



Council of the
European Union

Brussels, 17 October 2023
(OR. en)

13866/23

LIMITE

COMPET 959
IND 517
MI 827
POLCOM 224
WTO 157
RELEX 1137
RECH 437
CODEC 1790

Interinstitutional File:
2023/0079(COD)

'I' ITEM NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) 168/2013, (EU) 2018/858, 2018/1724 and (EU) 2019/1020 - Preparation for the Trilogue

I. INTRODUCTION

1. On 16 March 2023, the Commission adopted a proposal for a Regulation of the European Parliament and the Council establishing a framework for ensuring a secure and sustainable supply of critical raw materials¹. This proposal is based on Articles 114 of the Treaty on the Functioning of the European Union (TFEU).

¹ Proposal for a Regulation of the European Parliament and of the Council establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) 168/2013, (EU) 2018/858, 2018/1724 and (EU) 2019/1020, doc. ST 7568/22 + ADD 1-5.

2. The Critical Raw Materials proposal is aimed at improving the functioning of the internal market by establishing a framework to ensure the Union's access to a secure and sustainable supply of critical raw materials. This proposal is intended to help equip the EU with the capacities that will be needed to meet its targets for producing renewable energy, for developing strategic manufacturing technologies, such as semiconductors and to reach the EU's climate neutrality objectives. The Commission proposal aims to improve the EU capacity to monitor and mitigate risks of disruptions and to enhance circularity.
3. On 11 April 2023, the European Parliament's Committee on Industry, Research and Energy (ITRE) appointed Ms Nicola BEER (Renew, DE) as rapporteur for the proposal. The European Parliament also appointed the Committee on Environment (ENVI) as associated committee to discuss some provisions on which they had exclusive competence. The ITRE Committee voted on its final report, as well as the decision to enter into interinstitutional negotiations, on 7 September 2023. The Plenary endorsed that decision on 14 September 2023.
4. The European Economic and Social Committee provided an opinion on the proposal on 20 July 2023². The European Committee of the Regions provided an opinion on the proposal on 27 July 2023³.

II. WORK WITHIN THE COUNCIL

5. The proposal was discussed at the Competitiveness Council on 22 May 2023. Discussions in the Working Party on Competitiveness and Growth (Industry) started in March 2023. Following intensive preparatory work under Swedish Presidency, on June 30th 2023, the Council agreed on a COREPER mandate on the proposal and gave a mandate to the Spanish Presidency to engage in negotiations with the European Parliament, once the latter had reached its mandate.

² ST 12026/23

³ ST 12201/23

6. The opening political trilogue was held under the Spanish Presidency on 20 September 2023. All institutions recognised the importance of this Regulation in light of the Open Strategic Autonomy. The co-legislators presented their views on the main political issues and gave a broad mandate to the subsequent technical meetings to identify and make progress on areas of compromise.
7. In view of the preparation of the second trilogue, the Spanish Presidency has held exchanges with the European Parliament and the European Commission in six technical meetings on 28 of September and 6, 10, 11 and 12 of October.
8. The Industry Working Party was convened to discuss the progress in the interinstitutional technical meetings on 3, 9 and 16 October 2023.

III. PREPARATION FOR THE NEXT TRILOGUE

9. In view of the 2nd trilogue scheduled for October 24th 2023, the Presidency proposes to accept elements which were provisionally agreed at the technical level with the Parliament. These compromise proposals are contained in the four-column table, in document ST 13866/23 ADD1, as listed below.

Pre-agreed lines:

- **Lines:** 1-9, 53, 62, 65, 67, 72-78, 80-85, 85c-86, 88-92, 94, 96, 99, 102-104, 105-107, 110-111, 113, 115-116, 118, 121, 125-131, 133-134, 138, 140-150, 152-153, 158-160, 162, 164-165, 167, 169, 171, 173-175, 176-180, 182-183, 192-193, 196, 202-210, 211-212, 220, 227, 229-232, 234, 237, 243-245, 255, 258, 261, 267, 272, 273-283, 284, 287-289, 290-291, 295-297, 300, 302-305, 307-308, 310-313, 314-317, 320-321, 331-332, 337, 338, 341, 344, 346, 349, 351, 353, 355-360a, 368, 375-384, 391, 398, 400-403, 405, 407, 408, 413-415, 417, 422, 424-429, 434, 436, 440-443, 446-447, 450-451, 453, 456-464, 467-468, 471, 476, 478, 481, 483-484, 485-486, 489, 490, 491, 494, 496-500, 503-515, 518, 520-525, 531, 537-538, 542b, 542j-544, 547, 552-554, 555, 557-558, 561, 565-567, 568-570, 573-574, 576, 578-584, 586-590, 592, 594, 596-599, 620-643, 646c-647, 649-650, 651-653, 655, 657, 659, 664-673, 674, 676-679, 681, 685, 687-706, 708-716, 718-736, 738-750, 752-756, 758-764, 766-767, 769-775, 777, 779-783, 785-797, 799, 800-813, 817-823, 824-826, 827-837, 843-844, 845-863, 865-870, 872-898, 901-902, 904-906, 907-919, 921-924
10. **On Articles 1 / 5(0), on benchmarks**, as a result of the interinstitutional technical meetings, and with the feedback of the Industry Working Party, a compromise proposal for a **new article 4a** on the benchmarks has been put forward. The proposal aims to convey that the benchmarks are not limited to Strategic Projects, which is a political priority of the Parliament, with the need to reflect that the benchmarks are not overall objectives for the entire Regulation, but relevant for Chapter III. Furthermore, the proposal limits the domestic processing benchmark to those projects carried out in the EU, but in exchange a reduction on the ambition level would be needed in view of a compromise. **Delegations will find the proposal in Annex I to this note.**

11. On the recycling benchmark, the legislators mandates are yet divergent. In order to bridge the gap, the Presidency puts forward three possible options:
- a) Set the benchmark in terms of increase in recycling capacity, in line with the following wording:

“Union recycling capacity, including for all intermediate recycling steps, is able to increase at least +[10]% volume of recycling capacity.”

In addition, the Regulation would include an empowerment with clear criteria for the Commission to adopt a delegated act introducing individual benchmarks for each Strategic Raw Material.
 - b) Set the benchmark in terms of waste, but limiting the scope to the waste streams included in the implemented act referred to in Article 25(7), in line with the following wording:

“Union recycling capacity, including for all intermediate recycling steps, is able to recycle at least [XX] % of each strategic raw material contained in the Union’s waste streams defined in the [implementing] acts referred to in Article 25 (7).”
12. Maintain the wording of the COREPER mandate (Line 166e), but increase the level of the benchmark [20-30] %, in line with the increased level of ambition requested by the Parliament. **On Article 8, on Points of Single Contact (PSC) / One-Stop-Shop**, the Presidency will firmly maintain the Council mandate in the timeline to set them up (9 months), the possibility to have more than one One-Stop-Shop and the rejection of the “case officer” included by the Parliament. In return, the number of PSC would be limited to one per relevant administrative level and stage of the critical raw material value chain (meaning, at the most, in each municipality there could be one for mining, one for processing and one for recycling). Furthermore, the possibility for delegation as in Line 216 would be deleted. **Delegations will find the proposal in Annex II to this note.**

13. On Articles 3, and 4, on Strategic and Critical Raw Materials, and the lists included in Annexes I and II, legislators agree that the lists should reflect all stages of the value chain. Therefore, a provision would be added (*placement to be defined*) to ensure this assumption is reflected in the text. Thus, the inclusion of:
- Alumina and bauxite,
 - boron, lithium, manganese, natural graphite, nickel without battery-grade refinement, and
 - rare earth elements, without the reference “for magnets”
- would be covered in the operative part of the regulation. In return, the lists in Annexes I and II of the Regulation would reflect the Parliament’s mandate.
14. In return, on **article 3a on Secondary Strategic Raw Materials**, the Presidency sees the need to show flexibility towards the Parliament in the inclusion of this provision.

IV. **CONCLUSIONS**

15. In light of the above, the Permanent Representatives Committee is invited **to confirm:**
- a)** Lines preliminarily agreed at the technical level, as listed in point 9 of this note and in the four-column table, in addendum to this document ;
 - b)** Compromise proposals as in Annexes I and II to this note.
 - c)** Inclusion of Article 3a as in the Parliament’s mandate.
16. In addition, the Permanent Representatives Committee is invited **to provide political guidance** to the Presidency on three possible ways forward for the recycling benchmark as presented in point 11 of the present note.

ANNEX I – NEW ARTICLE ON EXTRACTION, PROCESSING, RECYCLING AND DIVERSIFICATION BENCHMARKS

Article 4a- Benchmarks

The Commission and Member States shall strengthen **the different stages of the value chain of strategic raw materials through the measures** within this Chapter in order to:

- (a) ensure that, by 2030, Union capacities for each strategic raw material have significantly increased so that, overall, Union capacity approaches or reaches the following benchmarks:
 - (i) Union extraction capacity is able to extract the ores, minerals or concentrates needed to produce at least 10% of the Union's annual consumption of strategic raw materials, to the extent that the Union's reserves allow for this;
 - (ii) Union processing capacity, including for all intermediate processing steps, is able to produce at least **[40-50]**% of the Union's annual consumption of strategic raw materials;
 - [(iii) Placeholder for recycling benchmark. Depending on discussion on point 10 of the present note.].*
- (b) diversify the Union's imports of strategic raw materials with a view to ensure that, by 2030, the Union's annual consumption of each strategic raw material at any relevant stage of processing can rely on imports from several third countries, none of which provide more than 65% of the Union's annual consumption.

**ANNEX II – NEW WORDING SUGGESTION ON THE POINTS OF SINGLE CONTACT
(PSC) / ONE STOP SHOP**

Article 8

1. By 9 months after the date of entry into force of this Regulation, Member States shall set up or designate one or more authorities as [Points of Single Contact]. In case a Member State sets up or designates multiple [Points of Single Contact], it shall ensure that there is only one [Points of Single Contact] per relevant administrative level and stage of the critical raw materials value chain.
2. In case of multiple [Points of Single Contact], Member States shall provide a simple, accessible website on which all [Points of Single Contact], including their address and electronic means of communication, are clearly listed and categorized per relevant administrative level as well as stage of the critical raw materials value chain. The website may also contain content provided in accordance with Article 17.
3. The [Points of Single Contact] referred to in paragraph 1 shall be responsible for facilitating *[and coordinating]* the permit-granting process for critical raw material projects and providing information on the elements referred to in Article 17, including information on when an application is considered to be completed according to Article 10(5). They shall *[coordinate and]* facilitate the submission of any relevant documents and information.
4. The [Points of Single Contact] shall be the sole point of contact for the project promoter and assist the project promoter in understanding any administrative matter relevant to the permit granting process.
5. Project promoters shall be allowed to submit all documents relevant to the permit granting process in electronic form.
6. The Member States shall ensure that any valid studies, permits or authorisations issued or conducted for a given critical raw material project are taken into account and that no duplicate studies, permits or authorisations are required, unless otherwise required under national or Union law.

7. Member States shall ensure that applicants have easy access to information on and procedures for the settlement of disputes concerning the permit granting process for critical raw materials projects, including, where applicable, alternative dispute resolution mechanisms.
8. Member States shall ensure that the [Point of Single Contact] referred to in paragraph 1 have a sufficient number of qualified staff and sufficient financial, technical and technological resources necessary for the effective performance of its tasks under this Regulation.

Recitals (L29 and new L29a):

- (20) In order to reduce complexity and increase efficiency and transparency in permitting process, project promoters of critical raw materials projects should be able to interact with a single ~~national authority~~ **contact point**, which is responsible for facilitating and coordinating the entire permit granting process and in the case of Strategic Projects ~~shall issue~~ **facilitates the issuance of** a comprehensive decision within the applicable time limit. To that end, Member States should **set up or designate one or more a points of single contact** ~~national competent authority~~, **while ensuring that project promoters have to interact only with one point of single contact. It should be for Member States to decide whether a point of single contact is also an authority taking permitting decisions or not. The responsible point of single contact should at least notify the project promoter of the comprehensive decision.** ~~Where needed in light of a Member State's internal organisation, the tasks of the national competent authority should be able to be delegated to a different authority, subject to the same conditions.~~ To ensure the effective implementation of ~~its~~ **their** responsibilities, Member States should provide their **points of single contact** ~~national competent authority, or any authority acting on its~~ **their** behalf, with sufficient personnel and resources.

(20a) It should be for Member States to, in light of their internal organisation, choose whether to set up or designate their point or points of single contact at the local, regional or national level, or any other relevant administrative level. In addition, Member States should be able to, at the administrative level they have chosen, set up or designate different points of single contact that focus only on critical raw materials projects related to a specific stage of the value chain, namely extraction, processing or recycling. At the same time, project promoters should be able to easily identify the point of single contact that is responsible for their project. To that end, Member States should ensure that, within the geographical area corresponding to the administrative level at which they have chosen to set up or designate their point or points of single contact, there is not more than one point of single contact responsible per relevant value chain stage. As many critical raw material projects cover more than one value chain stage, Member States should, in order to prevent confusion, ensure that a single point of contact is designated for such projects in a timely manner, for example by providing clear and objective rules for allocating such projects to a point of single contact or, in the absence of such rules, allowing the relevant project promoters to choose from among the points of single contact responsible for the value chain stages involved.
