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From: Presidency  
To: Working Party on Competitiveness and Growth (Industry)

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Subject: CRMA: Presidency non-paper for Industry Working Party on 6/11/2023

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## **Presidency Non-paper on CRMA**

In view of the third trilogue scheduled for 13<sup>th</sup> November 2023, in the Industry Working Party of 6<sup>th</sup> November, the Presidency presents possible compromises for Articles 1 (and 4a), 3 (and Annex I), 4 (and Annex II), 5 (and Annex III), 6, 8, 10, 18, 20, 21, 23 and 26 as proposed in this document.

The Presidency invites delegations to **inform if any of the 28 proposals** included in this note **is not considered to be a suitable way forward** in the negotiations with the Parliament.

### **Article 1: Subject matter and objectives and Article 4a: Benchmarks**

- **On mitigating the demand on strategic raw materials**, the following amendments are included in order to accommodate EP's amendments in L85b and L87b:
  1. a reference to mitigation of the increase in demand has been included in L79 (Article 1(a)), as proposed in **Annex A** of this note;
  2. a new benchmark is included in Article 4a point (1) point (c) to maintain the expected increase in Union consumption of critical raw materials below the reference projection referred to in the report referred to in [Article 42(-1)];
  3. to accommodate EP's amendment in L87b, instead of a delegated act, the projections of the annual consumption of each critical raw material are included in the report referred to in Article 42 (-1).
- **On the recycling benchmark**: new wording by the European Parliament has suggested as in **Annex A**.
  4. Include a dual benchmark on recycling capacity:
    - the first benchmark will be based on annual consumption of strategic raw materials;
    - the second benchmark will be based on the strategic raw materials contained in the waste streams for which there will be reporting obligations, and therefore data. The waste streams and strategic raw materials for which data will be available based on Union sectoral legislation will be identified at a later stage through implementing acts.

5. Include a recital to clarify the abovementioned empowerment of the Commission.

#### Article 3, 4 and Annexes I and II: Strategic and Critical Raw Materials

6. Amend article 3(1) and 4(1) to reflect that the materials listed in Annexes I and II shall at any stage of the raw materials value chain (meaning, exploration, extraction, processing and recycling), be considered strategic raw materials.
7. Amend lines 673a, 675, 690, 682-684, 686, 717 and 737 to reflect this consideration, as proposed in **Annex B** of this note.

#### Article 5: Criteria for Recognition for Strategic Projects and Article 6: Application and Recognition

8. The criteria to cover strategic projects that focus on the substitution of materials, included in the EP mandate in L168b, is included. However, it is placed in a new provision in Annex III “Assessment of the recognition criteria for Strategic Projects” (after line 799a). Delegations will find the new proposal in **Annex C** of this note.
9. In return, the Presidency would firmly defend the Council mandate in L188 (Article 6(5)).

#### Article 8: Points of Single Contact/One Stop Shop

Colegislators have agreed on the structure of the article as presented in document ST13866/23. Furthermore:

10. The Council will firmly maintain the Council mandate on the name of “Points of Single Contact”, instead of “One Stop Shop” and the timeline of 9 months to set up the structure of Points of Single Contact.
11. In return, the Presidency would show some flexibility in L214a (“case officer”). A new, less prescriptive wording can be found in **Annex D** of this note.

#### Article 10: Duration of the permit granting process

The Presidency invites delegations to provide guidance on the following elements of this Article as stated in **Annex E** of this note:

12. Article 10(1)(a) and Article 10(2)(a): Showing flexibility towards the Parliament’s mandate and set up shorter deadlines for extractive waste projects (L233 and 236).

13. Article 10(2): Showing flexibility towards the Parliament's mandate and apply the same permit granting deadlines of Strategic Projects that had entered in the permit granting process before being granted the status of Strategic Project to expansions of Strategic Projects already granted with a permit (L235).
14. Article 10(3): In return, the Presidency would firmly maintain the Council mandate on L238, to extend the deadlines in exceptional cases to 6 months (instead of 3) for extraction projects and 3 months (instead of 1) for projects only involving processing or recycling.
15. Articles 10(2a) & Article 10(6): In order to breach the gap between colegislators in relation to L237a, and leave the first step of the environmental impact assessment (EIA) out of the timeline, a new compromise proposal is presented, to address the concern of EP and Commission regarding those permit granting procedures that do not start with the EIA. In those cases, the Point of Single Contact will notify the project promoter the date by when the administration would need the EIA report in order to comply with the timeline as set in the Regulation. The period as from that date until the actual submission of the report shall not be counted towards the duration of the permit granting process.

For the drafting of the provisions, see *Annex E* of this note.

16. Article 10(1) & Article 10(2a): In return, the second step of EIA (public consultation) will be included in the timeline of the permit granting process pursuant within the duration of the permit granting process. However, the duration would be extended by 80-90 days (depending on the agreement on L252, where the timeframe for public consultation is regulated).
17. Article 10(4): In exchange, the Presidency will firmly maintain the Council's mandate on eliminating the tacit approval (L239).
18. Recital 23 shall be redrafted to include a clarification of the process, as presented in Annex E of this note.

#### Article 21: Reporting of Strategic Stocks

19. L339: The Presidency would like to confirm if delegations have any potential flexibility to go back to the Commission original text.

#### Article 23: Company Risk Preparedness

The Presidency invites delegations to provide guidance on the following elements of this Article as stated in Annex F:

20. Article 23(1) first paragraph: A *grace-period* of 6 months for the Member States to identify the large companies that fall under the scope of article 23 and an addition clarifying that, whenever the list of SRM is updated, the list of companies shall be updated accordingly.
21. Article 23(1) second paragraph: The list of strategic technologies will be a closed list.
22. Article 23(2): The obligation to perform a risk assessment of the supply chain of strategic raw materials is maintained, while the requirement is less prescriptive.
23. Article 23(3): the possibility to perform the risk assessment based on the information published by the Commission pursuant to article 19(4), or otherwise publicly available information.
24. Article 23(4): In line with EP mandate in L330a, the companies shall take efforts to mitigate vulnerabilities arisen from the risk assessment.
25. Article 23(5): Large companies shall be obliged to present the report containing the results of the risk assessment, the source of the information on which the assessment is based, as well as mitigation measures envisioned or implemented to their board of directors.

#### Article 26: Recovery of critical raw materials from extractive waste

26. L410, 415a/393, 41, 418 & 420: The Presidency is seeking delegations' guidance to breach the gap between Council and EP mandates in relation to the timetable for the obligations set out in Article 26. The timeline overview is laid out in Annex G of this note.

## Article 18: National Exploration Programs

27. L292 and 112: The Presidency would like to invite delegations to express their flexibilities towards reinstating the reference to “deep ore deposits” in L292 and the definition in L112.

## Article 20: Information obligations for monitoring

28. L117: In order to breach the gap between colegislators in article 20 and use the term ‘key market operators’ as in the Council mandate (instead of ‘large companies’ as in EP mandate), flexibility would need to be shown in narrowing the definition of the term, as in the Chips Act (*mutatis mutandis*). The compromise proposal for the definition is included in *Annex H* of this note.

## **ANNEX A: MITIGATION OF DEMAND AND BENCHMARKS**

### **Lines 78 and 79, Article 1(2)(a)**

2. To achieve the general objective referred to in paragraph 1, this Regulation lays down measures aimed at:
- a. lowering the risk of supply disruptions related to critical raw materials likely to distort competition and fragment the internal market, in particular by:
    - i. identifying and supporting strategic projects that contribute to lowering dependencies and diversifying imports;
    - ii. **undertaking efforts to mitigate the increase in demand in Union consumption of critical raw materials, including by supporting material substitution and increased efficiency throughout the value chain;**

#### *Article 4a*

#### ***Benchmarks***

1. The Commission and Member States shall strengthen the different stages of the value chain of strategic raw materials through the **relevant** measures within this Chapter **and through the relevant complementary mitigating demand measures in Section 1 of Chapter V:**
- (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. **Union recycling capacity, including for all intermediate recycling steps, is able to produce at least [20/50]% of the Union's annual consumption of strategic raw materials and for the waste streams and strategic raw materials specified in the implementing act referred to in Article [xx], is able to recycle at least [50]% of each strategic raw material in those waste streams.**

- (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.
- (c) **maintain the expected increase in Union consumption of critical raw materials below the reference projection referred to in [Article 42(-1)].**

#### Article [xx]

**By 1 January [20XX], the Commission shall adopt an implementing act specifying the waste streams for which the information on the relevant waste volumes and their strategic raw materials content is available based on the reporting requirements of Directive 2000/53 [End-of-Life Vehicles Directive], Directive 2008/98/EC [Waste Framework Directive], Directive 2012/19/EU [Waste Electrical and Electronic Equipment Directive] and Regulation (EU) 2023/1542 [Batteries Regulation] to allow for estimating the Union's recycling capacity as a share of the strategic raw materials contained in the relevant waste streams. The implementing act shall specify the strategic raw materials within those waste streams for which the information is available. The Commission is empowered to update the implementing act if as a result of the assessment referred to in Article 46(1a) [L661b], such information is identified to be available for further waste streams.**

#### Article 42

-1. By [OP please insert [6/18] months after the date of entry into force of this Regulation], the Commission shall present a report including indicative **projections of the annual consumption of each critical raw material in 2030, 2040 and 2050, including a low, a high and a reference projection**, as well as indicative benchmarks per strategic raw material with a view to meet the benchmarks set in Article 4a(a), for 2030.

## **ANNEX B: STRATEGIC AND CRITICAL RAW MATERIALS LISTS**

### **Line 154 (art. 3(1))**

1. The raw materials listed in Annex I, Section 1, **[including raw materials that are a by-product of other extraction or recycling processes]** shall, **at any stage of the raw materials value chain**, be considered strategic raw materials.

### **Line 159 (art. 4(1))**

1. The raw materials listed in Annex II, Section 1, **[including raw materials that are a by-product of other extraction or recycling processes]** shall, **at any stage of the raw materials value chain**, be considered critical raw materials.

### **Annex I – List of Strategic Raw Materials**

**L673a:** (-a) Aluminium

**L675:** (b) Boron - metallurgy grade

**L680:** (g) Lithium - battery grade

**L682:** (i) Manganese - battery grade

**L683:** (j) Natural Graphite - battery grade

**L684:** (k) Nickel - battery grade

**L686:** (m) Rare Earth Elements for magnets (Nd, Pr, Tb, Dy, Gd, Sm, and Ce)

### **Annex II – List of Critical Raw Materials**

**L717:** (c) Aluminium

**L737:** (w) Nickel – battery grade

## **ANNEX C: NEW WORDING FOR SUBSTITUTION CRITERIA**

The inclusion of the following provision in Annex III would entail the deletion of L168b:

**New Line 799b:**

- (c) whether the project contributes to strengthening Union capacity to produce innovative raw materials able to substitute strategic raw materials in one or more strategic technologies, while taking measures to achieve an equal or lower environmental footprint [and equal or higher technical performance] compared to the strategic raw material that is substituted. Research and innovation projects shall not be considered to contribute to strengthening Union capacity to produce innovative raw materials.**

## **ANNEX D: ARTICLE 8: POINTS OF SINGLE CONTACT/ONE STOP SHOP**

The following provision would be added to the compromise proposal for Article 8 as presented in document ST 13866/23.

- 4a. Project promoters of critical raw materials projects shall have the possibility to contact a [function/position] within the [Point of Single Contact/One Stop Shop] responsible for managing the tasks specified in this article.**

## ANNEX E: ARTICLE 10: DURATION OF THE PERMIT GRANTING PROCESS

### *Article 10*

#### **Duration of the permit granting process**

1. For Strategic Projects in the Union, the permit granting process shall not exceed:
  - (a) **[24+3]** months for Strategic Projects involving extraction **[except for Strategic Projects exclusively related to extractive waste, for which the permit granting process shall not exceed 18 months];**
  - (b) **[12+3]** months for Strategic Projects only involving processing or recycling.
2. For Strategic Projects in the Union that had entered in the permit granting process before being granted the status of Strategic Project **[and for expansions of Strategic Projects already granted with a permit]**, the duration of the remaining steps of the permit granting process after the project is granted strategic status shall, in derogation from paragraph 1, not exceed:
  - (a) **[21+3]** months for Strategic Projects involving extraction **[except for Strategic Projects exclusively related to extractive waste, for which the permit granting process shall not exceed 15 months];**
  - (b) **[9+3]** months for Strategic Projects only involving processing or recycling.
- 2a. Where an environmental impact assessment is required pursuant to Directive 2011/92/EU, the steps of the assessment referred to in Article 1 (2)(g) (i) **[and ii]** of that Directive shall not be included in the duration for permit granting process referred to in paragraph 1 and 2.
3. In exceptional cases, where the nature, complexity, location or size of the proposed project so require, the Member State may extend the time limits referred to in paragraph 1, point (a), and 2, point (a), by a maximum of **[3/6]** months and the time limits referred to in paragraph 1, point (b), and 2, point (b), by a maximum of **[1/3]** month[s], before their expiry and on a case-by-case basis. In that event, the **[designated contact point/One Stop Shop]** referred to in Article 8(1) shall inform the project promoter of the reasons justifying the extension and of the date when the comprehensive decision is expected in writing.

**[4. For Strategic Projects, not involving mining, the lack of comprehensive decision by the [designated contact point/One Stop Shop] referred to in Article 8(1) of this Regulation within the applicable time limits referred to in paragraphs 1 and 2 of this Article shall result in the relevant permit granting application to be considered as approved, except in those cases where the specific project requires an environmental impact assessment pursuant to Council Directive 92/43/EEC or Directives 2000/60/EC, 2008/98/EC, 2009/147/EC 2010/75/EU, 2011/92/EU or 2012/18/EU.]**

**[4a. By way of derogation from Article 4(6) of Directive 2011/92/EU, the determination of whether the project shall be made subject to an assessment in accordance with Articles 5 to 10 of the abovementioned Directive, shall be made within [30-90] days from the date on which the developer has submitted all the information required pursuant to article 4(4) of the abovementioned Directive.]**

5. No later than **[30/45]** days following the receipt of a permit granting application related to a Strategic Project, the **[designated contact point/One Stop Shop]** referred to in Article 8(1) shall acknowledge that the application is complete or, if the project promoter has not sent all the information required to process an application, request the project promoter to submit a complete application without undue delay, detailing which information is missing.

[L241 is deleted]

6. No later than **[one month/two months]** following the date of acknowledgement referred to in paragraph 5, the **[designated contact point/One Stop Shop]** referred to in Article 8(1) shall draw up, in close cooperation with the project promoter and other authorities concerned, a detailed schedule for the permit granting process. The schedule shall be published by **[either]** the project promoter on the website referred to in Article 7(7) **[or by the [designated contact point/One Stop Shop] to in Article 8(1) on a free access website].**

6a. **Where the environmental impact assessment required pursuant to Article 5 of Directive 2011/92/EU is not the first step of the permit granting process, the [designated contact point/One Stop Shop] referred to in Article 8(1) shall notify the project promoter when the environmental impact assessment report referred in Article 5(1) of Directive 2011/92/EU is due. In accordance with paragraph 2a, the period as from that date until the submission of the report shall not be counted towards the duration of the permit granting process referred to in paragraphs 1 and 2.**

7. The time limits set in this Article shall be without prejudice to obligations arising from Union and international law, and without prejudice to administrative appeal procedures and judicial remedies before a court or tribunal.

The time limits set in this Article for any of the permit granting procedures shall be without prejudice to any shorter time limits set by Member States.

**Recital 23 shall be redrafted to include the following:**

“The sequencing of permitting granting process varies from Member States to Member States. In the case where the environmental impact assessment is not the first step of this process, it is necessary to clarify that the time between the date by which the environmental impact assessment report is due and the actual submission date of the report by the developer is not counted towards the overall duration of the permit granting process, in line with the exclusion of the preparation of this report from the duration of the permit granting process. Accordingly, the timing for issuing the opinion by the competent authority referred to in Article 5(2) of Directive 2011/92/EU should also not be counted in the duration of the permit granting process but may run in parallel with other steps of the process.”

## **ANNEX F: ARTICLE 23: COMPANY RISK PREPAREDNESS**

### **Article 23 - Compromise Proposal**

1. **[Within [6] months of entry into force of this Regulation and within [6] months of each update of the strategic raw materials list in accordance with Article 3]** Member States shall identify the large companies operative on their territory that manufacture strategic technologies using strategic raw materials.

The strategic technologies referred to in the first subparagraph shall **[be / include but are not limited to]** batteries for energy storage and e-mobility, equipment related to hydrogen production and utilisation, equipment related to renewable energy generation, traction motors, heat pumps, data transmission and storage, mobile electronic devices, equipment related to additive manufacturing, robotics, drones, rocket launchers, satellites and advanced chips.

2. Companies referred to under paragraph 1 shall, at least every **[two / three]** years perform a risk assessment of their supply chain of strategic raw materials, including:
  - (a) a mapping of where the strategic raw materials they use are extracted, processed or recycled;
  - (b) an analysis of the factors that might affect their supply of strategic raw materials;
  - (c) an assessment of their vulnerabilities to supply disruptions.
3. Where the information referred to in paragraph 2 is not made available to the companies referred to in paragraph 1 by their supplier, they may perform their risk assessment on the basis of the information published by the Commission pursuant to article 19(4), or otherwise publicly available information.
4. If significant vulnerabilities to supply disruptions are detected as a result of the risk assessment referred to in paragraph 2, companies referred to under paragraph 1 shall take efforts to mitigate these vulnerabilities, including by assessing the possibility to diversify its supply chains or to substitute the strategic raw materials.
5. Companies referred to under paragraph 1 **[may/shall]** present a report containing the results of the risk assessment referred to in paragraph 2, **[including the source of the information on which the assessment is based]** any significant risks detected as well as mitigation measures envisioned or implemented to their board of directors.

**ANNEX G: ARTICLE 26- RECOVERY OF CRITICAL RAW MATERIALS FROM EXTRACTIVE WASTE. TIMELINE OVERVIEW.**

LINE	REQUIREMENT	Timeline (years)			
		COM	EP	COUNCIL	COMPROMISE
410	(3) Operators submit the study	3	2	3	[2-3]
<b>415a</b> <b>/393</b>	(4a) Adopt and implement measures to promote recovery	4	2,5	4	[3-3,5]
416	(5) Database put in place	1	9m	2	[1-1,5]
416	(5) Information completed	3	2	4	[3-3,5]
416	(5) Update	2	2	3	[2,5-3]
418	(6)(a) Review permitting files	1	9m	2	[1-1,5]
419	(6)(b) Geochemical sampling	2	1,5	3	[2-3]
420	(6)(c) Core logging	3	2,5	4	[3-4]

The Parliament has signalled that their priority within article 26 is to ensure that the measures pursuant article 4a are adopted and implemented as soon as possible. With the rest of the timelines they could show more flexibility.

**ANNEX H: DEFINITION OF KEY MARKET OPERATORS**

**(L117) ‘key market operators’ means undertakings in the Union’s critical raw materials supply chain, the reliable functioning of which is essential for the supply of critical raw materials;**

