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Legal Notice

Validity of the designation of 47 European and 13 third country projects as „strategic“ under the Critical Raw Materials Act

Concerning Commission Decisions C(2025)1904 & C(2025)3491

June 2025

Introduction

The European Commission's Decision C(2025) 1904 of 25 March 2025 recognises 47 projects as "Strategic Projects" under Regulation (EU) 2024/1252 (Critical Raw Materials Act). Commission Decision C(2025) 3491 of 4 June 2025 recognizes further 13 projects located outside of the European Union as "strategic". The Decisions recite that each listed project "fulfil[s] all the criteria provided for in Article 6(1)" of the Regulation, and notes that applications were assessed "with the support of external experts […] in the technical, financial, environmental, social and governance (ESG) dimensions of a project". However, **the Decision itself contains no explanation of how each project satisfies the sustainability requirements of Art. 6**, nor any factual or legal reasoning for granting the strategic status. This omission gives rise to a breach of the Commission's duty to state reasons and creates legal uncertainty for **affected communities, national permitting authorities and companies**. This notice outlines these shortcomings and depicts implications following therefrom for the involved stakeholder groups.

A. Legal Duty to state reasons, Article 296 TFEU

Article 296 TFEU requires that individual decisions state the grounds on which they are based. The European Court of Justice has repeatedly held that the statement of reasons "must be adapted to the nature of the measure in question" and "enable the reasoning of the [institution] to emerge clearly and unequivocally so as to enable those concerned to recognise the reasons for the measure adopted". In Joined Cases *Netherlands/Leeuwarder Papierwarenfabriek* (C-296/82 & C-318/82), the Court stressed that the reasons must "allow the Court to review its legality and provide the undertaking concerned with the information necessary to enable it to ascertain whether or not the decision is well-founded". In short, affected parties must be able to understand why a decision was made, and the Court must be able to review the substance of that reasoning.

Decisions lacking adequate reasons are routinely annulled. In *Nold v. High Authority* (Case 18/57), the Court of Justice held that "insufficient reasons are equivalent to absence of reasons", and that decisions failing to state their factual and legal bases "do not permit review by the Court". Likewise, in *Bonu v. Council* (Case 89/79), the Court annulled a refusal to admit a candidate to an open competition because "the most elementary statement of the reasons for the decision is missing". These and later rulings (e.g. *Freistaat Thüringen v. Commission* (T-318/00)) make clear that the statement of reasons must "disclose **in the act itself** in a clear and unequivocal fashion the reasoning… in such a way as to make the persons concerned aware of the reasons for the measure" (emphasis added) and enable them to defend their rights.

It should be noted that the Court of Justice has consistently rejected time pressure, complexity of assessment, or confidentiality as sufficient justification for failing to state reasons. In *Commission v Council* (Case C-370/07), the Court dismissed arguments

that urgency or institutional compromise could excuse the lack of reasoning. Similarly, in *Bonu* and *Nold*, it held that absence of explanation - **especially in a context where discretion is exercised** - is fatal to the validity of the act.

In the present case, the omission to state reasons is particularly grave because:

- It concerns projects that will unfold considerable environmental impacts and the decision, while not replacing national permitting procedures, heavily influences their outcome.
- It is a novel type of decision that is based on a forecasting assessment of the environmental development of raw materials projects over a long span of time without an Environmental Impact Assessment, which normally prescribes the methodology for such assessments.
- The Commission considered, in taking its decision, the assessment of "independent experts" but has not revealed the identity of those experts so that their independence cannot be verified.
- There was no public consultation or other participatory steps that were undertaken prior to the adoption of the Decision.
- The Commission exercised discretion under Article 6 without disclosing the methodology for how it gathered the necessary fact basis so as to comply with the legal limits set by CJEU-case law for the exercise of discretion.

To summarize, in the present case, the Commission's Decision contains no explanation of how the Article 6 sustainability conditions have been satisfied by the listed projects. It simply asserts that the projects "fulfil all the criteria", without specifying the facts or considerations relied upon. This is a textbook failure to state reasons. Such an essential procedural defect renders the Decision highly vulnerable to challenge and potential annulment: as the stated case law in *Nold* and *Bonu* illustrates, a decision with no substantial statement of reasons (beyond quoting legal criteria or process) will be struck down.

B. Right to Good Administration (Charter Article 41) and Internal Standards

The duty to give reasons is also enshrined in the EU Charter of Fundamental Rights. Article 41(2)(c) of the Charter explicitly guarantees the "obligation of the administration to give reasons for its decisions". This right to good administration strengthens the requirement of Article 296 TFEU – it means that EU bodies (including the Commission) must handle cases transparently and explain their decisions so that individuals and companies can know the basis of administrative acts affecting them. The Commission's own Code of Good Administrative Behaviour similarly commits officials to act fairly, impartially and with transparency in their dealings with the public. The unexplained granting of the strategic status here falls short of these standards.

C. Duty to state reasons under Regulation (EC) No. 1367/2006 (Aarhus-Regulation)

The lack of reasoning also raises issues under the Aarhus Regulation on access to justice in environmental matters. Article 10 of Regulation (EC) No. 1367/2006 entitles certain NGOs to request an internal review of a Union "administrative act" on the basis that it "contravenes environmental law". This right, conferred to members of the public as stipulated by Art. 9.3 of the Aarhus Convention, must not be undermined by a failure to state reasons which would render judicial review of unlawful environmental decisions effectively useless. It is apparent from this, that members of the public who are entitled to request internal review of EU administrative acts will also be able to challenge these acts on the grounds of insufficient reasoning.

D. Implications

For the EU Commission:

- **Risk of Annulment:** Under EU law an affected party or NGO could seek annulment of Decisions C(2025)1904 & C(2025) 3491 (or the decision to uphold these decisions upon internal review) for breach of Article 296 (failure to state reasons). As *Nold* and *Bonu* demonstrate, the Courts will annul decisions that do not set out their reasoning. If annulled, the strategic status conferred would be void and cease to have legal effect.
- **Risk of Liability:** Should project promoters incur financial losses as a result of the annulment, they could potentially hold the Commission liable under Art. 340 TFEU.

For Member States:

- **Planning and permitting decisions:** National planning and permitting authorities should adopt a cautious approach when applying exceptions from environmental protections based on an overriding interest that rests on the designation of a project as strategic. National challenges against the application of Art. 10 of Reg. EU 2024/1252 currently have good prospects of success.

For affected communities and NGOs:

- **Avenue for redress:** Affected communities and NGOs considering to challenge the designation of a raw materials project as strategic using a Request for Internal Review, should include the failure to state reasons as an individual ground for the unlawfulness of the Commission's decision.
- **Strengthening the argument:** Although not strictly necessary, actors should consider filing Freedom of Information requests to the Commission, asking for documents that contain the reasoning for the decision at hand. If the Commission will continue to deny such requests, then the argument that the failure to

state reasons impedes effective judicial review in environmental matters will become even stronger.

For project promoters:

- **Financial and Liability Risk:** Relying on this uncertain status may expose companies to significant risk. If the Decision is later quashed, any actions taken (project development, financing, permitting reliance, etc.) on that basis would be at risk of being invalidated. Corporate directors may also be personally liable if they base financial decisions on the Commission Decision despite having been put on notice with regard to its obvious shortcomings.
- **Precautionary Measures:** We strongly recommend that all project promoters exercise caution. Until the legal uncertainties are resolved – either through the Commission providing detailed reasoning or the Courts clarifying the validity of the Decision – companies should refrain from irreversible commitments that would rely on the status.

Imprint

Title: Validity of the designation of 47 European and 13 third country projects as „strategic“ under the Critical Raw Materials Act

June 2025

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Published by:

Green Legal Impact Germany e.V.
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