

While these FTAs grant the EU a steady supply of raw materials, they can also prevent the exporting countries from adopting policies that would increase the value of their exports. Export bans on unprocessed minerals are an example of a policy that is often banned in FTAs.[3] Such export bans could potentially encourage processing in the exporting country, thereby leading to industrialisation. Because of these measures, FTAs will, according to the TNI report, probably reproduce colonial patterns, whereby low-and middle-income countries (L&MICs) provide wealthy (post-)industrialised countries with materials, rather than adding value themselves.

Strategic Partnerships, Strategic Projects and the Global Gateway

The CRMA also introduces a new policy tool: the Strategic Partnership (SP). SPs are established between the EU and selected countries that export raw materials. According to the EU, these partnerships are meant to achieve a win–win outcome as they would provide a secure supply of raw materials to the EU, while simultaneously creating local value.

In fact, these SPs are based on intent, and do not grant firm rights or guaranteed trade rules. Governments merely state how they intend to cooperate, which usually means that EU member states countries invest in sectors like infrastructure and the creation of local value in exchange for access to raw materials.

The President of the European Commission, Ursula von der Leyen, said regarding the EU–Chile SP:

"We [Europe] think differently. We think it is much better for the local communities that you do not only have the mining and extraction here, in an environmentally respectful manner, but that we also have the processing process and the whole value chain here in Chile."[4]

Strategic Projects are meant both to create local value and also strengthen the EU's supply of strategic minerals, and may take place both in Europe and in partner countries. Strategic Projects provide the EU with a means to increase the role of the European private sector in the raw-materials value chain. If projects are assigned strategic status, permit procedures can be streamlined and projects can be subsidized, thereby making them viable for the private sector.[5]

SPs may be part of the Global Gateway (GG) programme, a global investment programme often seen as the European answer to China's Belt and Road Initiative. It aims to raise €300 billion, half of which is to be invested in the African continent. Projects may be conducted in various fields such as digital infrastructure or investment in renewable energy. But such projects may also be used as a bargaining chip in the raw material value chain. The starkest example of this is the Lobito corridor, a railway project running from the Angolan port of Lobito into the Zambian and Congolese copper-belt regions. This project is part of the SP the EU has signed with Zambia and the Democratic Republic of Congo (DRC), as a means to counter Chinese dominance in the region. The EU has also announced it will start investing in lithium facilities in Argentina and Chile.

Conclusion

The CRMA seeks to increase the security of the EU's supply of raw materials by both expanding its FTAs and by adopting a form of industrial policy. The FTAs are meant to ensure the supply, whereas the industrial policy is used to address the shortcomings of the free market in providing the EU with such security. This industrial policy comprises multiple programmes and initiatives, such as Strategic Partnerships, Strategic Projects and the Global Gateway. Because the countries that export raw materials are demanding more value in return for their minerals, the EU's industrial policy also has the goal of creating local value-addition. Investing in recycling to reduce the demand for minerals is another objective. Thus, the EU's policy to increase supply chain security consists of expanding FTAs while simultaneously adopting an industrial policy that uses public investment to create local value and also reduces demand for imported raw materials.

SECTION 2. THE EU'S DUAL ROLE

Section 1 analysed how the EU is combining its free-trade policy with a soft-industrial policy. One of the goals in this industrial policy is to create local value in exporting countries. Countries where raw materials are extracted often retain little value, something the EU now seeks to address with its industrial policy. However, this section argues that EU policies simultaneously facilitate the outflow of local value from the mineral sector, in what is effectively a dual role. The financial resources that are lost as a result are likely to far exceed the amount invested in the export-producing countries. This resembles more of a lose–lose than a win–win situation, as EU leaders often present the CRMA. The reasons why little value from raw materials remains in the exporting countries are not addressed. Indeed, the burden of creating local value is placed on European citizens.

This section first gives a general overview of the economics of trade in raw materials, and specifically to offer some answers to why so little value from of the mineral sector remains in the countries of origin. It will examine three different aspects: taxation, corruption and trade under-invoicing, drawing both on existing literature and on Payment-to-Government (PTG) data. Some countries require PTG data as a transparency measure in the extractive industries, demanding that companies disclose how much they paid in taxes, what kind of taxes and where they paid tax.

The section will then analyse the role European countries play in the outflow of value from the countries exporting raw materials, in order to trace the value that is generated in mining raw materials and explore connections to European countries. This is undertaken in three parts. First, it analyses the role of tax policies in European countries in the outflow of local value from raw-material-exporting countries. Second, it looks at corrupt money flows towards European countries. Lastly, it discusses the role of trade under-invoicing and its potential connections to European countries.

The section concludes with an analysis of the Lobito Corridor. This railway line is often seen as a flagship EU project in creating local value. We will argue, however, that the outflow of value from the mining sector connected to European financial centres far exceeds EU investment in the railway. It can be argued that the Lobito Corridor therefore presents a lose–lose rather than a win–win situation. The African countries will continue to lose value from their mining projects, which is only partly compensated by investment from EU countries. The burden of that partial financial repatriation will fall on European taxpayers rather than on those who are profiteering from mineral extraction.

Taxation in the mining sector

Countries that depend on exporting raw materials have historically seen minimal profits from the operations of foreign extraction companies. In 2022, the global revenue of the mining industry was approximately $943 billion, yet many of the countries exporting raw materials remain deeply impoverished. This phenomenon is often referred to as the 'resource curse', where resource-rich countries often have higher poverty rates than similar countries, and experience sluggish economic growth. The DRC illustrates this disparity vividly. Despite its estimated $24 trillion in untapped natural resources, in 2023 an estimated 74,6% of its population lived on less than $2.15 a day, according to the World Bank.[6]

The resource curse is partly due to structural problems created by the extraction of raw materials. These problems include the so-called 'Dutch disease', whereby greater activity in one sector of the economy leads to a decline in activity in other sectors – in this case, the extraction of raw materials. The over-reliance on revenue from mineral exports can also expose these countries to price shocks, where a significant drop in the global commodity price can lead to a rapid decline in government revenue.

The wider structural economic problems related to resource extraction lie beyond the scope of this paper. Rather, the focus is on what happens with the value that is created in the mineral sector. It identifies relatively low taxation and Illicit Financial Flows (IFFs), specifically corruption and under-invoicing, to be major drains on the revenue African governments can collect from the mining sector.

Low taxation is one of the reasons African governments generate little income from mining. A study by the International Centre for Tax and Development (ICTD), based at the University of Sussex in the UK, estimated that African governments attract about 3% of total value of mineral production in taxation, compared to 55% in the oil sector.[7] The study argues this figure is low because taxation in the mineral sector is based on royalties and corporate income tax. Royalties are paid on the basis of production, whereas corporate income tax is paid on the basis of generated profit. These forms of taxation can be subject to base erosion and profit shifting (BEPS).

Several reports have confirmed that L&MICs lose substantial revenue from mineral extraction through tax evasion. A 2021 analysis published by Oxfam International showed that Glencore and Mopani alone potentially avoided up to $102 million in taxes a year in Zambia[8] whereas the Mexican tax authority SAT [Servicio de Administración Tributaria] estimated the losses from tax evasion in the mining sector at $1.2 billion over a six-year period.[9]

Payment to government data

Using data from PTG reports, this report analyses the tax payments of the largest companies in the critical mineral sector and identifies the countries where these taxes are paid. The aim is to get a better overview of taxation in the mining sector. Six companies were analysed: Glencore, Rio Tinto, Teck Resources, First Quantum Minerals, BHP, and Anglo American. These companies were selected on the basis of their share of the CRM trade and the availability of PTG data. Nornickel was excluded since its operations are confined to Russia, from which the EU seeks to divest.

Data from 2022 was used, as some companies had not yet filed their 2023 reports at the start of the research. Most companies use the British PTG version, while Teck Resources and First Quantum Minerals use the Canadian Extractive Sector Transparency Measures Act

(ESTMA). The two are similar, except that the British PTG differentiates between income tax and other taxes. Data was standardised to US dollars based on the average exchange rate in 2022. The data may well have a selection bias since not all countries mandate the publication of tax data, which means it comes exclusively from companies operating in Australia, Canada, Europe, and the US, and thus excludes Chinese and Chilean companies. The data covers the company level, including activities in non-critical minerals, the energy sector, and refining. It was not possible to identify data related to the critical raw material sector, since companies are not obliged to differentiate between the activities for which they have paid taxes.

There is no standardized measure for profits among mining companies, leading to the use of different metrics. For Glencore, the measure used is "Net income for the year attributable to equity holders." For Teck Resources, it is "Profit (loss) from continuing operations attributable to shareholders." For Anglo American, it is "Profit for the financial year." For BHP, the measure is "Profit/(loss) after taxation from continuing operations." For Rio Tinto, it is "Profit after tax." Finally, for First Quantum Minerals, it is "Profit (loss) attributable to shareholders."

To get a better picture of how much, where, and what kind of taxes mining companies have paid, we used PTG data of six different mining companies, based on the availability of data and their role in the critical raw materials sector (see framework). PTG data shows that, in terms of overall taxation, the six companies paid around $42 billion in taxes and royalties, yet these companies' post-tax profits were estimated at $69 billion – 1.6 times more than they paid in taxation.

Although at first glance this level of taxation might seem reasonable, it is important to stress that the taxes listed in PTG data differ somewhat from the taxes paid by non-extractive businesses. A non-extractive company, for instance a manufacturing facility, might buy certain materials and pay employees or buy machinery to transform the materials into a higher-value commodity. In doing so, it generates a profit. This profit is then subject to taxation. The PTG data for the extractive industry partly includes this form of income taxation.

However, so-called production-sharing agreements are also part of PTG data. This type of payment is essentially a form of compensation for being able to extract minerals in the first place. Governments of the countries in which the extractive industries work request a share of the revenue generated in the mining sector, usually in the form of income-based taxation or royalties based on actual production. Since the PTG data comprises both forms of taxation, it may appear that the volume of taxes paid in comparison to the overall profits may not seem to be so much.

Furthermore, this data is based on the overall company, and is skewed towards high-income countries, accounting for about 72% of taxes paid by the six companies. It is not possible to determine whether this is because L&MICs receive a smaller share of the generated revenue or whether the companies have more mining activities high-income countries.

In specific cases, L&MICs appear to receive a particularly low share of the income generated from mining activities. Rio Tinto, for instance, paid only $4.6 million in income-based taxation and royalties for its QMM mine in Madagascar, which produces titanium, among other minerals. Mine managers estimated that the mine would generate about 2 million tons of titanium at peak capacity[10], which in 2022 sold at an average of $290 a ton.[11] If the estimated output was reached in 2022,

this would mean the mine generated an estimated $580 million of unrefined ilmenite ore that year, although it cannot yet be determined whether this production level was indeed reached.

Although Rio Tinto did not pay much in tax to the Government of Madagascar, it did leave a lot of pollution while it worked there. In April 2024, a British court charged Rio Tinto with contaminating the surroundings of its mine.[12] Research demonstrated that most of the local population suffered from lead poisoning, mainly the result of water contamination. Rio Tinto has also been accused of forcibly displacing people without compensation, causing soil contamination and threatening biodiversity.[13]

To sum up, research suggests that general taxation in the mining sector is low, specifically in L&MICs. This is possibly due to revenues from the mining sector coming from income-based taxation, which is subject to BEPS. Several reports indeed indicate that L&MICs lose value through mining companies' tax avoidance. Arguably, PTG data further backs up the fact that compensation for governments is low, given that PTG consists both of general income taxation and payments made under production-sharing agreements. PTG data further indicates that in certain cases L&MICs received a particularly low share of the value.

European connections to tax avoidance

Several European countries are responsible for enabling tax avoidance, making it harder for countries that depend on exporting raw materials to reap the benefits of this mineral production. Overall, European countries account for a significant proportion of worldwide tax avoidance. The Tax Justice Network (TJN) publishes the Global Tax Haven Index, ranking countries based on the estimated share of global tax avoidance for which a country is responsible. If British Overseas Territories and Dependencies are considered as being part of the UK, which is reasonable since the UK government has the power to implement and veto legislation there, 11 European countries appear in the top 25. Together they account for almost 30% of all tax avoidance worldwide.[14] The Netherlands and Luxembourg alone account for almost 10% of global tax avoidance.[15]

If we look at the mining sector specifically, we see mining companies have many subsidiaries in these European countries (see Figure 1).

Clearly, the existence of these subsidiaries does not mean they were set up for tax-evasion purposes, since they can be used for legal practices such as trading. However, there have been many known cases of tax evasion in the past, such as the Dutch government warning several mining companies using Dutch subsidiaries to avoid paying taxes on minerals originating in sub-Saharan Africa,[16] and Canadian mining companies shifting profits of $119.8 billion to subsidiaries in Luxembourg over a ten-year period.[17]

Tax avoidance can leave mineral-rich L&MICs with almost no income to tax. Rio Tinto, for instance, paid only $200,000 in income tax in Mongolia, despite its principal mine reporting an underlying EBITDA of $436 million in 2022.[18] Rio Tinto owns 66% of the mine, meaning that the company's income tax comprised 0.07% of underlying EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortisation). A 2018 report by the Centre for Research on Multinational Corporations (SOMO) showed that Rio Tinto used Dutch and Luxembourgian subsidiaries to avoid paying $470 million in taxes.[19]

Country	The Netherlands	France	Germany	Luxembourg	Spain	Belgium
Ranking	4th	18th	23th	6th	22th	16th
% of total tax avoidance	5.5%	2.1%	2.1%	4.1%	1.6%	2.2%

Figure 1.*

Illicit Financial Flows in the mining sector, corruption and trade under-invoicing

Apart from tax avoidance, Illicit Financial Flows (IFFs) are also a major drain on the revenue African governments are able to generate from mining activities in their countries. IFFs are defined as any cross-border money flow that is illegal in nature, for example corruption, under-pricing or tax evasion. According to the United Nations Trade and Development organisation, UNCTAD, IFFs cost all African countries combined about $89 billion every year, equivalent to 3.7% of their total gross domestic product (GDP) – nearly as much as the volume of Official Development Assistance (ODA) and foreign direct investment (FDI) combined.[20]

* Mining Technology, "Exclusive Database of Multinational Mining Industry Operations and Technology Companies," accessed September 2024, https://www.mining-technology.com/features/exclusive-database-of-multinational-mining-industry-operations-and-technology-companies/.

It is believed that the commodity sector is the largest source of IFFs, amounting to $40 billion annually. In terms of metals, gold, diamonds and platinum are the most vulnerable to IFFs, but the minerals needed for clean energy solutions such as battery-storage technologies are likely to increase in the future and may therefore become a large source of IFFs.[21]

UNCTAD does not specify which IFFs are most harmful in the commodity sector. Several studies have found that corruption is endemic in the commodity sector, making it likely to be a significant contributor to IFFs. According to the Organisation for Economic Co-operation and Development (OECD), corruption in the commodity sector takes several forms. It can arise when a buyer for commodities is selected, a contract is signed or a payment is made. These are all examples of practices commonly associated with corruption.

A rather less widely known form of corruption is trade under-invoicing, when the quantity, quality or value of commodities are misreported when they are traded. Examples are misrepresenting the grade of a commodity, which is an important factor in determining its value, or under-reporting the volume of exported commodities. UNCTAD published the first-ever official data on trade under-invoicing in 2023. Six African countries participated in the research, which shows that such under-invoicing amounts to billions of dollars in each case. In Zambia it amounted to $44.9 billion between 2012 and 2020, and in Gabon it was calculated at $65 billion in the period 2010 to 2021. Mining was one of the sectors affected by under-invoicing.[22]

European connections to IFFs

IFFs have also found their way into European financial systems. The best-known links between IFFs and the European financial system centre around Dan Gertler, the infamous Israeli businessman, a personal friend of the former DRC president Joseph Kabila. According to a RAID report, he acquired mining rights in the DRC at far below the true value and then either sold these assets for a much higher price to companies like Glencore and the Eurasian Resource Group (ERG), or retained them to extract royalties.[23] Through Gertler's deals the RAID report estimates that the DRC lost $1.96 billion up to 2020.[24]

US legislators put Gertler on the sanction list in 2017 after the Paradise Papers revealed his alleged corrupt business activities, listing 14 different entities as part of Gertler's network, of which five were in the Netherlands, showing the extent of the involvement of the Dutch financial system in IFFs from the DRC.[25] The other companies were listed in the DRC, the British Virgin Islands (BVI) and Switzerland.

After the US sanctioned Gertler, Europe became his financial safe haven, according to a Global Witness report. Despite the US sanctions, his European companies were never dissolved and some, such as Glencore, switched their payments to Gertler by paying him in euros rather than dollars.[26]

After Tshisekedi succeeded Kabila, Gertler fell out of grace with the DRC government, which tried to renegotiate its mining deals. They reached a settlement in 2022 which, according to local non-government organisations (NGOs), was largely unfavourable to the DRC.[27] Gertler continues to receive royalties from three key DRC mines operated by Glencore and the ERG. The Congolese NGO Le Congo n'est pas à vendre (Congo is not for sale) estimated that under the current arrangement these would continue to generate $131.7 million a year for Gertler.[28] This alleged corruption has led to significant losses to the DRC's revenues from its mining operations.

There are still links with the Dutch financial system. Opensanctions shows the sanctioned entity Fleurette Properties Limited still operates from addresses in Amsterdam, despite facing sanctions by American authorities.[29] Fleurette Properties Limited is connected to several other Dutch entities, such as Fleurette Holdings Netherlands B.V. and Fleurette Energy I B.V., that are subject to sanctions.[30]

The case of Dan Gertler shows that anti-corruption legislation and/or enforcement is inadequate in European countries. Although the US was sufficietnly concerned about Gertler's business practice to add him to a sanctions list, European countries continued to enable them. Gertler relied on using the euro as a means to evade US sanctions.

Apart from corruption, there are also some signs of connections between trade under-invoicing and European financial systems. It is hard to find solid evidence on trade under-invoicing, given its illegal nature. The UNCTAD report does state, however, that Ghana had seen trade under-invoicing with the EU and US, both inward and outward, which amounted to an estimated $8.4 billion between 2010 and 2012.[31] This suggests that European countries are involved in sanctioning this practice, potentially further draining the resources of L&MICs. There is a need for further research into the mechanisms and volume of this trade, and whether the EU is also involved in trade under-invoicing in the mineral sector.

LOBITO CORRIDOR

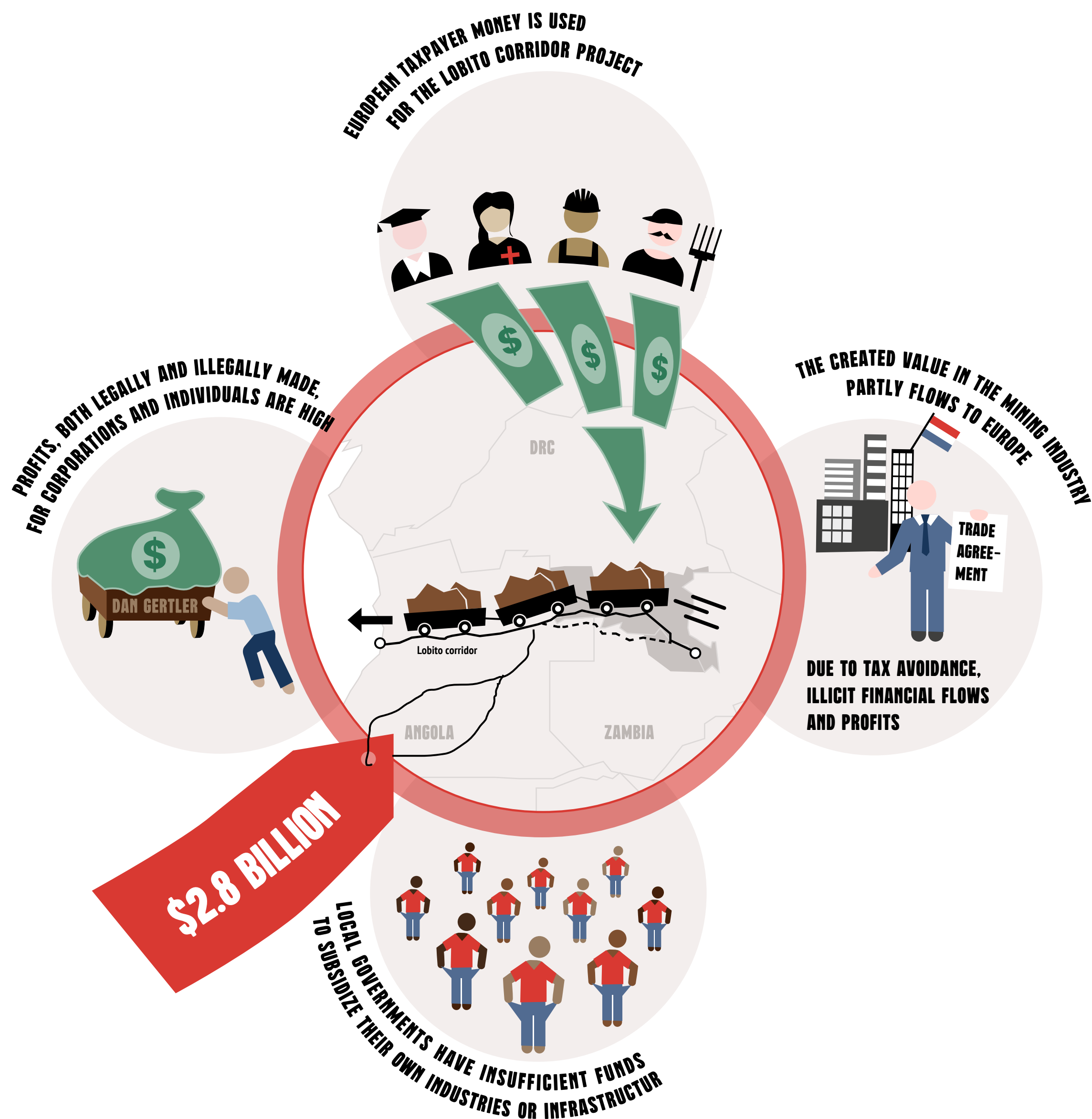
The Lobito Corridor shows the problematic nature of the EU's dual role as both the creator of local value and the enabler of its outflow. As part of the strategic partnership between the DRC, Zambia, the US and the EU, the new Lobito Corridor railway will connect the copper-belt region in Zambia and the DRC with the Lobito port in Angola. It will be the largest EU and US investment in Africa for many years, which Bloomberg has described as the west's 'single biggest move to counter Chinese influence'.[32] The railway is estimated to cost about $2.8 billion, which in addition to US and EU financing also includes Trafigura and the African Development Bank (AfDB).[33]

Politicians from Angola, the DRC and Zambia have welcomed the railway as a much-needed investment in their countries, which could potentially harness growth and enable them to move up the value chain. Since the three countries lack the financial resources to construct the railway themselves, they will rely on external finance.

European taxpayers will also contribute to the infrastructure project. Although the actual amount remains unknown, the project is part of a wider investment under the GG programme of €50 billion. Italy has said it will provide investment of $320 million in the project.[34]

While it is laudable that the EU is providing finance for infrastructure projects in L&MICs, many of the resource-rich countries could have easily paid for such projects had the IFFs, tax evasion or the enormous profits the mining companies directed towards European financial centres – notably those of Luxembourg and the Netherlands – been curbed.

The construction of the Lobito Corridor is expected to take five years and be completed in 2029. At the same time, Gertler will have moved an estimated total of $365 million to $500 million into his overseas accounts, such as those in the Netherlands, from royalties on copper and cobalt mines in the DRC, according to Le Congo n'est pas à vendre.[35] This figure is based on an estimation of the amount of royalties received by Gertler in 2022.



The loss of taxation for the Zambian copper industry, assuming the conditions Oxfam International described in 2021 still hold, will total $2,8 billion.[36] It is not known to which countries taxes were shifted, but according to the report tax treaties with Ireland and the Netherlands contributed to the loss in taxation, again indicating the enabling role of some European countries. This tax loss, combined with the estimated losses from the Gertler deals, already exceed the necessary finance for the Lobito Corridor. This figure represents only the estimated loss in taxation from the Zambian copper industry and Gertler's royalties, although the IFFs, tax evasion and excessive profits from the three countries are likely to be much higher.

Conclusion

Because of the economic structure of the global mining industry, the profits accrue to only a tiny elite. Overall taxation is rather low, partly due to governments largely relying on taxation of revenue, which is subject to BEPS, especially in L&MICs. The sector is also plagued by illegal practices such as under-invoicing and corruption. For this reason, the mining industry mostly serves a tiny group of shareholders, local elites and corrupt tycoons.

Some EU member states (and the UK) have actively encouraged this by providing pathways for corporations to under-invoice and evade taxation on their revenues. Furthermore, corrupt business figures who are now on the US sanction list are given ample room in European financial centres, notably Luxembourg and the Netherlands. The volume of money lost to countries producing raw materials because of both tax evasion and IFFs far exceeds the amount the EU might invest in strategic projects such as the Lobito Corridor.

SECTION 3. TOWARDS A BETTER MODEL

Section 1 analysed the changes and continuities in the EU's trade policy with the introduction of the CRMA, arguing that the free-trade paradigm is supplemented with an industrial policy. Section 2 identified a contradiction in this approach. While the EU claims that its industrial policy will create local value, it also enables the outflow of value from countries that export raw materials. The Lobito Corridor, one of the EU's flagship international projects, shows that the finance that flows out of raw-material-exporting countries to the EU outstrips potential EU investment.

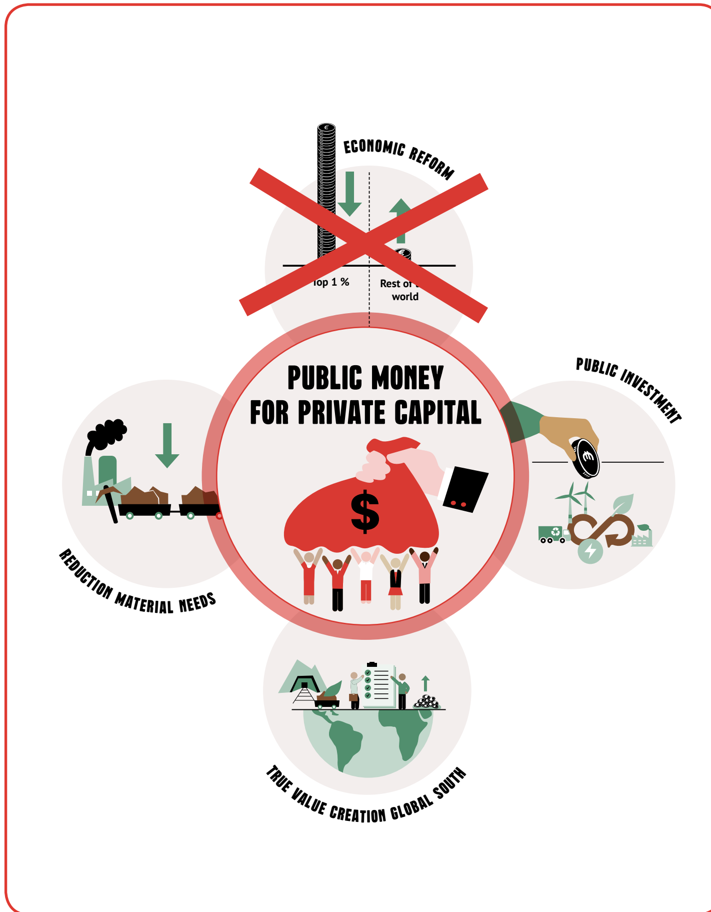
This section argues that this model is unsustainable and does not contribute to a fair transition because it does not contemplate economic reform, thereby placing the burden of public investment on the shoulders of ordinary Europeans. This implies that it could effectively mean a transfer of wealth from the European public to the tiny financial elite that profits from the trade in raw materials.

Were economic reform to be part of the EU's approach, the industrial policy could contribute to a form of climate justice by combating climate change in a way that also addresses inequalities. Measures such as adopting tougher anti-corruption laws and curbing tax-avoidance practices has the potential to generate significant local value in exporting countries, without putting the strain on European taxpayers. Furthermore, tougher taxation on profits and overall wealth could greatly increase the potential for public investment in creating local value and reducing material demand.

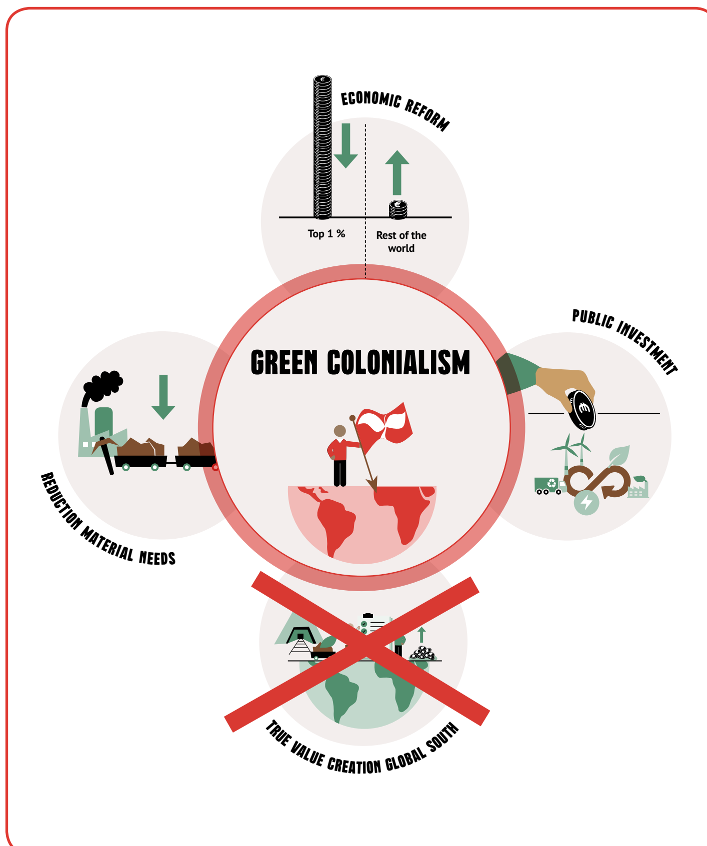
Why all pillars matter

This paper argues that a successful industrial policy that contributes to climate justice in the mining sector will rest on four interrelated pillars: economic transformation, public investment, creation of local value and a reduction in material need. In the absence of any one of these pillars, the industrial policy will become unsustainable.

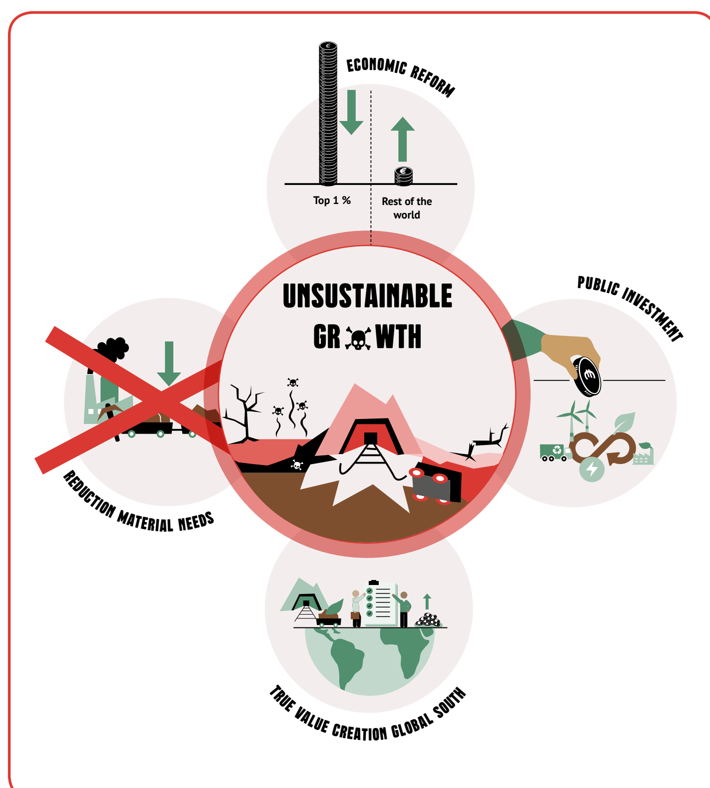
The previous sections have demonstrated why adopting an industrial policy that ignores the EU's role in the outflow of local value is unsustainable.



First, the level of investment is likely to be less the than the finance that flows out of exporting countries because of tax avoidance and IFFs, as has been shown by the example of the Lobito Corridor. Furthermore, the burden of public investment will be borne by general public in Europe. In a highly extractive sector like raw materials, this could very well mean that the industrial policy constitutes a transfer of wealth from European taxpayers to the financial elite that profits from the trade in raw materials. Economic reform should, therefore, be a central pillar of the European approach to critical raw materials.

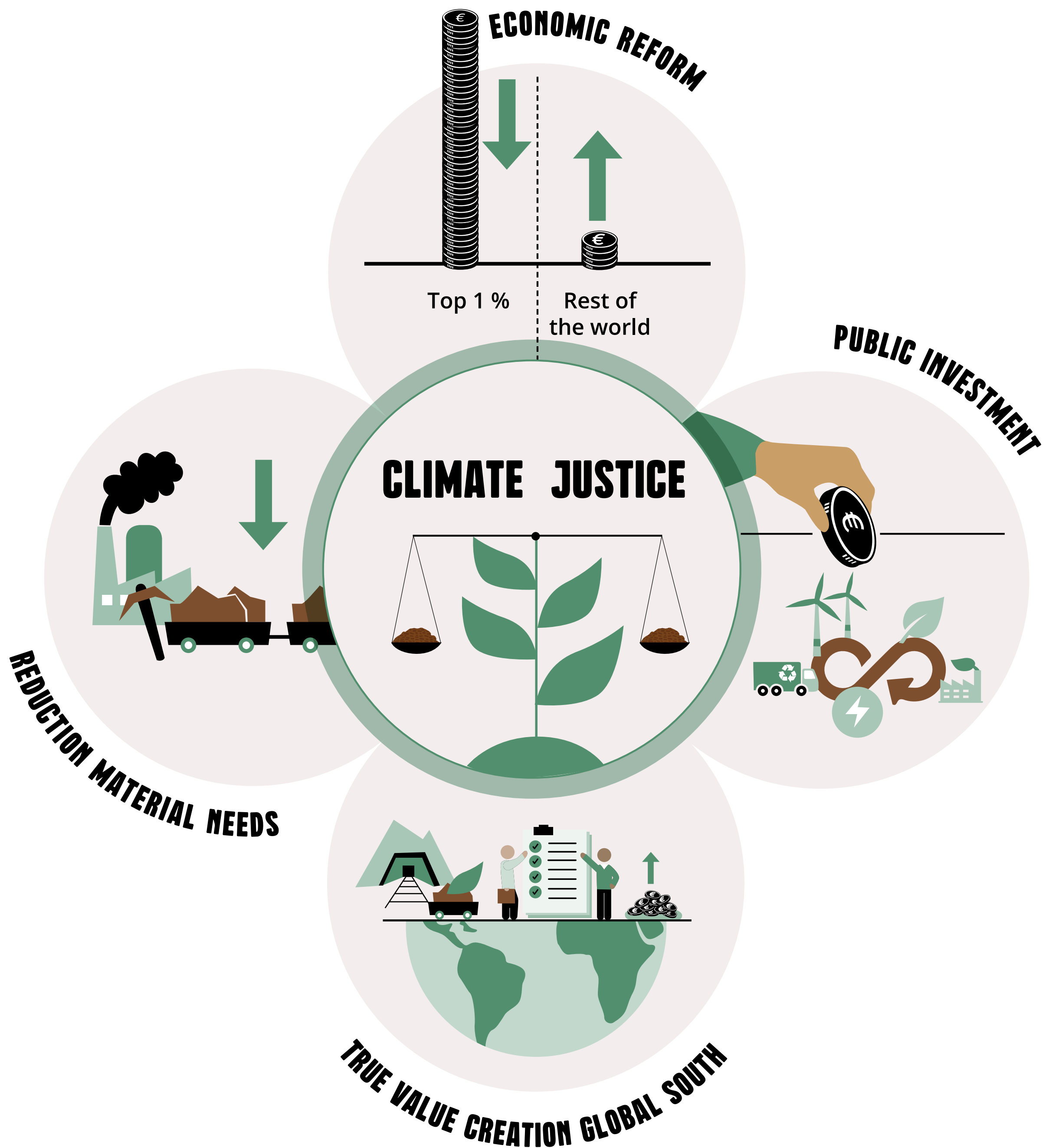


If the creation of local added-value is not adequately addressed, it will lead to green colonialism. L&MICs will serve the economic needs of the high-income countries by providing raw materials and cheap labour on which the latter can capitalise. Furthermore, if environmental issues in the supply chain are poorly addressed, green colonialism may also amount to environmental dumping. The environmental problems that arise with mining the minerals that are largely needed for high-income countries will be shifted to L&MICs where most of the mining takes place.



In the absence of serious dematerialisation, the green economy will depend on limited natural resources, and fall into the same trap as the existing fossil-led economy. There is a need to pay special attention to the expansion of private e-vehicles in the transport sector, since producing and running them will consume large volumes of raw materials and energy. In the absence of investment in alternative forms of transport or new technologies that require far less minerals or in recycling, this will lead to the unsustainable consumption of raw materials.

Currently, the EU has incorporated only three pillars in its approach to raw materials: creation of local value, a reduction in the demand for raw materials, and public investment. It could be argued, however, that none of them is adequately addressed. Whether the projects the EU plans to stimulate in L&MICs will lead to creating local value remains to be seen. It is clear, however, that the outflow of value will not be significantly reduced. In terms of reducing the demand for raw materials, the EU has set out some important steps with its recycling targets but has no policy on reducing the need for private e-vehicles, which are the biggest source of demand for raw materials.



Including the goal of economic reform could strengthen the other three pillars. Increased taxation could create potential for more public investment, which might then be used to invest more in reducing its need for raw materials and to create local value. Adopting anti-corruption laws or combating trade under-invoicing can also lead to increased local value by stopping the outflow of value.

Conclusion

Section 1 analysed the ways in which the CRMA continues conventional European trade policy, and the extent to which there is a break with conventional policies. It concluded that with the CRMA, the EU is continuing its expansion of FTAs, both by signing new FTAs and by incorporating new chapters on raw materials. The CRMA is also supplementing this 'business as usual' with a form of industrial policy whereby Strategic Projects are intended to improve the security of the EU's supply chain for critical raw materials.

Although the EU's industrial policy incorporates some form of public investment, creating local value and reducing the need for materials, it fails to address economic transformation. Section 2 showed why this is a contradiction. The EU claims it will create local value in raw-material-exporting countries but is simultaneously facilitating the outflow of local value from these countries. The value created in the mining sector often ends up in European financial centres, either in the form of profits, tax avoidance or IFFs. In the case of the Lobito Corridor, a flagship European project, these combined financial flows from the three countries alone exceed the EU's investment in the project.

Section 3 explored ways in which to improve the EU's model. It argued that in the absence of economic reform, it would basically mean transferring wealth from European taxpayers to the financial elite. Were economic reform part of the EU's approach, accompanied by public investment, the creation of local value and a reduction in the need for raw materials, it could genuinely contribute towards a form of just transition.

POLICY RECOMMENDATIONS

To create local value in countries that rely on exporting raw materials, the EU must take a critical look at its role in the outflow of value from these countries. It should:

- adopt strong anti-corruption due diligence laws to prevent corrupt money flowing into its financial systems;
- combat tax havens within the EU;
- further investigate the role European countries play in trade under-invoicing and take the necessary measures to eliminate it.

Any project receiving EU public investment, either in the GG programme or in Strategic Partnerships and Projects should work only with companies that:

- have no subsidiaries in known tax havens;
- comply with the International Labour Organization's labour standards;
- comply with environmental standards.

Another potentially interesting way to create economic reform is to use tariffs to leverage financial openness, and compliance with tax rules and economic and environmental standards. Currently, the EU imposes tariffs only on companies based on the rules of origin (the source(s) of an item or its components). This could be expanded to companies based on their financial, social and environmental performance. There is a need for more research on whether this might lead to import barriers for companies based in L&MICs. However, policy makers should start investigating the following options in order to create a more equal trade:

- have subsidiaries in known tax havens such as Bermuda or the British Virgin Islands;
- cannot prove that their production complies with ILO standards. This could result in companies providing better working conditions for miners.
- cannot prove that their mining activities complied with environmental standards.

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