



Council of the European Union
General Secretariat

Brussels, 27 April 2023

WK 5253/2023 INIT

LIMITE

COMPET

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From: General Secretariat of the Council
To: Working Party on Competitiveness and Growth (Industry)

Subject: MS questions and written comments on the proposal for a draft Regulation on the Critical Raw Materials Act

Delegations will find attached the questions and written comments received from Member States on the proposal for a draft Regulation on the Critical Raw Materials Act.

Questions concerning CRMA, Finland 18.4.2023

1. The legal basis of the proposal is TFEU 114 Article. Article 12 of Critical Raw Materials Act provides for land use planning which usually falls into the competence of the Member States due to local and regional features. Is TFEU 114 Article appropriate legal basis in terms of land use planning?
2. Under Article 10(4) the lack of comprehensive decision by the national competent authority within the applicable time limits shall result in the relevant permit granting application to be considered as approved. We would like to ask about this Article's relation to the right to good governance. How is it possible to appeal the decision of the national competent authority if there is no explicit decision of the approval of the application? How is it possible for the national competent authority to give reasons for the decision if there is no explicit decision?
3. What does the term "battery grade" mean in the list of strategic raw materials? Does it cut some metals off in ore exploration and mining projects?
4. How much critical/strategic minerals must be produced in one project in order for it to be considered as a strategic project?
5. Which one is overriding: critical raw material act or nature restoration targets, if they conflict with each other? Can the nature restoration target limit ore prospecting activities and possible exploitation?
6. A lot of duties are put on the Member States. But is there any funding available for those duties?
7. How is the strategic significance defined, in detail, for a commodity?
8. How will the training for the use of the UNFC guidelines for resource classification to be organised effectively and, importantly, funded? This would mean that there are several experts in every MS governmental organisation which take care of national resources accounting, experts who can apply the UNFC and do that in a unified way with no essential deviations between the experts, organisations, countries, and commodities. Also the private sector should have experts on the topic even if no UNFC use is demanded from the companies.
9. For a mine or processing plant, is it realistic to have all permitting in place within 12 to 24 months, in any country in Europe?
10. Who will be in the new advisory body, who will fund the body?
 - a. " national authorities participating in the standing sub-group shall support the Commission in the monitoring referred to in paragraph 1 by ...
 - b. ... the standing sub-group referred to in Article 35(6), point (c) shall coordinate and divide the implementation of stress tests for the different strategic raw materials by the different participating authorities
11. Who will create the databases needed by the Commission? JRC?
12. Why would the critical and strategic lists be updated only every 4 years? When things change quickly there can be an urgent need for the list updates in a short notice, even in just a few months after the latest update.

- 13.** In recent years, several new European legislations involving different time limits for permitting and requirements to designate contact point authorities (one stop shops) have been introduced. There are similar provisions also in the current Raw Materials Act as well in so called Gigabit infrastructure Act –proposal. As the permitting is such a wide issue with different level competencies (and the Commission’s IA is missing), and as it will a big part of the implementation of the NZIA at national level - **could the Commission provide information on the relationship of the CRMA proposal and other relevant EU-regulation and proposals dealing with a similar provisions of permitting, time limits and one stop shops?**
- a. For transport network investments TEN-T directive (EU) 2021/1187 and for renewable energy investments Article 16 of the RED II directive (EU) 2018/2001 and the Council Regulation (EU) 2022/2577.
 - b. In addition, a significant number of new permitting related amendments to the RED II directive are being discussed.
 - c. Many of the permit granting processes in Finland are not sector specific but apply in the same way to all project types. The introduction of new sector specific and sector varying requirements for permit granting procedures increase the overall complexity of the Finnish permitting system.
14. Impacts assessment for the CRMA proposal is lacking proper assessment on environmental impacts.
15. What is the role of the existing “clubs”, such as Raw Materials Supply Group RMSG, Battery alliance, ERMA, EIT Raw Materials, EIP Raw Materials (with high level steering group), in the context? New groups are proposed: the Board with subgroups, and then the international CRM Club that sounds very similar to existing organs by at least EIA and MSP.

Comments and questions concerning the circularity section of the proposed CRMR

Circularity – section (Chapter 5, Section 1) is an important part of the proposed regulation. The proposal imposes a number of obligations on Member States and actors. Its implementation is left partly to MSs - like establishing a national programme regarding CRMs and various measures required for closed and abandoned extractive waste facilities. These obligations seem rather challenging. Therefore, the dates of entry into force of the various obligations should be carefully examined in relation to the adoption of the implementing acts. The relationship with the EU waste legislation should be very clear.

We would welcome a special technical workshop focusing on the sustainability chapter 5.

Article 25 National measures on circularity

- **Paragraph 1 and 7:** Adoption and implementation of national programmes regarding CRMs is quite a challenge to Member States. The proposed obligation is fairly loosely formulated and the required measures are to large extent left to Member States. How the equality and the quality of national programmes (and level playing field) will be ensured in the implementation of this obligation? What will be the role of the Commission in relation to the programmes drawn up in the Member States? For example, we would welcome further clarification and practical examples on how MSs can fulfill the detailed requirements for the programme proposed in paragraph 1 (a) – (e). To facilitate this work and to ensure coherence between the national programmes, it would be important that the Commission provides the list referred to in paragraph 7 specifying products, components and waste streams that shall be covered by the programme as soon as possible after the

adoption of the Regulation. Without such a list it is not fruitful to start preparation of the programme. In any case, the implementing act confirming the list should be available for Member States well (2-3 years) before the dead-line for adoption of the programme, in order to allow sufficient time for preparation.

- **Paragraph 3:** According to this paragraph, the Member States should adopt and implement measures to promote the recovery of critical raw materials from extractive waste. What kind of measures does the Commission intend here? Could this paragraph be moved to Article 26 which contains other provisions concerning recovery of critical raw materials from extractive waste?
- **Paragraph 5:** In order to ensure data collection on quantities of components containing relevant amounts of critical raw materials, should the reporting requirements set out in Article 16 of the WEEE Directive (2012/19)/EU) also be updated correspondingly?

Article 26 Recovery of critical raw materials from extractive waste

- In general, collecting all the requisite data possibly requires lot of work and resources and the deadlines seem very tight. Has the economic impact of this work been estimated (in relation with the benefits)?
- Does the Commission see any challenges in reconciling the Extractive Waste Directive and the proposed CRM Regulation?
- **Paragraph 3:** does the duty to provide an economic assessment study apply also to closed waste facilities in existing mines?
- **Paragraphs 4 and 6:** In Finland, we have a database that includes data of the existing and closed waste facilities. However, the database does not cover all the data required in paragraph 4. Should the database include information on all closed waste facilities in the territory of a Member State, regardless of when the waste facility has been closed?
- **Paragraphs 6 ja 7:** Could the role of the MS and property owner be explained in more detail?

Article 27 Recyclability of permanent magnets

- This would mean significant new tasks for producers of permanent magnets and also for the market surveillance authorities. Is this realistic in the given time frame?
- It would be important to ensure that the Commission's Implementing Act referred to in paragraph 2 is issued in good time in relation to the entry into force of the labelling obligations – could the entry into force of the labelling obligation be tied to the adoption of the implementing regulation in the same way as Article 28(1)?

Article 28 Recycled content of permanent magnets

- It would be important to clarify what is meant by “post-consumer waste” and, if appropriate, to add its definition to Article 2.
- The entry into force of the obligation referred to in paragraph 2 would be useful to synchronize with the entry into force of the labelling obligation referred to in Article 27(1).

Danish questions and comments on the proposal for a draft Regulation on the Critical Raw Materials Act

Strategic Projects – ESG standards and reporting

Whilst article 5 makes clear that adherence to ESG criteria is a precondition for being recognized as a Strategic Project, article 7 on implementation does not specifically require the project promoter to report on any ESG related aspects.

If the EU vouches for a Strategic Project by declaring it to be strategic, and confers the associated benefits to it, it would entail significant reputational damage if the Commission fails to ensure with reasonable levels of confidence compliance with the requisite standards, whether the project in question is developed in EU member states or in third countries.

- **How would the Commission ensure adherence to ESG standards and sound business conduct in practice?**
- **Why do the listed reporting requirements not explicitly specify adherence to ESG criteria among the items that must be included in the report to the European Raw Materials Board?**

Interplay between Strategic Projects and European Raw Materials Board

Moreover, the project promoter would according to article 7 be reporting to the European Raw Materials Board, which comprises of Member States and the Commission.

- **Would the Commission be responsible for ensuring actual oversight and monitoring in practice? Or how would we make sure Strategic Projects do in fact live up to the requisite standards?**
- **Would Member States, directly or through the Board, be jointly responsible? How would monitoring and oversight then work out operationally in practice?**

Delineation of Strategic Projects

A key question in terms of how the regulation would work in practice seems to be how much it would take for a project to be qualified as “Strategic”. In principle every recycling facility probably recycles some degree of cobber, which is relatively ubiquitous and is defined as a strategic raw material. Everything therefore appears to hinge on how the relatively vague phrase “meaningful contribution” is understood

- **How should “meaningful contribution” be understood according to the Commission?**
- **How would the Commission draw the line between projects that can be considered for Strategic status and projects that are not significant enough?**
- **And why does article 6 (8) only provide for strategic status potentially being revoked instead of mandating it if the criteria are no longer fulfilled?**

Automatic approval of Strategic Projects

Article 10 (4) would provide for Strategic Projects to be automatically approved if authorities fail to finalize the permitting process within the delineated timeframe (with certain exemptions).

- **First, please explain why the various listed directives have been made exempt**
- **Which types of decisions would then be subject to the automatic approval provision?**
- **Second, could you please elaborate on the legal implications foreseen, and why the provision is considered to not be in breach of principles of good governance and sound public administration conduct? (i.e. due process, requirements that decisions be based on objective facts etc.)?**

Off-take agreements for Strategic Projects

Article 16 requires the Commission to set up a system that will facilitate off-take agreements for Strategic Projects. Leaving aside why this provision is not placed in the chapter on Strategic projects,

- **Please elaborate on how the scheme would work**
- **Why is this kind of public intervention in the workings of markets justified?**
- **In particular, which market distortions are present, and how would off-take agreements help address them? What impact on market dynamics is foreseen?**

Operations of the European Raw Materials Board

Article 15 would require the European Critical Raw Materials Board, if requested by a project promoter, to “discuss and advise on how the financing of its project can be completed”.

- **Why is the Commission proposing the wording “advice” (rather than less committal wording e.g. “provide information”)?**
- **What legal obligations would that create on the Board/its members?**
- **Is there similar examples of this type of scheme (i.e. requiring government representatives to advice companies) being employed in other regulation or elsewhere that could serve as inspiration and give indications as to its appropriateness in this context?**

Safe level benchmarks

Article 22 requires the Commission to define “safe level benchmarks” for strategic stocks of strategic raw materials.

- **How would the Commission in practice set such benchmarks?**
- **What would be the considerations and criteria, and how exactly would member states (through the Critical Raw Material Board) be involved?**
- **Also please explain why EU-wide benchmarks are considered appropriate given the very different traditions and approaches to security of supply amongst member states**

Joint purchases

The provision for joint purchases in article 24 would oblige the Commission to operate a system of joint purchases. This would not be a temporary crisis mechanism to be activated in response to specific and extraordinary market conditions, it would not be triggered only at the request of member states, and it would be open to undertakings as well as national authorities. This sets the mechanism apart from similar joint purchasing schemes the Commission has recently proposed in the context of EU industrial policy.

- **What is the motivation for this provision, including its dramatic departure from other EU joint purchasing schemes?**
- **Has the Commission carried out proper economic analysis of the likely negative effects on affected markets, through distortions etc.?**
- **How has the Commission established that lack of market power is a central challenge that needs addressing (rather than other types of problems that would require different solutions)?**

Choice of governance modus

The proposal makes frequent use of delegated acts including when adjusting the Annex I, II and III which crucially define the scope of the regulation, 6 (2) uses the advisory procedure for the requisite template even though granting of strategic status is a very important decision and similarly 6 (6) allows the Commission to decide on granting projects Strategic status, with member states only consulted through the Board.

- **Please explain the logic behind these choices?**

Cross-references to other EU regulation

The proposal contains multiple cross-references to other EU regulation – in particular the Ecodesign Sustainable Products Regulation and the WEEE Directive.

- **Please elaborate on the connections, possible duplications and the coherence between the proposed regulations?**
- **Similarly, could the Commission comment on how the use of the term “sustainability” in article 29 (1) does not contradict the Empowering Consumers proposal and the Green Claims Directive proposal by setting rules for any green claim of a product?**

Duration of the permit granting process

Article 10 (5) states, that "The date of the acknowledgement of the validity of the application by the national competent authority referred to in Article 4(1) shall serve as the start of the permit granting process".

- **Does this entail that the time limit as referred to in article 10 (1) does not start, until the competent authority has acknowledged receipt (i.e. validated) of a complete permit granting application including a complete environmental impact assessment report?**

Environmental footprint declaration:

According to article 30(1), the environmental footprint declaration shall be limited to only one impact category.

- **How can this be justified, when the Commission’s own recommendation on Environmental Footprint (C(2021) 9332) from December 2021 stipulates that an environmental footprint declaration should include at least 3 impact categories accounting for at least 80% of the overall environmental impact?**

Additional technical questions and comments

Article 2: Definitions

- In order to streamline definitions this article should refer to other Union legislation where relevant. For example “recycling” and “recovery” are already defined in the Waste Framework Directive.

Article 25: National measures on circularity

- Para 1 introduces an obligation to adopt and implement national programmes regarding circularity for critical raw materials. Can Commission confirm that such programmes can be an integrated part of the national waste management plan and the national waste prevention programme, according to article 28 and 29 in the Waste Framework Directive?
- Para 2 mentions that the programmes mentioned in para 1 shall in particular cover products and waste which are not subject to specific requirements under Union legislation. Since electronics, batteries and vehicles are already subject to specific requirements, it would be helpful if Commission could elaborate on the products and waste which should in particular be covered? And elaborate on how to ensure coherence between these programmes and the obligations to have Extended Producer Responsibility for electronics, batteries and vehicles?
- Para 3 concerns recovery of critical raw materials from extractive waste including closed waste facilities. Has Commission considered including closed waste facilities from other types of waste in order to promote landfill mining in general?
- Para 7 mentions an implementing act specifying products and waste relevant for the programmes mentioned in para 1. Since these programmes shall be adopted 3 years

after entry in to force of this regulation, the implementing act in para 7 should be adopted well in advance.

Article 27: Recyclability of permanent magnets

- The article focuses on recyclability of permanent magnets only. Has the Commission considered to include other products and/or components with a high relative concentration of critical raw materials in the Regulation?
- According to article 27 (1) a list of 13 products categories shall meet specific labelling requirements. Has the Commission considered including other product categories as well?
- Para 1(b) mentions four types of permanent magnets. Can Commission explain the reason for only mentioning a limited number of permanent magnets?
- Para 3 includes an obligation to ensure a data carrier for products incorporating three specific types of permanent magnets. Can Commission explain the reason for limiting this obligation to these exact types of permanent magnets?
- Para 6, 8 and 9 have strong and thorough links to the Ecodesign for Sustainable Products Regulation, including the Digital Product Passport, which are very important in order to ensure coherence between these closely interrelated regulations.

Article 28: Recycled content of permanent magnets:

- Para 1 includes an obligation to inform the recycled share of 8 critical raw materials in 3 specific types of permanent magnets with a weight exceeding 0.2 kg. Can Commission explain the reason for limiting this obligation to these exact 8 critical raw materials, these exact 3 types of permanent magnets and why the threshold is 0.2kg?
- Para 1 mentions that info about recycled content should be “publicly available on a free access website”. Can Commission explain why the info is not placed in the data carrier mentioned in article 27 and how to ensure coherence with corresponding information requirements and the Digital Product Passport in the Ecodesign Regulation (ESPR)?
- According to article 28(3), the Commission can adopt requirements concerning the content of recycled materials in permanent magnets after 2030 at the earliest. Would the Commission consider setting a deadline for when such requirements shall be adopted at the latest to allow the market to prepare for future requirements?
- Para 4 has a strong and thorough links to the Ecodesign for Sustainable Products Regulation, which is very important in order to ensure coherence between these closely interrelated regulations.

Impact Assessment: Non-regulatory actions

- There is a reference to possible pilot lines financed by Horizon Europe (on page 135). Is the Commission referring to the existing possibility that Horizon Europe can fund smaller pilot lines as part of research and innovation projects? Or does the Commission under this proposal foresee initiatives such as the larger pilot lines discussed in the Chips Joint Undertaking which is not to be financed by Horizon Europe, but by the Digital Europe Programme?
- There is a reference (on page 53) to the Communication announcing actions to strengthen EU's leadership in support for R&I. In the Communication we find a reference to a "coordinated plan of action" and "strategic implementation plan" for F&I. Would it be possible for the Commission to expand on what this entails, and whether they expect to be able to do this within the current framework of Horizon?
- There is a reference (on page 90) to the fact that “Respondents call for new R&I programmes and additional competitive grants for ongoing EU research programmes.” Would it be possible for the Commission to elaborate on its thinking regarding “new programmes” and “additional competitive grants”?

Berlin, April 18th, 2023

**Critical Raw Materials Act –
GER Comments and Questions on the Proposal for a Draft Regulation on the
Critical Raw Materials Act**

We would like to thank the EC for this comprehensive proposal on the Critical Raw Materials Act. We stress the necessity to diversify and secure the Union's raw material supplies and support the overall objectives of the Commission's proposal of the Critical Raw Materials Act. We welcome its aim to facilitate and accelerate the exploration and extraction of domestic critical raw materials, as far as necessary to meet the domestic industry demand, to strengthen processing and refining and to support and strongly enhance recycling and circular economy. The CRMA tackles the important challenges with respect to the security of raw material supply. We want to emphasize the importance of a systematic, revolving review process for assessing and including technological innovation, political and economic developments. We see circular economy as crucial and emphasize that recycling makes an important contribution to ensure a sustainable raw material supply."

We agree on the importance of Strategic Partnerships. These partnerships, especially with developing and emerging countries, should be designed to mutual benefit, i.e. enhancing our access to raw materials and also promoting local value creation. This can help diversify supply chains while supporting countries in achieving their development goals, thereby strengthening our partnerships. At the same time, we should facilitate the negotiation of EU trade agreements and strengthen the multilateral trading system to help diversify our sources of raw materials.

We greatly appreciate that the EC included the environmental and social criteria in the sustainability assessment and we underline that any improvements of granting access to critical raw materials must not challenge national and European achievements and legal standards of environmental protection and safety and health of citizen.

The proposal of the CRMA affects an elaborated and partially decentralised system of granting permissions and executing supervision of mining, refining, recycling and other raw material projects in Germany. Our system is based on European and domestic law in the fields of mining, environmental protection and spatial planning. Furthermore, the international and European provisions for effective procedures on public participation in decision-making and access to justice in environmental matters must be met. Therefore, we see the need for a scrutiny and financial reservation and would like to ask the presidency to discuss these points in detail. Such a discussion is also necessary with respect to the foreseen National Exploration Programs.

Please find detailed questions and comments listed in the table below.

Correspondence Table

Title of the Article	Number	
Subject matter and objectives	Article 1	<ul style="list-style-type: none"> • Assuming that the 15%-recycling goal refers to every single strategic raw material, the EC should consider to use goals based on current recycling rates (e.g. status quo +15%). This would pay attention to the fact that recycling rates of some metals (e.g. Cu) already are much higher than those of other CRM (e.g. Li). • The other diversification goals set seem to be appropriate. Important is of course, to regularly re-evaluate these goals, taking achievements and negative impacts into account. Most importantly, there can only be a significant diversification, if the necessary preconditions in terms of alternative sourcing, global offer and supply are fulfilled • How does the EC intend to ensure that these goals of Article 1.2a) and b) will be reached? Does the EC plan to implement any monitoring procedures? • 1.2b: What is the schedule for implementation of the requirements? • 1.2b: What is the definition of “any relevant stage of procession”? Processing of certain minerals) requires large amounts of energy as well as productive capacities – thus strong economic incentives for companies are needed. • 1.4: We would support a stronger phrasing: “<i>ensure that the following product aspects are improved and implemented:...</i>” instead of „shall take into account”...” • How does the proposal ensure that its application is without prejudice to current and future EU legislation in the areas of human rights, protection of the environment and climate change under other Union legislative acts? • The list of objectives should also have a reference to the environmental performance of raw materials
Definitions	Article 2	<ul style="list-style-type: none"> • Def. 23 „deep exploration “: this definition is not precise as the depth of mining activities depend on regional geologic conditions. • Def. 26: reference to ‘raw materials value chain’ seems superfluous, reference to ‘all activities and processes of the raw materials’ seems sufficient • Def. 30: reference to ‘large’ companies misleading as NFRD has lower thresholds for ‘large undertakings’. Might be preferable to determine the threshold in the text of the regulation instead of in a definition • Def. 31: Health and nutrition security should be considered as strategic sectors, too.
List of strategic raw materials	Article 3	<ul style="list-style-type: none"> • Does the EC envisage ad-hoc updates to integrate actual developments like technological innovations, political crises etc.? • Could the EC please explain the data base for aluminium, zinc, tin, indium and fluorspar leading to the non-listing of those raw materials in the corresponding lists of critical and strategic raw materials.

List of critical raw materials	Article 4	<ul style="list-style-type: none"> • Does the EC envisage ad-hoc updates to integrate actual developments like technological innovations, political crises etc.? • Will the thresholds for economic importance and supply risk be reviewed periodically?
Criteria for recognition of Strategic Projects	Article 5	<ul style="list-style-type: none"> • 5.1: Which entity of the EC will perform the assessment and recognition procedure and which role will the board play? • 5.1c: Please integrate the use of renewable energy as sustainability criteria • 5.1c: Which concrete risk categories shall be addressed? Consider defining “socially responsible practices”, “meaningful engagement with local communities”, “adequate compliance policies” and “risks of adverse impacts on the proper functioning of public administration” in Art. 2. • 5.1c: Do the requirements on sustainability differ between EU Members and third countries? • 5.1c: Could the EC elaborate on what “meaningful engagement with local communities and relevant social partners” entails? In what way do these social partners have to be included before a project can be approved? • 5.1c: It is important that newly created jobs in these industries do not undermine prevailing wages/labour standards. More specific requirements might be needed to ensure this. • 5.1e: At what threshold would a project be considered as “adding value in that country”? • 5.1e: Please clarify that the ‘adding of value’ does not refer only to economic aspects, but also that the respect of environmental and human rights standards has to be ensured • 5.3: How will the commission control/assure the conformity of strategic projects in third countries?
Application and recognition	Article 6	<ul style="list-style-type: none"> • Why is the Merger Regulation related to and not the Investment Screening Regulation? • 6.1d: Does the EC deem it feasible to require applicants to draw up these plans in collaboration with social partners as opposed to solely outlining their participation in the process? • 6.8-9: Please explain how conformity check will be performed for projects in third countries?
Implementation of Strategic Projects	Article 7	<ul style="list-style-type: none"> • Please clarify “overriding public interest” with regard to these directives • An overriding public interest for water withdrawal for industrial purposes compromises the primacy of public water supply • Should a difference be made regarding the facilitation between strictly extractive projects that are geologically bound to one location and location wise ‘flexible’ projects (e.g. recycling)? • Please specify how it can be ensured that these provisions are in line with the EU’s arctic policy, in particular regarding the rights of indigenous populations.
One stop shop	Article 8	<ul style="list-style-type: none"> • The German mining law includes provisions and competent authorities like the “Bergbehörde” that are closely related to core elements of the commission’s proposal of the “one stop shop” In

		<p>Germany - based on constitutional law - the tasks of granting and supervision of mining projects are in the responsibility of the Länder. Article 8 Nr. 3 seems to open a way of connecting the CRMA's proposals aim with our current system. But we see the need for further elaboration, clarification and the amendment of Article 8 Nr. 3.</p> <ul style="list-style-type: none"> • 3: Would the following example meet the intentions of the CRMA's proposal? One national federal competent authority ("FCA") would be the sole point of contact for any project promoter with a project. This FCA could pass the project promoter with his project to a single competent authority (Bergbehörde). The Bergbehörde is located in the "Land" where the project (mining site) should be realised. The Bergbehörde would then act as the single authority mentioned in article 8 Nr. 3 b and c? • To take into account national circumstances, it is necessary that Member States can designate other (e.g. regional) authorities as one stop shop instead of a new central authority. This should be expressed directly in the text. In Member states like Germany with a decentralised administrative structure at regional level the idea of only one competent federal authority and the option to delegate responsibilities seems complicated. It would add an additional bureaucratic layer. Instead the requirement of only one single authority for each critical raw material project should be sufficient. <p>6: What kind of disputes shall fall under this provision?</p> <ul style="list-style-type: none"> • 7: Nr. 7 states: <i>"Member States shall ensure that the national competent authority referred to in paragraph 1 has a sufficient number of qualified staff and sufficient financial, technical and technological resources necessary, including for up- and re-skilling, for the effective performance of its tasks under this Regulation."</i> <p>This requirement will affect member states budgets, so we see the need for a financial scrutiny reservation.</p> <ul style="list-style-type: none"> • In addition, we would like to mention that regulations like the "Revision of the Industrial Emissions Directive (IED) 2010/75/EU" will already rise the demand for qualified staff for competent authorities as well. Qualified staff in this sector is rare and not always available in short term. <p>Therefore, we would like to ask if the issue of "availability of qualified staff for competent authorities" could be further addressed in the consultation on the CRMA.</p>
Priority status of Strategic Projects	Article 9	<ul style="list-style-type: none"> • We agree with the need for accelerating the permit granting processes. But we assume that there is a need for deeper evaluation in which duration the permitting granting processes would be feasible and whether and what the consequences are if these periods are exceeded.
Duration of the permit granting process	Article 10	<ul style="list-style-type: none"> • As pointed out in 10.4 for specific projects that require an environmental impact assessment the permit granting application cannot be considered as approved.
Environmental assessments and authorisations	Article 11	<p><u>Rationale</u></p>

		<p>We need to clarify the interdependency of the following aspects. The time duration of granting permissions for mining projects is highly based and already governed by (i. a.) the following pieces of EU legislation (among domestic mining law):</p> <p>92/43/EEC = Habitats Directive 2000/60/EC = Water Framework Directive</p> <p>2008/50/EC = Ambient Air Quality Directive 2008/56/EC = Marine Strategy Framework Directive 2008/98/EC = Waste Framework Directive 2008/105/EC = Environmental Quality Standards in the Field of Water Policy 2009/147/EC = Birds Directive 2014/52/EC = EIA Directive 2003/35/EC = Public Participation Directive</p> <p>There is also the Directive specific to mining 2006/21/EC = Management of Waste from Extractive Industries Directive. A set of the raw materials mentioned in the lists of the CRMA will be under the scope of the revised Industrial Emissions Directive (IED) 2010/75/EU in the future. The relevant BAT-Documents are not developed yet.</p> <p>In addition, the duration and procedures of administrative court proceedings is determined to a high extend by European and international law.</p> <p>Concluding, we would like the COM to outline how the proposed time limits interact/are possible within the above-mentioned legal texts. Also, we want to refer to Recital 24 (draft CRMA) with regard to section 2: "...it should be ensured that project promoters and responsible authorities explicitly agree on the scope of the bundled assessment before it is implemented to prevent unnecessary follow-up. "</p> <ul style="list-style-type: none"> • Art. 10: Which rules apply to permit granting for strategic projects in third countries? • How can the obligations from 92/43/EEC, Directives 2000/60/EC, 2008/98/EC, 2009/147/EC 2010/75/EU, 2011/92/EU or 2012/18/EU be combined? Could COM give any examples of practical applications? • How does the regulation on the time limits correspond to the permit regulation contained in EU-Directive 2010/75/EU? • In general considering a permit as approved if the comprehensive decision by the national competent authority within the applicable time limits is lacking is not acceptable if the competent authority does not make a written statement explaining the reasons for delayed issuance
Planning	Article 12	<ul style="list-style-type: none"> • An assessment of the prohibition of deterioration according to Art. 4 Water Framework Directive (see Art. 12 para. 2) is hardly possible

		<p>at plan level and cannot replace a corresponding assessment at project level.</p> <ul style="list-style-type: none"> • What form of provisions is meant here? Could the COM give any examples of practical applications? • How shall the assessments be combined? Shall both assessments be included in one document /one procedure or is there more to it? How shall the assessment concerning different objects of protection be combined? • Why are there no exceptions, e.g. for Natura-2000 sites and national protection areas? Why are there no exceptions for greenfield sites with high value for biodiversity within cities, with high value for bird migration or adaption to climate change?
Applicability of UNECE conventions	Article 13	<ul style="list-style-type: none"> • We explicitly welcome Art. 13 regarding the applicability of UNECE conventions (Aarhus and Espoo). • Why are only articles 6 and 7 of the UN ECE Aarhus Convention addressed? Does COM consider the other articles unconcerned (esp. articles 4, 7 and 9)?
Accelerating implementation	Article 14	
Coordination of financing	Article 15	
Facilitating off-take agreements	Article 16	<ul style="list-style-type: none"> • How will this system be organized? Who will participate/decide? • Will the EC plan, implement and execute the activities?
Online accessibility of administrative information	Article 17	
National exploration programmes	Article 18	<ul style="list-style-type: none"> • We need a discussion between Member states and the EC about the focus of the National exploration programs • Most likely, the national explorations programs would trigger obligations under the INSPIRE directive (2007/2/EC) to make information on minerals /critical raw materials public. Hence, considering Art. 18(5) as well as recital 32, please check potential redundancies with a view to INSPIRE) and explain the envisaged interplay.
Monitoring and stress testing	Article 19	<ul style="list-style-type: none"> • Art. 19.3a Please evaluate if, in addition to the location of processing or recycling, the entrepreneurial influence by country, for example through subsidiaries or contract manufacturers, should be assessed. • Art. 19.3b): Please explain what is meant with “capacities of the economic operators” • Please see remarks on Article 44
Information obligations for monitoring	Article 20	<ul style="list-style-type: none"> • Please see remarks on Article 44
Reporting of strategic stocks	Article 21	<ul style="list-style-type: none"> • Please see remarks on Article 44
Coordination of strategic stocks	Article 22	<ul style="list-style-type: none"> • Please see remarks on Article 44

		<ul style="list-style-type: none"> The intention and method of the planned stock coordination by the EC seems not entirely clear. As described in the introduction, it seems important, that the different approaches of the member states regarding stockpiling will not lead to competitive imbalances within the European Defence Industry.
Company risk preparedness	Article 23	<ul style="list-style-type: none"> Company risk preparedness is very important and we therefore support the approach. The gained data are very sensitive and have to be treated accordingly (Article 44) Some information could also affect national security interests
Joint purchasing	Article 24	<ul style="list-style-type: none"> How does it fit together with the system of Article 16? Is it the same? The lack of vertical supply chain integration will likely pose a major challenge to many companies of the German Security and Defense Industry for a diversified purchasing strategy for strategic raw materials and intermediate products in the lower end of their supply chain. For the companies this might mean, to (1.) choose new and - in case of strategic raw materials / components - probably redundant distributors along their supply chain, that comply with the CRM Act and / or (2.) to vertically deepen their own supply chain integration. However, a Joint purchasing approach would also be an interesting option. The question would be, if the EC can realistically develop the needed ability in the given time for this coordination function.
National measures on circularity	Article 25	<ul style="list-style-type: none"> Art. 25.1: Increase by how much? Until when? 25.2: Is EC able to give some examples for products and waste which are not covered by Union legislation and how relevant are these for the recovery of critical raw materials? 25.3: What concrete measures does EC consider or what measures would EC prefer, especially with regard to the fact that recovery from those waste is usually not profitable? 25.4: How to set up recycle systems that do „avoid barriers to trade“? Why would they constitute trade barriers anyhow? 25.5: Why not go further and amend directive on waste so as to export less waste? <ul style="list-style-type: none"> Furthermore, the required data do not exist yet. In order to keep the burden as low as possible, the data collection could be limited to categories where experience shows that many critical raw materials are to be collected. The regulation could be limited to category 6 (ICT equipment) of the WEEE Directive 2012/19/EU. 25.7: See question above (25.2), can EC give some examples for that proposed List and the expected relevance for the recovery of critical raw materials?
Recovery of critical raw materials from extractive waste	Article 26	<ul style="list-style-type: none"> Which „waste “facilities“ should be contained in the database. Please specify age, size/volume, raw material. Database on CRM in mine waste should be a European effort. 26.4: Does "all closed waste facilities" mean all closed "extractive" waste facilities as mentioned in the title of the article or does it have a broader scope under this number?

<p>Recyclability of permanent magnets</p>	<p>Article 27</p>	<ul style="list-style-type: none"> • The measures for the recycling of neodymium magnets in particular concern products that are already regulated by different areas of law. Both the End-of-Life Vehicles Directive and the WEEE Directive are to be amended in the near future. Is it planned to establish further accompanying measures there? • Art. 27/28 establishes a parallel product regime to already existing regulations. Would it not be a better option to address the product requirements there? • 27.1: Why is EC focusing only on permanent magnets, why didn't EC include catalysts for instance? This could be applicable for more products containing a certain level of CRM. • 27.1: Where does EC address the need of a design for recycling of products with high content of critical raw materials (also beyond permanent magnets)? • 27.1: Where does EC address the “reuse” of components referred to the requirements of the waste hierarchy. • 27.1: Does EC have a full list of products that contain the listed kind of permanent magnets and the share on the European market? • 27.2: There are already a lot of different labels (mandatory and voluntary) on the market, how will EC ensure that the proposed new additional label can be integrated with existing ones? • 27.4: Wouldn't Art. 15 of the WEEE Directive be a suitable link in terms of legal uniformity? • 27.5: It is unclear why 4c should not apply if the magnets are in electric motors. Because here it can be assumed that recyclers are able to remove them? • 25.7: It remains unclear who is responsible in case of an insolvency, liquidation or cessation of activity.
<p>Recycled content of permanent magnets</p>	<p>Article 28</p>	<ul style="list-style-type: none"> • 28.1: How will EC address the likely possibility of dispersion of hazardous chemicals in the recycling processes? • 28.3: why only 2030? • 28.3: According to our research, interim storage for the purpose of concentration is considered particularly necessary from an economic point of view. This intermediate step after labelling and monitoring is still missing in the CRMA - should it be addressed via the special directives? It is of considerable importance for economic efficiency. The economic efficiency of the recycling process should definitely be addressed - are there already considerations on this?
<p>Recognised schemes</p>	<p>Article 29</p>	<ul style="list-style-type: none"> • What is the intent of the certification? Will future imports to the EU need the certification to access the EU market? • How to rank e.g. security issues vs certification?” • Criteria that are missing in the annex: inclusion of stakeholders in the development process of certification; transparency; complaint mechanism, monitoring, enforcement; certification by an independent third party in compliance with EU initiative “Empowering Consumers for the Green transition” and EU “Green Claims Directive”.

Environmental footprint declaration	Article 30	<ul style="list-style-type: none"> • What is the footprint declaration good for? Possibilities of import restrictions should be included via max. footprint thresholds! • 30.4b/c: Who decides what disproportionality is? • 30.5: Why restrict only to raw materials and not to processed materials, too? • Art. 29 and 30 are of significance with regard to trade policy (see also Art. 30 Para. 4 b). Such regulations can represent de-facto trade restrictions that are linked to production standards. For this reason, WTO law provides for increased justification requirements (especially striving for an international solution). Here we ask KOM for explanation by DG Trade.
Free movement	Article 31	<ul style="list-style-type: none"> • 31.1 Please explain the background because it looks contradictory to other objectives of the regulation • To be discussed regarding impact on exports and cooperation projects with third countries
Conformity and market surveillance	Article 32	
Strategic Partnerships	Article 33	<ul style="list-style-type: none"> • 33.1c.ii: As in Article 5.1c, please add “including corruption and bribery” at the end • 33.1c.iv: Beyond local value addition, please add “and to the sustainable development goals of the Agenda 2030”. • We are pleased that Art. 33 c considers social criteria as well. Yet, in our opinion, Art. 33 c ii) should refer to the implementation of the third country’s regulatory framework, including regarding the fundamental labour rights, the ratification of human and labour rights Conventions as well. Thus, we propose to use the following wording: „whether a third country’s regulatory framework <i>and its implementation</i> ensure the monitoring, prevention and minimisation of environmental impacts, <i>the use of socially responsible practices including respect of human and labour rights, in particular the fundamental labour rights, the ratification of human and labour rights Conventions</i> and meaningful engagement with local communities, the use of transparent business practices...“. • 33 (1a): the achievement of sustainability objectives with regards to human rights and environmental standards should also be discussed • 33(1c ii): Which data would such an assessment be based on?
European Critical Raw Materials Board	Article 34	
Composition and functioning of the European Critical Raw Materials Board	Article 35	
Exercise of the delegation	Article 36	

Committee procedure	Article 37	
Amendment to Regulation (EU) 2018/1724	Article 38	
Amendment to Regulation (EU) 2019/1020	Article 39	
Amendment to Regulation (EU) 2018/858	Article 40	
Amendment to Regulation (EU) 168/2013	Article 41	
Monitoring progress	Article 42	
Reporting of Member States	Article 43	
Treatment of confidential information	Article 44	<ul style="list-style-type: none"> • This is a very important point and we would like the EC to review if it is necessary to classify additional data gained under the CRMA as confidential • Please clarify scope of reporting and information obligations of the MS in relation to sensitive data (especially regarding national security concerns interests): <ul style="list-style-type: none"> - Recital 36 refers to national security (only) in the context of information requests concerning strategic stocks: how is this incorporated into the actual provisions? What about the protection of security interests in the context of <i>other</i> information obligations (not related to strategic stocks)? - Art. 44 only makes explicit reference to “trade and business secrets” as one category of possible “sensitive, confidential and classified information”: consider specific mention of data affecting national security? - To what extent would MS be considered bound by obligations to provide information (e.g. under Art. 19, 20, 21, 22 and 25) if disclosing the information in question could pose a risk to national security / to what extent could MS refuse to disclose information on the grounds of security concerns (e.g. in connection with defence applications)? • What is the relation of this article to Directive 2003/4/EC?
Penalties	Article 45	
Evaluation	Article 46	
Entry into force	Article 47	
Annex I	Section 1	<ul style="list-style-type: none"> • How is “battery grade” defined
Annex II	Section 1	<ul style="list-style-type: none"> • How is “battery grade” defined
Annex III		<ul style="list-style-type: none"> • 4: Consider including social and environmental and governance risk categories to sharpen the criteria for assessment. • Consider extending the list of international instruments by:

		<ul style="list-style-type: none"> - UNEP Guidelines for Social Life Cycle Assessment of Products, - UN Paris Agreement, - Eight fundamental ILO Conventions as defined under the ILO Declaration on Fundamental Principles and Rights at work, - The International Bill of Human Rights. • 6: Please explain how the assessment for projects contribution to local value addition will be performed and who will be responsible for its implementation? • Addition: de-carbonization and green energy plan
Annex IV		<ul style="list-style-type: none"> • Renaturation planning and financing is missing, stakeholder involvement in the certification scheme, e.g. local citizens or NGOs, is important; need for transparency of certification schemes; they need to contain a complaint mechanism that meets the criteria of the UNGP • Lack of threshold/definition for ‘environmentally sustainable practices’ (Annex IV.b.i). Similarly, Article 5 c) does not define ‘environmental impacts’. Only recital 51 contains a reference to certain environmental impacts that this regulation should cover. It might be preferable to have some definition of ‘environmental impacts’ also in the text of the regulation, e.g. in the Annex as in the Batteries regulation • Access to remedy as part of the requirements for certification is important • b.iii: Please consider adding an explicit reference to child rights and indigenous rights • How does the EC’s proposal ensure that certifications referred to in the annex attain a sufficient level of quality with regard to, in particular: <ul style="list-style-type: none"> - the involvement of trade unions society groups and rights holders, also taking into account a non-European perspective - the certification entity’s ability to ensure transparency by publishing information such as the scope of the audit, methods used, results and corrective action plans. - certification entity having its own complaints channel that meets the effectiveness criteria of the UN’s Guiding Principles on Business and Human Rights - certification entities being based in the EU and being subject to a public or government-authorised permit or accreditation and supervision ensuring quality, integrity and accountability

CRITICAL RAW MATERIALS ACT

First Written Comments and Questions

AUSTRIA 18/04/2023

- General Comments

- The legislative proposal **addresses key challenges in raw materials policy and is an appropriate approach to improve the competitiveness and resilience of the European industry** in relation to technologies requiring critical raw materials.
- Austria thus **very much welcomes** the proposed **Critical Raw Materials Act** from the perspective of the necessary **energy transition**, but also with regard to important common European goals such as **resilience, open strategic autonomy, and the green and digital transition**. The alignment with objectives of the **Industrial Strategy** as well as the **European Green Deal** and other relevant regulations is positive.
- To address the **feasibility of the objectives of the Critical Raw Materials Act**, it is important to **carefully analyze the relevant regulatory environment**, to be concrete, **relevant EU legislation that could stand in the way of achieving the objectives**. It is further important to derive steps on how the achievement of the objectives of the Critical Raw Materials Act can be harmonized with the objectives of other regulations. From AT's point of view, such an analysis is missing.
- The issued **impact assessment of the individual policy options for Member States is considered completely insufficient for competent national authorities**. AT believes that the impact of the proposed regulations on different substantive law and thus the resource requirements for the enforcement of proposed provisions has been underestimated.
- In addition, more emphasis can be placed on societal and **socio-economic aspects with regards to raw materials**.
- The relation regarding **products from forced labor** is also not considered in the proposed regulation.
- The given opportunities through **research and innovation** to achieve set objectives should be exploited more strongly.
- Is the amendment of **the lists of critical and strategic raw materials by means of delegated acts** (see Article 3 and Article 4) only permissible in the mentioned data of Article 3(3) and Article 4(4) respectively, or, if necessary, also in between?

- The lack of secure access to critical raw materials is rightly recognized as a central problematic as it stands in the way of achieving the goals to climate neutrality. Some raw materials, which are very important for the **implementation of the climate targets**, but also for **defense or space applications**, are **not part of the list of critical or strategic raw materials** (e.g.: construction raw materials for the cement industry, aluminium, magnesite). In this context, we believe that the **definition of strategic/critical raw materials falls short**.
- To give an example, due to competitive land use, there is no more access to deposits of construction raw materials, in some European regions; such raw materials are needed for many renewable technologies (e.g.: foundations of wind power plants). As already around 80% of mineral construction materials are recycled, options to compensate for an increasing demand by increased recycling of such materials would be very limited in Austria. Therefore, it is proposed **to include the topic "lack of regional availability of construction raw materials as components of green technologies"** and, in particular, to make provisions for securing access to deposits of essential construction raw materials (e.g. those for the production of concrete).
- **Austria welcomes the proposed measures to drive forward a sustainable and compatible exploration of untapped raw materials deposits. Incentives must now be set for investments in such exploration programs.** Such incentives could for example be implemented at OECD-level, by expanding the definition of research to include raw materials exploration in the "Frascati Manual" and could lead to tax advantages for exploring companies. **Exploration, like research, is associated with a high earnings risk.** About one in hundred exploration projects is developed into a mining operation. However, the results of all hundred projects contribute to a better understanding of exploration and are thus valuable research contributions.
- Regarding Art. 2(4), a **definition should be made for the industrial value chain**, since the present definition seems to exclude the processing of raw and basic materials into products. Efficient material management can only be implemented if sufficient knowledge about the entire material flow is available. This means that knowledge about the quality and quantity of raw and basic materials used in products is of considerable importance for subsequent steps of the value chain.
- Coherence with existing and proposed EU legislation
 - The proposed regulation has many **common elements and partly overlaps** with other **EU legislation or recent EU proposals** (e.g. Chips Act, Single Market Emergency Instrument, Net Zero Industry Act, CSDDD, Conflict Minerals Regulation). From AT's point of view, there is a **lack of precise information and illustrative examples** of how **the interaction of these legal provisions is to take place in practice**.

- Should **overlaps and parallel provisions, especially with the Chips Act, Net Zero Industry Act and Single Market Emergency Instrument** (e.g. Governance Board, acceleration of procedures, One-Stop-Shop) be **centrally regulated in a uniform, horizontal legal act and sectoral specific provisions be summarized in following chapters?**
- Industry
 - It must be ensured that the proposed provisions, in addition to numerous other regulations, do **not lead to additional burden for companies**.
 - From companies' point of view, obligatory **publication of data** (e.g. stress tests, results of national exploration programs) is seen critically due to **sensitivity and confidentiality of such data**.
- Procurement / Joint Purchasing / Off-Take Agreements
 - From a legal standpoint, it is assumed that the **conduct of procurement procedures is not subject to the Critical Raw Materials Act** and that the provisions of "Section 2" apply exclusively to approval procedures by authorities following the completion of a possible procurement process. **AT asks the Commission for confirmation in this respect**.
 - **Article 24 on "Joint Purchasing"** has a different structure and content than other Commission-proposed provisions on Joint Purchasing. **AT pleads for a unification of the provisions in this respect**.
 - AT also suggests that, in line with other existing legal acts, it should be explicitly stated in **Article 24** that **the European Commission** acts as the "**central procurement body**" in accordance with the EU regulation on the financial rules applicable to the general budget of the Union (2018/1046).
 - Concerning **Article 24 (6)**, it is not clear why **Article 176 of the EU regulation on financial rules applicable to the general budget of the Union** does not apply. In view of a forthcoming amendment of mentioned EU regulation on financial rules, is such a derogation necessary at all?
 - AT asks for explanations on "**off-take agreements**" according to Article 2 No. 16/17 and Article 16. To what extent are these agreements also available to contracting authorities, what is the concrete role of the Commission in this context?
- Environment / Circular Economy
 - The options of **demand reduction, circular economy and recycling** should be prioritized more strongly. The **15%-target for recycling** is an important step towards **strengthening the circular economy and reducing consumption**.

- The proposed deadlines for **environmental assessments and authorizations** under **Article 11** are ambitious. Coordinating several assessments for one project is reasonable. However, it remains open through which national authority within which deadlines.
- The **formulation of Article 25 on national measures for circularity** raises questions about the concrete content of the obligation and corresponding national implementation.
- Do the **provisions of Article 29** refer exclusively to product-related environmental criteria or also to compliance with all due diligence obligations in the sense of a sustainable supply chain? If the latter is the case, it should be based on individual fulfillment of due diligence obligations which can be based on certification schemes. AT asks for **clarification** of the meaning of "**recognized certification schemes**" in this context.
- The connection of the provisions of **Article 30** on the **environmental footprint declaration** with the **obligations according to the CSDDD** is unclear. It shall be ensured that a **uniform approach** is applied in order to keep the burden on the companies concerned as minimized as possible.
- The **overall goal of diversification of raw material sources is correct**. Potentials of a possible reduction of raw material consumption should also be taken into account.
- Strategic Projects
 - **Accelerated permitting procedures for raw materials projects are very much welcomed**. Environmental protection rules, social sustainability standards, and local community involvement should not be disregarded in this respect.
 - The proposal of a "**one-stop-shop**" for the **coordination of such approval procedures is much welcomed, but ambitious**, as **new responsibilities and more resources** may be needed to implement approval procedures including possible environmental impact assessments or other environmental authorizations within the sometimes-ambitious deadlines.
 - The provisions on the **priority status of strategic projects** (see Article 9) are comparable to the provisions of the **TEN-E Regulation** as well as other proposals such as **RepowerEU or the Net Zero Industry Act**. How is this priority status supposed to work in practice if the responsibility for projects under several EU legal acts (e.g.: Net Zero Act, Critical Raw Materials Act) is supposed to lie with one authority?
 - The mentioned "**automatic approval**" according to Article 10(4) is seen critically with regard to **legal certainty**, as it is unclear what exactly is considered as approved in this respect.

- How are interests of **other MS and third countries** (other than those in whose territory a strategic project is to be implemented) taken into account in the procedure, for example, interests of countries for whose security of supply the project is of great importance (see Article 6(5))?
- **Facilitating access to financing for strategic projects is in general important.** However, the **mandate and status of the proposed sub-group within the Critical Raw Materials Board on these issues need to be clarified** before the creating of such a sub-group can be supported. To be precise, any existing prejudice, including political prejudice, regarding financial decisions of Member States, financial institutions and EU budget should be excluded.
- Strategic Partnerships
 - The proposed regulation correctly shows that Europe must **reduce its dependency on third countries for raw material imports.**
 - The goal of supporting countries rich in raw materials through the Global Gateway Strategy is very much welcomed, but European raw materials policy must not prevent these countries from building up their own processing and industry. **AT pleads for an exchange with new partner countries on an equal footing.**
 - AT further suggests involvement of **regional groups (COLAC, COAFR, COASI)** at EU level to discuss the geopolitical situation and the important narrative in dealing with third countries.
 - Do the provisions on **strategic partnerships (see Article 33)** include those on corresponding cooperation in free trade agreements as well as agreements on "trade and technology councils"?
 - It would further be interesting to what extent strategic partnerships (e.g. referring to those already negotiated) lead to concrete projects?
 - In addition to conclusion of free trade agreements, AT proposes to include, in the **area of customs, certain raw materials or semi-finished goods in the list of autonomous tariff suspensions.** For this purpose, a corresponding application would have to be submitted to the European Commission by one or more importers.
- Governance (Critical Raw Materials Board)
 - How is the proposed **deadline of 60 days after application for recognition as a strategic project** (see Article 6(6); Article 35(4) (a)) to be met if the Critical Raw Materials Board only has to meet every 3 months to evaluate strategic projects?
 - An **involvement of trade unions and civil society** should, whenever necessary, be ensured in the work of the Critical Raw Materials Board.

Slovenia Critical Raw Materials Act – questions for the Commission

1. With regard to the proposed benchmarks/objectives (article 1) and in general strategic vs critical raw materials:

The first paragraph of article 1 talks about critical raw materials, but the proposed benchmarks (a) and (b) in this article are only related to strategic raw materials. We understand the reasons behind adding a new category of strategic raw materials. We also agree that with regard to the EU's commitments and objectives for the twin transition as well as with regard to the importance of defence and aerospace objectives for the EU, it makes sense to focus primarily on those critical raw materials that can contribute to achieving the set objectives in those areas. When it comes to proposed benchmarks in article 1 we are of the opinion that the recycling should not only focus on strategic, but on all critical raw materials. It is in our opinion important that we aim at enhancing the recycling capacities within the EU as wide as possible since here we have quite lot of potential.

- We would appreciate the opinion of the Commission on that.
- In general we are of the opinion that a more clearer distinction between critical and strategic raw materials is needed – in a sense that it is not always clear what in the Regulation is intended for critical and what for strategic raw materials. We would like the Commission to clarify that.
- We would also like the Commission to provide us with the current data related to proposed benchmarks in order to be able to compare the current situation and the proposed benchmarks.
- Could the Commission also inform us about the basis for the benchmarks proposed in this article.

2. With regard to strategic projects (articles 5 - 7):

- We would like the Commission to clarify whether the strategic projects relate only to strategic, or are they intended also for critical raw materials.
- We would like to ask the Commission to explain the synergies between strategic projects in the context of this regulation and for example the relevant IPCEIs and other projects
- What is meant by "meaningful contribution" to the security of the Union's supply of strategic raw materials as outlined in para (a) of article 5?
- What is meant by "reasonable timeframe" for the project to become technically feasible as outline in para (b) of article 5?

3. Priority status of Strategic projects (article 9)

- Without prejudice to obligations provided for in Union law, Strategic Projects in the Union shall be granted the status of the highest national significance possible, where such status exists in national law, and be treated accordingly in the permit granting processes. We would like the Commission to explain what happens if there is no such provision in national law? Would it be necessary to amend national legislation with such provisions?
- All dispute resolution procedures, litigation, appeals and judicial remedies related to the permit-granting process and the issuance of permits for Strategic Projects in the Union in front

of any national courts, tribunals, panels, including mediation or arbitration, where they exist in national law, shall be treated as urgent, if and to the extent to which national law provides for such urgency procedures and provided that the normally applicable rights of defence of individuals or of local communities would be respected... We would like the Commission to explain what happens if there is no such provision in national law? Would it be necessary to amend national legislation with such provisions? What happens if deadlines set in article 10 are not achieved?

4. One stop shop (article 8):

In our opinion setting up a one stop shop will be quite burdensome especially for small MS that have a limited administrative capacities and resources. Will the Commission prepare any guidance/assistance for MS when setting up one stop shop, for example with clarification what is a sufficient number of qualified staff, etc.?

5. Planning (article 12)

- This article is related to critical raw materials. What about strategic raw materials?

6. National exploration programmes (article 18)

- Will national exploration programmes be linked also to strategic raw materials?

7. National measures on circularity (article 25)

- The same question as previously: is it expected that national measures on circularity will be intended also for strategic raw materials?

8. Governance – chapter 7

- If we distinguish between critical and strategic raw materials then it might make sense that this is also reflected in the name of the Board – European Critical and Strategic Raw Materials Board. What is the opinion of the Commission on that?

Critical Raw Materials Act – PT Preliminary Questions and Comments

Portugal welcomes this initiative to ensure EU access to a "secure, diverse, accessible and sustainable supply of critical raw materials", which are necessary for the societal development, decarbonization and digital transition. We consider the Critical Raw Materials Act as an excellent and important step forward, as it makes it possible to streamline and overcome some of the existing obstacles in terms of legislation and others, safeguarding fundamental principles of access to mineral resources. Some of the most positive aspects, are the recognition of raw materials as indispensable for the energy and digital transition and for circularity with increased recycling along the value chain, faster and more expeditious permitting of Strategic Projects, the inclusion of new critical raw materials such as copper in the list of PMs and additional definition of strategic raw materials, among others.

The need for this Act is further evidence that the European Commission recognizes that the administrative system in force in the EU and in the majority of its member states does not meet the proposed purposes to increase the security of supply of mineral resources from domestic sources, avoiding dependency from third countries/parties.

It is essential that Europe overcomes the obstacles that are threatening the performance and integrity of the industry on every stage of the mineral resources value chain. It is important to ensure that Member States start increasing geological target data and knowledge on CRMs through new exploration contracts, followed by producing more on its own territory, boosting circular economy while maintaining environmental protection actions.

Questions:

- Timeframes and financing:

Portugal welcomes the streamlining of permitting, increasing and updating the knowledge and mapping of the Union's raw materials occurrences, and improving circularity measures. We are concerned with the timeframes proposed and whether they are realistic, and with the costs for MS and potential understaffing of the national authorities involved in the process, particularly the single contact point / one-stop-shop and the national exploration plans.

To de-risk mining and refining projects and increase their access to financing opportunities, as well as to encourage investment in ESG-compliant critical raw material projects, they should be eligible in the context of sustainable finance, the EU Taxonomy. The Communication's chapter II.2 Financial

support states that “The Commission will: (...) ask the Platform on Sustainable Finance 2.0 to develop taxonomy criteria for mining and refining.” Is there a time frame for this work, adoption, and Delegated Act?

Will there be European financial incentives to strengthen the competent authorities not only in terms of staff numbers but also more specialized staff or is this also left to the MS to resolve?

- Social acceptance of mining in the EU:

In the public consultation stakeholders expressed concerns regarding the opposition to mining projects in the EU and lack of public awareness of the importance of critical raw materials. Several organizations called for the inclusion of measures in the Act to address this issue and build social acceptance of sustainable mining.

Although the Communication states that “Continued efforts are needed to address concerns related to public awareness and acceptance.” neither the Regulation Proposal nor the Communication include initiatives to inform EU citizens about the need to produce CRMs.

There is no recognized strategy in this Regulation to increase public acceptance for exploration and for the exploitation/beneficiation of geological resources, not even at the level of Strategic Projects. It is only indicated, in subparagraph a) of paragraph 8 of article 8 of the Act that the “Board” will periodically discuss the implementation of the permitting provided for in the Regulation and will share best practices to speed up licensing procedures for projects of critical raw materials, as well as improve its public acceptance. It's very generic. Will this be discussed on the “Board” later, between the Commission and the MS representatives?

Portugal considers this one of our main concerns, that requires joint European efforts to be solved, and is not sufficiently addressed in the Act: increasing public awareness of the importance of raw materials and social acceptance of mining projects. This should be improved during the negotiations and build on the results of previous EU-funded projects addressing these issues.

- Critical Raw Materials Club:

Under chapter III.1. of the Communication, The CRM Club: Working together with interested partners of the Communication, the Commission proposes to establish a Critical Raw Materials Club “bringing together consuming and resource-rich countries to promote the secure and sustainable supply of CRMs.”. The goals and principles of the Critical Raw Materials Club outlined in the Communication seem to overlap those of the Minerals Security Partnership: how different will the approach be?

- European Critical Raw Materials Board - There could be more than one representative per sub-group?
- There is a doubt about the compatibility or prevalence procedures with this Critical Raw materials Act and other Regulations under development such as the extension of the Natura 2000 network and the Nature restoration Law, among others. Those laws are creating a great obstacle to access territory for mining activities (exploration and exploitation) and that this is causing the sterilization of the territory, and of existing mineral reserves.
- The CRM Act recognizes a strategic group of CRMs as the first step in the value chains of green technology, which will be updated on a regular basis. Although, besides these CRMs there are several other mineral resources which are also important and strategic for specific industries and MS economies. We would like to understand how the EU policy will address the streamlining procedures for the complementary set of the remaining mineral resources, in order to ensure also their security of supply.
- Which mechanisms are foreseen to be taken to address cases of mining rights previously granted and those that have initiated their licensing process (new mining right or extension of an existing one) prior to the entry into force of European regulations? No transitional dispositions are foreseen in the Regulation?
- Some definitions are unclear and the need for definitions such as “microwave” or “light means of transport” or “vacuum cleaner” are not understood. What's the point?

Comments:

- PT welcomes the new list of strategic raw materials (Article 3, recital (4), Annex I) and the updated list of critical raw materials (Article 4, recital (5), Annex II), as they reflect current and future needs. We note the inclusion of copper, a vital material for electrification, we suggest that methodology to select strategic raw materials (Annex I, Section 2) include in its scope raw materials for medical applications (e.g. helium) and food safety (e.g. phosphorus). Other CRMs like zinc, caulin, and others are also necessary for medical applications. According to the evolution of the expected demand, new strategic raw materials may be selected to integrate the list according to the methodology set up on section 2 of Annex 1.

As remarked on the general comments, despite the opposition to mining activities in the EU neither the Regulation Proposal nor the Communication include initiatives to inform EU citizens about the need to produce CRMs. Under the criteria for application and recognition of strategic projects (Article 5, 6 / Recitals 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 22) the project promoters must submit “a plan containing measures to facilitate public acceptance” (Article 6, 1. (d)), and Member States may

provide “assistance to project promoters to further increase the public acceptance of the project.” (Article 14, 2(b)). This case-by-case approach and only for strategic projects does not address the underlying problem, there should be joint initiatives (education, campaigns) to increase public awareness of the importance of raw materials and social acceptance of mining projects. It is suggested to include “Education”. There is no medium/long-term plan that will allow new and future generations to have a greater perception and acceptance of the importance of this value chain in Europe.

- Criteria for recognition of strategic projects and recognized certification schemes (Articles 5, 29; Annexes III and IV). Under Annex III point 4. project promoters may attest compliance with the criterion referred to in Article 5(1), point (c) (whether the project would be implemented sustainably) by “providing evidence that the project concerned is individually certified as part of a recognized scheme referred to in Article 29; or (b) committing to obtain certification for the project concerned as part of a recognized scheme referred to in Article 29”. Under this Article, recognition of schemes will depend on application by the scheme owners and adoption through an implementing act.

If a certified project applies for recognition as strategic project before the certification scheme has been recognized or before the scheme owners have applied for recognition, will it have to provide evidence of compliance with point 4 (a)? Shouldn't certifications such as IRMA be recognized without need for application, thus incentivizing companies that are adopting responsible mining and accelerating the recognition process for Strategic Projects?

- We agree with the measures set out under Recital (5) and Article 8 related to one stop shop for permitting. However, we fear that the suggested time frame of 3 months after the date of entry into force of this Regulation is too short to guarantee all the coordination measures, enough qualified staff and sufficient financial, technical and technological resources necessary to comply with the duration of the permit granting process under Article 10 and to provide the online accessibility of administrative information under Article 17.
- Regarding Planning (Article 12, recital 25), under Article 12 point 1 “Priority shall be given to artificial and built surfaces, industrial sites, brownfield sites, and, where appropriate, greenfield sites not usable for agriculture and forestry.” seems inadequate to the exploration and extraction stages of raw materials.

To settle complicated land use conflicts, consistency with other policy instruments that are being negotiated must be ensured. The Nature Restoration Law and the revision of the Renewable Energy Directive (renewables acceleration areas should be defined considering geological resources) stand out.

- Facilitation of off-take agreements (Article 16, Recital 31) – Is there a timeframe for the Commission to present the system to facilitate off-take agreements? Will the Board be consulted on the system and / or coordinate it?
- Article 18 - It is essential to ensure funding for this key stage if the national exploration plans are to meet the goals defined in time. Which will be the funding and financing mechanisms?
- Company risk preparedness (Article 23 / Recital 34, 38) We support the strategic technologies mentioned in point 1 of Article 23, however technologies related to health and food safety should be considered as well.
- Strategic stocks and joint purchasing (Article 21, 22, 23, 24 /Recital 34, 36, 37, 38, 39, 40). Have any financing measures/instruments been considered to support “(...) incentives for private operators, which rely on strategic raw materials as inputs, to constitute their own stocks or to take other measures to manage their exposure to supply risks”?

- To ensure a faster and more targeted uptake of the recycling and circularity measures, the proposal integrates the measures on extractive waste and on increasing the collection of electronic waste and other CRM-rich products and components directly in the Regulation (Article 25, 26, 27/ Recitals 41, 42, 43, 44, 45, 46, 47, 48). We agree with the approach, but it will demand coordination within Member States’ administrations and speedy and effective information to businesses.

The suggested time frame on Article 25 of 3 years after the date of entry into force of this Regulation to adopt and implement national programmes to increase the collection of waste with high critical raw materials recovery potential and ensure their introduction into the appropriate recycling system, may be too long. This period will, eventually, finish at a date close to 2030 (e.g. 2027), when the benchmarks of the regulation should be achieved.

Consistency of proposals being negotiated such as the revision of the Directive on waste electrical and electronic equipment (WEEE), the revision of the Regulation on shipments of waste, or the revision of the REACH Regulation with this Regulation is fundamental. If the first two are not properly implemented, there is a clear risk that the EU will not have sufficient materials for recycling due to low collection rates (e.g. of WEEE), insufficient separation and sorting of key CRM equipment, and illegal shipments (e.g. end-of-life vehicles).

We expect the circularity measures listed by the Commission under chapter IV.3. Circularity of the Communication to be presented as soon as possible.

- We welcome the measures on Recyclability of permanent magnets and Recycled content of permanent magnets (Articles 27, 28, Recitals 47, 48), however incentives to keep them from being exported out of the EU seem to be missing.

- Environmental footprint declaration (Article 30, Recital 50, 51) – Under Recital 50 “The requirement to declare the environmental footprint of a material should only apply where it has been concluded, based on a dedicated assessment, that it would contribute to the Union’s climate and environmental objectives by facilitating the procurement of critical raw materials with lower environmental footprint and would not disproportionately affect trade flows.”: What would trigger this dedicated assessment of a particular material?

Under Article 30 “2. The Commission may adopt calculation and verification rules for a specific critical raw material if it has concluded, having considered the various relevant environmental impact categories, that the critical raw material in question has a significant environmental footprint and that therefore an obligation to declare the environmental footprint of that material regarding the most important impact category, when placing it on the market, is necessary and proportionate to contribute to the Union’s climate and environmental objectives by facilitating the supply of critical raw materials with lower environmental footprint”: “if it has concluded” would this conclusion be based on the monitoring data?

Why not simply require certification / assessment according to international recognized schemes like CRIRSCO or UNFC, IRMA, or TSM? The Environmental footprint declaration seems an unneeded extra layer of complexity for the Commission, Member States, third countries and industry.

- We welcome the measures on Strategic Partnerships (Article 33, Recital 54), especially regarding coordination between Member States' bilateral cooperation and the actions carried out by the Union in the context of Strategic Partnerships, and the definition of a coherent framework for the conclusion of future partnerships. We support mutually beneficial partnerships with emerging market and developing economies, in coherence with the EU Global Gateway strategy.
- Governance - Composition and functioning of the European Critical Raw Materials Board (Article 35, Recital 55): Will the EuroGeoSurveys have a seat / role in subgroup 6 (b) national geological institutes or surveys? It coordinates the network of the Geological Surveys of Europe, the European Geological Data Infrastructure, and gathers over 50 years of scientific knowledge, expertise and collaboration that should not be left out of the implementation of the Regulation.
- Article 20 obliges MS to provide information to the Commission on any raw materials project, existing or new, that is relevant in accordance with Article 19, number 1, point d), including the classification of new projects according to the United Nations Framework Classification of Resources. This will have to be duly addressed and will require additional efforts on the part of some MS, as there are already adequate international classification systems for reserve calculations used by the Industry, within CRIRSCO, thus it is not mandatory for operators to provide the classification of their projects through the UNFC.

POLAND

Table of comments as part of the consultation on the draft European Critical Raw Materials Act

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) 2019/102

On.	Page in the document 16.3.2023 COM(2023) 160 final 2023/0079 (COD)	Note content	Possible justification for the note
EXPLANATORY MEMORANDUM			
1.	Page 1	We propose to complete the sentence: These critical raw materials (CRMs) are often indispensable inputs for a wide set of strategic sectors including renewable and low emission energy, the digital industry, the space and defence sectors and the health sector.	Critical raw materials are necessary not only for the development of renewable energy, but also for other low-emission sources, such as nuclear energy (e.g. boron). The proposed addition complies with the principle of technological neutrality.
2.	Page 1	We propose to complete the sentence: With the global shift towards renewable and low emission energy and the digitalisation of our economies and societies, demand for some of these critical raw materials is forecasted to rapidly increase in the coming decades.	Critical raw materials are necessary not only for the development of renewable energy, but also for other low-emission sources, such as nuclear energy (e.g. boron). The proposed addition complies with the principle of technological neutrality.
3.	Page 2	We propose to complete the sentence: This proposal is intended to help equip the EU with the capacities that will be needed to meet its targets for producing renewable and low	Critical raw materials are necessary not only for the development of renewable energy, but also for other low-emission sources, such as nuclear energy (e.g. boron). The proposed addition

		<u>emission</u> energy, for developing strategic manufacturing technologies such as semiconductors and to reach our climate neutrality objectives.	complies with the principle of technological neutrality.
4.	Page 3	„Consistency with other Union policies“: Reference to Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions.	COM(2022)156. The issue of including the extraction and processing of certain minerals and metal ores in the scope of the IED. We believe that the IED will have a limited impact on limiting impacts from this type of activity, which is already regulated under EU legislation. Therefore, it is justified to remove it from the scope of mineral extraction or to introduce a threshold close to 500 t/d.
Proposal for regulation (recitals and articles)			
5.	Page 2	Recital 4 In order to ensure that the measures set out in the Regulation focus on the most relevant materials, a list of strategic raw materials and a list of critical raw materials should be established.	<p>The two types of lists of sources - critical and strategic - proposed by these two types of lists (in one Act) of sources, which coincide in many points, will cause confusion in certain levels. From the moment of publication, it is clear that there is no distinction between the above-mentioned list and interchangeable combinations of both names.</p> <p>In addition, it is worth emphasize that the list of critical raw materials is created on the basis of well-developed methodology, and the assessment of criticality, which raw materials are periodically subjected to, is carried out in a comprehensive and relatively transparent measure, with the participation and substantive support of independent external experts, representatives of industry and scientific units.</p> <p>On the other hand, the list of strategic raw materials is created according to a separate</p>

			<p>methodology, without a clearly stated method. This method of calculating the proposed value threshold, and until today the data on which the list published in the regulation is unknown.</p> <p>Considering that all raw materials appearing on the list of strategic raw materials, in accordance with the Regulation, are automatically included in the list of critical raw materials, it seems reasonable to limit the publication to one list - the list of critical raw materials. In the case of raw materials that do not meet the mandatory thresholds related to critical raw materials such as Economic Importance and Supply Risk indicators, this should be noted in the comments accordingly. Currently, due to forecasts of a significant increase in demand, only two raw materials identified as strategic are not critical (copper and nickel). According to the name, this Regulation should be dedicated to critical raw materials, while the text clearly indicates that the priority of the presented proposal is strategic raw materials and support for their production, while critical raw materials and their role seem to be marginalized.</p>
6.	Page 5	<p>Recital 15:</p> <p><i>“To prevent misuse of the recognition as Strategic Project, the Commission should be able to repeal its initial decision to recognize a project as strategic if it no longer fulfils the conditions or the recognition was based on an application containing incorrect information. Before it can do so, the</i></p>	<p>The existing regulations provide for obtaining binding arrangements from the local governments participating in the procedure - in the event of their objection, the concession authority cannot be responsible for guaranteeing compliance with the (a) the date of the decision.</p>

		<p><i>Commission should consult the Board and hear the project promoter.”</i></p> <p>and</p> <p>article 6 par. 8</p> <p><i>Where the Commission finds that a Strategic Project no longer fulfils the criteria set out in Article 5(1) or where its recognition was based on an application containing incorrect information, it may, taking into account the opinion of the Board and the responsible project promoter, repeal the decision granting a project the status of Strategic Project.</i></p> <p>Poland believes that decision recognizing project as a strategic cannot be rejected if promoter delivered earlier all needed documents with proofs achieve enough of “environmentally friendly” by the project.</p> <p>Additionally, Poland considers of what kind of incorrect information it has applies? What if promoter won’t change crucial information?</p> <p>Possibility of this action could be dangerous for businesses dealing those projects. By this possibility EU could discourage small and medium business for applying for strategic projects. Therefore there is a need to precise it e.g. which institution will monitor whether projects still fulfill conditions and what will be the procedure?</p>	
--	--	---	--

7.	Page 13	The provisions on waste prevention should be deleted from recital 45.	The content of the recital refers to extractive waste facilities. The extraction of critical raw materials from waste cannot be regarded as waste prevention as, according to the definition of the term 'waste prevention' in the Waste Framework Directive (2008/98/EC) mentioned in the recital, it refers to actions that are taken at the product stage and not at the waste stage.
8.	Page 14	<p style="text-align: center;">Recital 50:</p> <p style="text-align: center;"><i>“In order to limit such damage and incentivise the production of more sustainable critical raw materials, the Commission should be empowered to develop a system for the calculation of the environmental footprint of critical raw materials, including a verification process, to ensure that critical raw materials placed on the Union market publicly display information on such footprint.”</i></p> <p>- Poland is wondering how Commission will approach to specific raw material if this material will have to big footprint for environment? If this wording is limited only to the information on the environmental footprint, it may be acceptable, but if it contributes to limit of extraction or recycling of raw materials with too high an environmental footprint, how will this affect competitiveness on the global market? If the European Commission decides that the environmental footprint is too large,</p>	

		third countries will sell strategic raw materials to markets other than European ones.	
9.	Page 17	<p>Chapter 1, Article 1 General provisions:</p> <p>The general objective of the regulation is to ensure the supply of critical raw materials. Achieving this goal is defined as:</p> <ul style="list-style-type: none"> a) strengthening the different value chains of strategic raw materials b) diversification of strategic raw materials (c) improving the monitoring and risk mitigation of the supply of critical raw materials (d) free movement of critical raw materials 	<p>The statement raises doubts, because the purpose of the regulation is to ensure access to critical raw materials, while the implementation of this goal is to be measured by the parameters set out in point a) and b) relating only to strategic raw materials.</p>
10.	Page 17	<p>Regarding article 1 par. 2(b)</p> <p>To achieve the general objective referred to in paragraph 1, this Regulation aims to: (...)</p> <ul style="list-style-type: none"> (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 <p>- It is not clear how the EC will act in the situation that companies from two member states already have contracts on importing one</p>	<p>An important issue that requires analysis is whether such information should not have limited access. Making such information public may negatively affect the strategic independence of the EU in the context of strategic raw materials.</p>

		<p>of the raw materials with the amount that provide 65% of the EU consumption. What if company from another member state would like to import this raw material from the same third country (because it will be cheapest)?</p>	
11.	Page 18	<p><i>The wording in Art. 2 sec. 2 "critical raw materials" means raw materials as defined in Art. 4; is imprecise, because 4 of the draft regulation does not define the term "critical raw materials". In the indicated place, there is only a reference to Annex II, section 1, where there is a list of strategic raw materials and the methodology for their selection.</i></p>	<p>The "Definitions" section should contain definitions of terms used in the regulation.</p>
12.	Page 18	<p>The wording in Art. 2 sec. 3 "strategic raw materials" means raw materials as defined in Art. 3; is imprecise, as Art. 3 of the draft regulation does not define the concept of "strategic raw materials". In the indicated place, there is only a reference to Annex I, section 1, where there is a list of strategic raw materials and the methodology for their selection.</p>	<p>The "Definitions" section should contain definitions of terms used in the regulation.</p>

13.	Page 18	Art 2. No definition of the term "strategic project"	The text of the regulation should contain definitions of terms used for the purposes of the regulation
14.	Page 18	Art. 2 extraction' means the primary extraction of ores, minerals and plant products from their original source" - No "concentrates" entered	
15.	Page 19	In article 2 point Article 19 defines the permitting granting process. It should be limited to issuing a mining license by the relevant authority. It is not possible to coordinate the issuance of all permits (construction, environmental, connection to the grid, etc. within the specified time) in the country	
16.	Page 19-20	In Article 2, renumber it as paragraph 1, delete the terms already defined in the Waste Framework Directive (2008/98/EC), i.e. "recycling", (point 11), "collection" (point 33), "treatment" (point 34), "recovery" (point 35), and add the following paragraph 2: „2. In addition, the definitions of 're-use', 'collection', 'treatment', 'recovery' and	The draft regulation refers in the preamble to the Waste Framework Directive (2008/98/EC). For the reason of legislative consequences (e.g. the way concepts are interpreted), it is not appropriate to introduce different definitions of than those already contained in the Waste Framework Directive. Furthermore, the term used in the draft regulation ('re-use') should be defined.

		'recycling' laid down in Article 3 of Directive 2008/98/EC shall apply."	
17.	Page 22	All article 4 should be incorporated in Article 3.	<p>The two types of lists of sources - critical and strategic - proposed by these two types of lists (in one Act) of sources, which coincide in many points, will cause confusion in certain levels. From the moment of publication, it is clear that there is no distinction between the above-mentioned list and interchangeable combinations of both names.</p> <p>In addition, it is worth emphasize that the list of critical raw materials is created on the basis of well-developed methodology, and the assessment of criticality, which raw materials are periodically subjected to, is carried out in a comprehensive and relatively transparent measure, with the participation and substantive support of independent external experts, representatives of industry and scientific units. On the other hand, the list of strategic raw materials is created according to a separate methodology, without a clearly stated method. This method of calculating the proposed value threshold, and until today the data on which the list published in the regulation is unknown.</p> <p>Considering that all raw materials appearing on the list of strategic raw materials, in accordance with the Regulation, are automatically included in the list of critical raw materials, it seems reasonable to limit the publication to one list - the list of critical raw materials. In the case of raw</p>

			<p>materials that do not meet the mandatory thresholds related to critical raw materials such as Economic Importance and Supply Risk indicators, this should be noted in the comments accordingly. Currently, due to forecasts of a significant increase in demand, only two raw materials identified as strategic are not critical (copper and nickel). According to the name, this Regulation should be dedicated to critical raw materials, while the text clearly indicates that the priority of the presented proposal is strategic raw materials and support for their production, while critical raw materials and their role seem to be marginalized.</p>
18.	Page 23	<p style="text-align: center;">Criteria for recognition of Strategic Projects</p> <p>1. Following an application of the project promoter and in accordance with the procedure established in Article 6, the Commission shall recognise as Strategic Projects raw material projects that meet the following criteria:</p> <p>(a) the project would make a meaningful contribution to the security of the Union's supply of strategic and critical raw materials</p>	<p>If EC is wondering to diverse two types of raw materials – strategic and critical, but we strongly recommend to combine those two lists into one with clear regulations.</p> <p>All investments in the mining industry are long-term and capital-intensive, which, together with the long and complicated processes of obtaining licenses and the changing regulatory environment, effectively discourages investors from financing such projects. Taking into account the ambitious plans of digital and green transformation and the aspiration to achieve strategic autonomy and gradually reduce dependence on imports of raw materials from third countries, facilitating and shortening the existing procedures for obtaining licenses should be a priority not only for the so-called Strategic Projects, but for all projects related to the acquisition of critical raw materials.</p>

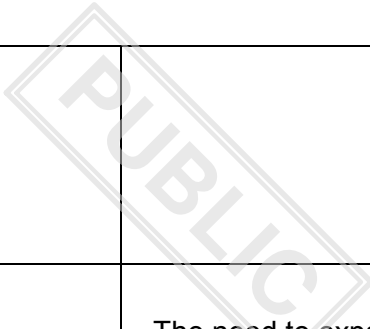
			<p>What miss the European Commission's proposal is an important measure for providing financial support for the development of projects related to critical raw materials. Allocating funds to increase the production of raw materials necessary in the transformation will send a clear signal to investors, which should also be properly included in other EU documents, including in the Mining Industry Guidelines under the Taxonomy. Such activities will have a positive impact on the development of new mining projects in the EU.</p>
19.	Page 23	<p>Regarding to article 5:</p> <p>“Following an application of the project promoter and in accordance with the procedure established in Article 6, the Commission shall recognise as Strategic Projects raw material projects that meet the following criteria...”</p> <ul style="list-style-type: none"> -Wording of this article is not enough clear. Poland considers if all conditions must be made to recognize project as strategic? - What means “meaningful contribution to the security of the Union's supply of strategic raw materials”? Who will judge whether the project has “meaningful contribution” or not? -Additionally, regarding letter (e), does the Commission plan to present a list of exemplary mutual benefits related to potential projects as part of cooperation with third countries? 	<p>The purpose and scope of the provision are unclear. The fear that it will eventually fail to a situation in which certain raw materials will not be allowed on the European market, which may result in a decrease in the competitiveness of the EU market. It is also not clear whether the provision is foreseen as part of gathering information or implementing certain solutions.</p>

20.	Page 23	<p>Article 5 point 1 a) the strategic project should address both critical and strategic raw materials</p>	<p>It raises doubt that the purpose of the regulation is to ensure access to critical raw materials, while the activities are limited only to strategic raw materials.</p>
21.	Page 24	<p>The Board shall discuss the substantiated reasons presented by a Member State for its objection. If, after the discussion, the Member State maintains its objection, the project shall not be considered for the status of Strategic Project.</p>	<p>In sec. 5 does not contain any mention of a possible appeal path against the Committee's decision, even though the recognition of a given project as strategic obliges the Member State to give it preferential treatment.</p>
22.	Page 25	<p>Art. 6 par. 4 "Member State for its objection. If, after the discussion, the Member State maintains its objection, the project shall not be considered for the status of Strategic Project" - Does the examination and discussion result in the development of any written document of the Raw Materials Council for PC, that opposes the Strategic Project.</p>	
23.	Page 25	<p>Article 6 point 6 The Commission, taking into account the opinion of the Council, makes a decision within 60 days and notifies the project promoter.</p>	<p>At the same time, the Commission should notify the Member State where the strategic project will be implemented. Alternatively, the representative on the Council should be notified. In the absence of such information, the Member State will find out about the strategic project status only when the project promoter submits the application for implementation of the project.</p>

24.	Page 25	<p style="text-align: center;">Article 6 point 8</p> <p style="text-align: center;">repeal of the decision to award the strategic project</p>	<p>As it currently stands, only the Commission can declare that it does not meet the criteria required for a strategic project during project implementation. This point should also include the finding of irregularities by the Member States in whose territory the project is implemented.</p>
25.	Page 25	<p style="text-align: center;">Article 7</p> <p style="text-align: center;">Implementation of strategic projects Strategic projects contribute to the security of supplies of strategic raw materials.</p>	<p>It raises doubt that limiting strategic projects only to strategic raw materials is contrary to the general provision of the regulation which refers to ensuring access to critical raw materials.</p>
26.	Page 26	<p>Innovative in relation to the current regulations is the introduction of the "one stop shop" formula for strategic projects, i.e. the appointment of one body to coordinate and optimize the processes of obtaining all permits and decisions required for the proposed investment concerning strategic raw materials. The designated body must be provided with qualified staff and sufficient technical, technological and financial conditions to effectively perform its tasks. It will also be able to delegate its tasks to other competent entities or bodies. The regulation does not specify how coordination and cooperation will work in practice. This issue, together with the powers of this body and the functioning of the "one stop shop" formula, must be defined at the level of national legislation.</p>	<p style="text-align: center;">Considering the security of commercial information, there is a fear of intensification of economic intelligence. Contacting project promoters with potential clients of strategic raw materials is not a sufficient basis for concluding trade agreements, which may facilitate greater penetration of information on the EU market of strategic raw materials .</p>

27.	Page 26-27	<p style="text-align: center;">Permit Granting Process Article 8</p> <p>Identification of the national competent authority responsible for facilitating the permitting process.</p>	<p>There is a justified risk that specifying only one national authority will not bring the expected results related to speeding up the permitting process. The role of such an authority will essentially be reduced to further transfer/distribution of all submitted documents to the relevant offices.</p> <p>As part of issuing individual decisions, there are many entities that have specialized knowledge and must take an appropriate position.</p> <p>In addition, the decision-making processes often involve the bodies of local government units, which can make autonomous decisions.</p> <p>The role of the competent national Authority could be limited to providing comprehensive information on which issues should be handled by which authority and in what order. Such a body would be a substantive guardian of the promoter of the strategic project, providing support when questions/problems or doubts arise.</p> <p>Therefore, the concept of a substantive supervisor - the competent national authority - could be introduced, which would be indicated each time for a specific strategic project.</p>
28.	Page 28	<p style="text-align: center;">Article 10</p> <p>Duration of the permitting process: 24 months for strategic projects involving mining</p> <p>It is impossible to accept a guarantee that the entire procedure of issuing concessions for</p>	<p>The determination of the indicated term depends on how a strategic mining project is defined.</p> <ul style="list-style-type: none"> - Does the strategic project relate only to obtaining a concession for the extraction of minerals or does it also apply to other decisions

		<p>mining projects will be carried out within the proposed rigid timeframe under the Geological and Mining Law.</p>	<p>and permits related to the construction of the entire mining plant?</p> <ul style="list-style-type: none">- Do the indicated deadlines also include those necessary to obtain all the obligatory decisions before submitting the application for a concession, in particular the decision on environmental conditions? <p>Considering the above, it should be considered that the indicated deadlines are unrealistic to meet.</p> <p>What should be paid special attention to is that the project promoter sets extremely ambitious deadlines without introducing any simplifications in granting them, primarily in the context of decisions on environmental conditions.</p> <p>Poland as part of e.g. of the currently prepared National Raw Materials Policy, tried to diagnose the factors unfavorable to investments in the mining area. As the most unfavorable factor, the respondents indicated environmental regulations, including the lengthy procedures for obtaining them. Therefore, possible simplifications (without a negative impact on the environment) in the EU directives determining environmental issues should be considered, which would undoubtedly accelerate and increase interest in mining projects related to strategic raw materials.</p>
--	--	---	---



		interested entities will find appropriate information?	
31.	Page 32	<p>Article 18</p> <p>National Exploration Programs; Each Member State develops a national program for the general exploration of critical raw materials</p>	<p>The question concerns whether the indicated plan is to specify only activities in the field of exploration of raw material deposits planned to be implemented by state institutions, e.g. state geological surveys or plans should include the planned exploration works of private entities indicated in the submitted concessions.</p>
32.	Page 33	<p>Regarding to article 19:</p> <p>“1. The Commission shall monitor supply risk related to critical raw materials. That monitoring shall cover at least the evolution of the following parameters...”</p> <p>-Poland sees the needs of extension of the catalog of threats for two more categories - threat of armed conflict and destabilization in some countries, that may affect the supply chain.</p>	<p>Doubts are raised both about the question or about all the conditions under the provision must be met as well as the issue of the definition of security of supply of strategic raw materials.</p> <p>It is also important whether a list of mutual benefits related to projects in cooperation with third countries will be presented. Thanks to this, the criteria for recognizing projects as strategic would be more transparent. Such a list could be semi-open, i.e. it would indicate examples, but also give the opportunity to include other projects not on the list.</p> <p>The need to expand the catalog of threats with others, such as the threat of armed conflict or destabilization in the state. Russia's aggression against Ukraine has shown how important armed</p>

			<p>conflicts can be for energy policy and raw material security, hence the proposal in question.</p>
33.	Page 33	<p>Article 18 point 6 c to create an integrated database to store the results of national programmes</p>	<p>What exact data will be collected there? Will it only be public information? Will Member States have to submit geological information that is confidential?</p>
34.	Page 35	<p>Article 20 Information Obligations for Monitoring Point 1. Member States (...) shall provide the Commission with information on (...) raw materials projects</p>	<p>Should this be understood as all projects - not only strategic - implemented in relation to all critical raw materials?</p>
35.	Page 35	<p>Art. 20 par. 3, On the basis of the currently proposed provisions of the proposal, it is difficult to determine whether it will lead to duplication with regard to the collection of statistical data.</p>	<p>Member States shall separately identify and report the quantities of constituents containing the relevant quantities of critical raw materials removed from waste equipment and the quantities of critical raw materials recovered from waste electrical and electronic equipment. This reporting obligation may overlap with reporting data on CRM recovery in the PRODCOM survey. In 2022, the PRODCOM survey was expanded to include the recovery of secondary raw materials, broken down into various metals, including some strategic metals. The PRODCOM survey is carried out on the basis of Regulation (EU)</p>

			<p>2019/2152 of the European Parliament and of the Council of 27 November 2019 on European business statistics repealing 10 legal acts in the field of business statistics and Commission Implementing Regulation (EU) 2020/1197 of 30 July 2020 laying down technical specifications and arrangements pursuant to Regulation (EU) 2019/2152 of the European Parliament and of the Council on European business statistics repealing 10 legal acts in the field of business statistics. Care should be taken not to impose double obligations arising from different legal acts. Although PRODCOM does not specify the type of waste from which metal raw materials are recovered, it cannot be ruled out that a significant part of the recovered metals will come from waste electrical and electronic equipment. The problem may also be statistical confidentiality, which will prevent the publication of too detailed data.</p>
36.	Page 35	<p>Art. 20 par. 3, The principle is that the provisions of articles are explained by recitals. Since recitals (35) and (40) relating to Article 20 do not explain the relationship between the Regulation and the provisions on the collection of statistical data, including the reference to Regulation 223/2009 on European Statistics (see Article 20.3), we propose to introduce a recital reflecting the relationship between the two Regulations (E.g. <i>The regulation is without prejudice to statistics collected on the basis of the Regulation 223/2009 on European statistics and the national statistical legislation.</i>)</p>	<p>The proposal, with a different legal basis from Article 338 TFEU (specific for European statistics), refers directly to official statistics in the context of data collection, while recalling (in Article 20.3) Regulation of the EP and Council No 223/2009 on European statistics. It should, therefore, clarify the relationship between the two Regulations (at least in the recitals).</p>

37.	Page 37	<p>Art. 20 par. 3, We suggest replacing the word “compiling” in par. 3 by “producing”:</p> <p>3. Member States shall transmit the data collected pursuant to paragraphs 2(a) and (b) of this Article to national statistical authorities and to Eurostat for the purposes of compiling producing statistics in accordance with Regulation (EC) No 223/2009 of the European Parliament and of the Council. Member States shall Designate the national authority responsible for transmitting the data to national statistical offices and Eurostat.</p>	<p>The word “producing” better reflects the activities of official statistics covering the collection, gathering, processing and dissemination of statistical data and is in line with the term used in the statistical regulation 223/2009.</p>
38.	Page 38	<p>In Article 25(1), amend the introductory sentence to the enumeration as follows: „Each Member State shall by [OP please insert: 3 years after the date of entry into force of this Regulation the last implementing act mentioned in paragraph 7] adopt and implement national programmes containing measures designed to:”.</p>	<p>Article 25(7) provides for the issuing of implementing acts establishing a list of products, components and waste streams that are considered at least to have a high potential for recovery of critical raw materials within the meaning of paragraph 1(a) and (b). Therefore, these lists must be known in order for national programmes to be prepared.</p>
39.	Page 38	<p>Art. 25 –national programmes</p>	<p>It is not clear if the national programmes referred to in Art. 25 are the same programs referred to in Art. 18? Are these separate, independent programs?</p>
40.	Page 39	<p>In Article 25(2), amend the first sentence as follows: „The programmes referred to in paragraph 1 shall cover in particular products and waste which are not subject to any specific requirement on collection, treatment, including recycling, or re-use under Union legislation.”.</p>	<p>Recycling is one of the treatment processes.</p>

41.	Page 39	In Article 25(4), amend the last sentence as follows: „The first reporting period shall cover the first second full calendar year after the adoption of those implementing acts.”.	From past experience, the EC is able to issue an act at the end of the year and Member States do not have time to prepare properly for reporting.
42.	Page 39	The term 'relevant amounts', which appears in Article 25(5), should be defined.	In order to properly prepare the report, it is necessary to determine what is to be reported.
43.	Page 39	Art. 25 (7) The Commission shall adopt implementing acts specifying a list of products, components and waste streams that shall at least be considered as having a high critical raw materials recovery potential within the meaning of paragraph 1 (a) and (b).	The date by which the Commission shall adopt those implementing acts should be indicated.
44.	Page 40	Art. 26 on the recovery of critical raw materials from mining waste includes, among others: new obligation to create a database of closed waste facilities, including abandoned waste facilities.	The issue should also be carefully reviewed by other authorities.

45.	Page 40	<p>Art. „Member States shall establish a database of all closed waste facilities, including abandoned waste facilities, located on their territory. This database shall contain information on: [...],”</p>	<p>The issue of appointing an authority responsible for establishing the database and ensuring financing for its maintenance in the long term needs to be considered. In connection with the above, it will be necessary to introduce new national regulations that would indicate not only the authority responsible for creating the database, but also the system, information circulation and data flow needed to complete the database and the rules of access to data. Thus, the implementation of the above changes, is associated with an appropriately adjusted deadline for its implementation, and the proposed deadlines in the draft regulation are too short.</p>
46.	Page 40	<p>Art 26. „[...]”</p> <p>(a) the location, areal extent and waste volume of the waste facility;</p> <p>(b) the operator or former operator of the waste facility and, where applicable, their legal successor;</p> <p>(c) the approximate quantities and concentrations of all raw materials contained in the extractive waste and, where available, in the original mineral deposit, in accordance with paragraph 6 of this Article;</p> <p>(d) any additional information considered relevant by the Member State to enable the recovery of critical raw materials from a waste facility.”</p>	<p>A note in the context of too short a deadline for the implementation of Art. 26. Entering the above-mentioned information involves obtaining data and then entering them into the database, so it should be considered whether it is possible to obtain all the required information in such a short time. The proposed implementation dates seem too short.</p>

47.	Page 40	Art 26. Adjustment time is too short	Article 26, as well as the entire document of the draft regulation, requires appropriate adjustment of the deadline for its implementation, and the proposed deadlines in the draft regulation are too short.
48.	Page 40-41	There are serious doubts about the way in which Directive 2006/21/EC has been amended (Article 26), with the result that issues concerning extractive waste hitherto governed by national law will also be regulated in a piecemeal fashion directly by the Regulation.	This way of making changes will create difficulties for those applying the law.
49.	Page 46	<p style="text-align: center;"><i>Article 30</i></p> <p style="text-align: center;">Environmental footprint declaration</p> <p>1. The Commission is empowered to adopt delegated acts in accordance with Article 36 to supplement this Regulation by establishing rules for the calculation and verification of the environmental footprint of different critical raw materials, in accordance with Annex V and taking into account scientifically sound assessment methods and relevant international standards.</p>	According to the Act, the European Commission has the right to lay down rules for the calculation and verification of the environmental footprint of various critical raw materials through delegated acts. It is crucial to point on what basis the Commission will select the raw materials to be covered by the new rules and whether raw materials imported from outside the EU should not also be subject to similar requirements.
50.	Page 51	<p style="text-align: center;">Chapter 6 Strategic Partnerships</p> <p>Article 33 point 3 a coordination of activities with the Commission in the field of coherence of bilateral cooperation</p>	What will be the coordination of the Member State's activities with the Commission?

51.	Page 51	<p style="text-align: center;">Article 35</p> <p>2. Each Member State shall appoint a high-level representative to the Board. Where relevant as regards the function and expertise, a Member State may appoint different representatives from the industry (related to raw materials) and industry organisations in relation to different tasks of the Board. Each member of the Board shall have an alternate.</p>	<p>The CRM Board, which is to be established as an advisory body, should also include representatives of industry and industry organizations in addition to representatives of the Member States and the European Commission. The advantage of representative of industry involved is crucial due to rich cognition market needs and system of production respectively.</p>
52.	Page 56	<p>In Article 43(1), amend the second sentence as follows: „The first report shall be sent [OP please insert: one two years after the date of entry into force of this Regulation the last acting act mentioned in paragraph 2].”.</p>	<p>Due to the issuing of implementing acts, the deadline for reporting should be contingent on the issuing of these acts, not the regulation.</p>
53.	Page 56	<p>Article 43 .1. Member States shall each year send a report to the Commission containing the information referred to in Article 18(4), Article 20(1) and (2), Article 21(1), Article 22(5) and Article 25(6). The first report shall be sent [OP please insert: one year after the date of entry into force of this Regulation].</p>	<p>Date one year is not compatible with date referred in art. 25 where Member State shall by [OP please insert: 3 years after the date of entry into force of this Regulation] adopt and implement national programmes containing measures designed to....</p> <p>Sending a report containing the information referred to in Article 25 (6) will be possible after adopting and implementing national programmes.</p>

54.	Comments	<p>Introducing specific solutions for certain specific types of activities in a situation where the process of issuing permits and EIA is already established in the Member States on the basis of national legal solutions implementing the EIA, SEA, RDW, RDM and N2000 Directives and international law (Espoo, Aarhus), carries the risk of heavy burdens related to the design and implementation of new procedures, or supplementing the procedures with new substantive requirements or elements. Currently functioning legal and organizational solutions in Poland, in which the investment process is a multi-stage procedure, based on administrative decisions issued on the basis of various normative acts by authorities with different competences, will hinder the coordinated implementation of the draft regulations. Any modifications to this system may disrupt its functioning as a whole, so they should be planned very carefully.</p>	
55.	Comments	<p>As a side note, it should be noted that the introduction of such solutions without strengthening the public administration with highly qualified staff able to efficiently carry out relevant analyzes and procedures may undermine the purpose of the draft regulations. The deadlines and facilitations assumed in the project will then remain solutions only on paper.</p>	

Clarifying questions and written comments for the CRMA – from NL

1. **Context of the proposal (explanatory memorandum):** Could the Commission share its view on the relationship between the Critical Raw Materials Act and the Single Market Emergency Instrument? Is it possible to apply the SMEI to critical and strategic raw materials as defined in the CRMA?
2. **Legal Basis:** Why is the CRMA only based on Article 114 of the Treaty on the Functioning of the European Union? Does the fact that the objective of the proposal is to achieve a Union extraction capacity of 10% by 2030, together with the obligation of Member States in Article 7 to implement Strategic Projects, mean that the CRMA interferes with national planning and land use laws? In that case, should Article 192(2) be used as the legal basis for the provisions concerned?
3. **Article 3, List of strategic raw materials:** How does the Commission ensure that the current scope of critical and strategic raw materials chosen for the CRMA remains to adequately serve our future needs?
4. **Article 6, Application and recognition:** Does it follow from paragraph 5 that it is ultimately up to the Member State to decide whether a project is granted the status of Strategic Project? Or will the Board decide whether Member States' reasons for objection are sufficiently substantiated?
5. **Article 8, One-stop-shop:** There should be freedom for member states how such a one-stop-shop should look like. For NL, the proposal could potentially lead to a significant overhaul of our permitting system without any benefits for applicants. Almost all our time limits are already shorter than those proposed. We believe that it shouldn't matter how it is organised, but should aim at the time limit only. Could you clarify what the consequences are of the fact that the chosen form is a regulation, specifically what this means for the interaction of the CRMA with national law? Is it, with the current text of the proposal, possible to implement procedural rules for the permit granting process in the national permit granting system? Is a clause needed in the recital that expressly allows Member States to incorporate elements of the regulation into their national law (like recital clause 8 of the GDPR)?
6. **Article 8, One-stop-shop:** How and when are member states to determine that a sufficient number of qualified staff and sufficient financial, technical and technological resources are available? And how will the EU support the extensive training that is necessary for the licensing authorities and supervisors?
7. **Article 8, One-stop-shop:** Who will supervise the national competent authority?
8. **Article 9, priority status:** The NL does not work with prioritisations as they are proposed in the CRMA. What effect will this have and how to choose between different projects like NZIA and CRMA that both will have priority status?
9. **Article 10, Duration of the permit granting process:** It is sometimes unrealistic to – within 14 days – ensure that all the information needed can be provided, e.g. for some nature studies you'll need a year to do it. If these lack, then it will be impossible to fulfil the requirements in 14 days.
10. **Article 10, Duration of the permit granting process:** What happens if the application still isn't complete after requesting to complete the application within fourteen days? Are member states allowed to give another term for completion?

What happens if the applicant comes to an agreement with the national competent authority for a longer term than fourteen days? What happens if the terms aren't met?

11. **Article 15, Coordination of financing:** How will the favorable conditions to gain access to the financing of a project be arranged so that no opportunities will be created for environmental crimes?
12. **Article 19, Monitoring and stress testing:** The Netherlands welcomes the scope of the CRMA with regard to the inclusion of renewable energy, digitisation, defence and space. As sustainable mobility is a crucial part of the energy transition, however, the Netherlands believes that sustainable mobility should also be seen as part of the scope of renewable energy. Does the Commission see this in the same way?
13. **Article 19, Monitoring and stress testing:** The supplying industries (such as mechanical engineering, maritime manufacturing and SMEs specialising in critical materials) are essential to Dutch industry. In the commission's proposal, these industries seem to be excluded from the scope of the proposal. Can the commission explain how the delineation of the scope was arrived at?
14. **Article 19, Monitoring and stress testing:** As many European industries depend not only on (un)processed strategic raw materials, but also on value chains of semi-finished, components and/or final products, information gathering, benchmarking and recommendations on strategic stocks should, according to the Netherlands, focus not only on (un)processed strategic raw materials but also on related semi-finished, components and final products. How does the Commission reflect on this? What is the reason that this is not included?
15. **Article 24, Joint Purchasing:** Could the Commission explain what the joint purchasing system proposed in article 24 entails exactly *in practice*? Which problem does this system aim to solve?
16. **Article 25, National measures on circularity:** The Netherlands endorses the inclusion of sustainability and circularity goals. However, it is still unclear which raw materials streams will be covered by this legislation. Can the Commission clarify this? How did the committee arrive at this demarcation?
17. **Article 33, Strategic Partnerships:** To what extent will the Board include Member States in the discussion, negotiations and implementation of Strategic Partnerships?
18. **Article 35, Composition and functioning of Critical Raw Materials Board:** Some of the competences given to the CRM Board, such as asking for opinions and information from companies, is against the rulings of the European Court of Justice known as the "Meroni doctrine". Indeed, in these rulings, the Court indicated that delegation of powers is only allowed if it is necessary to delegate them. In view of the fact that the board will consist of representatives of member states and the CPC, the Netherlands considers the added value to be very low and therefore there is no need to delegate powers. Furthermore, transferring the power to request information directly from companies is contrary to the restrictions set out in the ruling regarding the delegation of powers by the Commission to external bodies. Because the provisions relating to the CRM board results in the Union exceeding its competence with regard to the delegation of its powers, the Cabinet considers EU action in this regard disproportionate.

19. **Article 35, Composition and functioning of Critical Raw Materials Board:**
How will the lessons from the EU Guidelines on Human Rights Defenders be taken on board, given the finding that threats and attacks against HRDs in relation to economic development are increasing and more needs to be done to include civil society in the whole process?
20. **Article 43, Reporting of member states:** The permit granting procedures will take at least several months. What will the European Commission be able to do with data after one year?
21. **Article 45, Penalties:** What does the European Commission consider to be effective, proportionate and dissuasive? How will a level playing field be created?
22. **Communication, chapter 2:** The Netherlands endorses the Commission's focus on developing the right competences/skills within the workforce to make the green and digital transition a reality. In the communication, the Commission describes a number of important professional groups (geologists, metallurgists, mechanical engineers, mine workers, sorters, recyclers and also high-tech professions relevant for the sector etc). The would like to see the exact skills needed elaborated further. What exact skills do the green and digital transitions require? And how do we ensure that our (future) workforce acquires these skills? Ensuring an appropriately skilled workforce starts by mapping very precisely what skills are involved in specific activities that are needed as a result of the proposal. Here, we ask for more ambition from the Commission.

QUESTIONS AND WRITTEN COMMENTS FROM THE ITALIAN DELEGATION ON THE PROPOSAL FOR A REGULATION ON THE CRITICAL RAW MATERIALS ACT

Deadline 18th of April 2023

QUESTION 1

It seems that almost most of the efforts will be devoted to batteries, electric cars and renewable energy. These sectors should therefore be "created almost from zero", how do you intend to proceed and with what timing?

QUESTION 2

From an preliminary examination it seems that the proposal is constructed considering the raw materials used above all in digital industries and for the production of renewable energy. The reference to the basic manufacturing industry seems absent. Why were the peculiarities (strengths and weaknesses) of the "traditional" sectors not considered? It would also be useful to specify which and how many critical raw materials are needed for "traditional" industries.

QUESTION 3

What is the actual state of play of the collection of data on basic geological and mining knowledge, therefore available for each individual EU country? What is the state of play of data collection regarding the amount of potential deposits of critical raw materials and how many and which CRMs could be recovered from past mining activities?

QUESTION 4

The Impact Assessment includes three different strategic options to achieve multiple objectives in terms of critical raw materials and strategic raw materials and also establishes for each strategy different sets of policy and governance approaches, costs, access to funding and benefits both for the EU value chain and for SMEs. While each policy option duly provides the impact assessment, the following elements are not clear enough:

- a) The total amount of resources needed to support and implement the strategic plan for each option
- b) The effective capacity to cover the investments required in the medium-long term for each option.
- c) The total amount of financial obligation of SMEs, which seems to gradually increase moving from option 1 to option 3.
- d) The point of view of the different stakeholders.
- e) Timing, especially for the goals to be achieved in 2025.

Therefore, to support SMEs in building realistic strategic plans, it could be very useful to provide more detailed information on the above topics, with particular reference to Italy.

QUESTION 5

There is a lack of the topic relating to raw materials exported from Europe, since these are raw materials that can play a critical role. Take the case of ferrous scrap, a basic material for the decarbonisation of the steel sector, the quantity of which generated in Europe will not be sufficient even if all those exports were to remain in the territory. It should be noted that 41 third countries in the world have already implemented restrictive measures on the export of this material ranging from duties, to quotas, up to a total ban. In the light of the foregoing, could the possibility of considering ferrous scrap as a strategic raw material within this Regulation be evaluated?

QUESTION 6

The regulation foresees to reach by 2030:

- At least 10% of the overall annual EU CRM consumption extracted in the EU.
- At least 40% of the overall annual EU CRM consumption processed/produced in the EU.
- At least 15% of the total annual EU CRM consumption recycled in the EU.
- No more than 65% of the Union's annual consumption of each strategic RM at any relevant processing stage from a single third country.

The values refer to each critical material without, however, reporting a clear motivation behind the above percentages, based on the actual ability to extract, refine or recycle each of these materials. Might it be desirable to include specific or more general goals for each CRM? As for some CRMs it may be more difficult to achieve the objectives. Furthermore, it is not clear whether these objectives are really achievable in the short term (e.g. 2030).

QUESTION 7

CRM/SRM criteria - The clear definition of the criteria to be used to identify materials is truly fundamental in the light of technological and market evolution. For SRMs, the criteria of a high ratio of future demand to current global production or a high difficulty of scaling up production appear appropriate, while for CRMs, recent years' demand should be a good indicator. How does the classification approach of the CRM fit in with the strategic objectives of the EU?

Focus on silicon metal - silicon metal is on the list of CRMs. We wonders if, with a view to strengthening value chains, the entire supply chain up to polysilicon is included? In fact, this material is essential for photovoltaics and microchips (strategic technologies for the EU). Furthermore, its supply chain presents the possibility of a complete reshoring as it is not characterized by a scarce resource, as for other CRMs. It is believed that PV supply chains will need to be scaled to be able to meet the requirements of a Net Zero pathway, so as to ensure resilience, cost-effectiveness and sustainability.

QUESTION 8

The text pays great attention to permanent magnets and rare earths: why not extend this attention to other materials connected to strategic technologies as well?

The document presents a very in-depth focus on permanent magnets and identifies several measures to ensure the circularity of raw materials and rare earths, along the entire value chain. We support this approach and we wonders why was it limited to permanent magnets?

NZIA technologies and CRMA materials are interconnected: it will be important to identify the most relevant technological applications and define systematic actions ranging from design to traceability (passport for the material), reuse and recycling. Could the definition of a specific annex be considered to deal in more detail with the possible actions to be taken on circularity?

Do you intend to clarify the rationale for the attention paid to mining waste (Article 26) and to permanent magnets among other types of secondary sources of critical raw materials?

QUESTION 9

Having regard to the European Commission's proposal to establish a Critical Raw Materials Club to ensure secure, sustainable and affordable global supply of critical raw materials essential for the EU's green and digital transition with a competitive and diverse industrial base, do EU intend to engage in a full and transparent dialogue and work closely with like-minded partners to establish the Club?

QUESTION 10

The governance system provides for the establishment of a Critical Raw Materials Board, why not consider using an Agency rather than a Board? An Agency could be more effective in keeping up with a very large and rapidly evolving knowledge and experience base. An operational structure dedicated to the management and implementation of activities in terms of analyses, scenarios, models, etc. (i.e. an agency, authority or other form with a clear and specific mandate) could avoid duplication for structures of existing functions, aggregating what already exists and integrating the missing functions.

QUESTION 11

Has the European Commission considered the European initiative with a focus on materials, defined as the "Advanced Material 2030 Initiative" (AMI2030), whose promoters are the main European associations dealing with materials (EMIRI, EUMAT, SUSCHEM, etc.) and which collect the interests of the European industry which mainly works on the development of advanced materials and has the objective of becoming one of the strategic partnerships at European level according to the plans of Horizon Europe?

QUESTION 12

Considering the current geopolitical situation, which excludes a part of the world from trade agreements with the EU and a strong competition for supply even between member states, achieving no more than 65% from a single producing country could be, for some critical raw materials, difficult to achieve. Has the Commission foreseen derogations, especially when the suppliers are highly reliable countries?

QUESTION 13

Clarification is sought regarding the provisions of Article 18 which appear to concern only basic non-invasive research, but not operational research. Without simplified procedures similar to those provided by strategic projects, to be applied to basic and operational research, there could be many difficulties in identifying new strategic extractive projects. How does the Commission intend to facilitate basic and operational research?

QUESTION 14

Article 26. In Italy there are hundreds of millions of cubic meters of abandoned extractive waste and distributed in about a thousand sites. For these sites, the operator is no longer available and the ownership belongs to the regional governments, which have their own legislative system on the matter and, in several cases, are also against the characterization of the reservoirs. How does the EC intend to contribute to the resolution of any State-Region conflicts, if there are conflicting visions?

In the absence of previous studies, the characterization, even approximate, of the sampling needs of extractive waste at various depths and analyses. All this involves the acquisition and training of new human resources and a considerable financial commitment for sampling and geochemical campaigns which, in the absence of operators, will be borne by the State or the Regions. How does the EC intend to provide its support?

Is the definition of common protocols at European Union level foreseen for carrying out sampling campaigns?

QUESTION 15

EU countries need appropriate skills to address the challenges posed by the green and digital transitions, as well as new skills on circular economy models related to critical raw materials value chains. How does the European Commission intend to support the action of the Member States for the training of talents and skills for the development of innovation in the sector of critical raw materials? How does the Commission intend to support actions by Member States for structured training which allows the reconstruction of mining knowledge both in universities and professional schools and in public administration?

QUESTION 16

Earth observation (Recital 33): Does the European Commission plan to support Member States in research, monitoring and control activities through Earth observation?

QUESTION 17

Since the importance of a raw material is determined according to its relevance to the economic/technological sectors of the EU, will benchmarks be established to identify critical raw materials at individual Member State level and not just for the internal market? In developing mechanisms for monitoring critical raw materials in supply chains, will national needs be taken into account, in order to provide a clear picture of the critical issues of the different value chains?

QUESTION 18

Article 21 requires Member States to provide information on their strategic stocks of critical raw materials to the Commission in the report referred to in Article 43. Article 25, paragraphs 5 and 6,

refers to the reports that the Member States must send to the Commission on waste management and the critical raw materials contained therein.

These strategic stocks also include waste from the so-called “urban mining”? In this regard, the case of batteries and accumulators and the related separate collection rates, which can constitute potential reserves of critical raw materials, seems to be relevant.

QUESTION 19

The Regulation, in order to diversify the risk associated with the supply of critical raw materials, provides for the possibility of concluding agreements (Strategic Projects) to support private investments also in third countries. How will EU principles and values, especially in environmental, health and social matters, be safeguarded in agreements with third countries for the supply of critical raw materials?

QUESTION 20

Public and private investments in research and development activities, aimed at optimizing production processes and favoring the replacement of critical raw materials, will play a fundamental role in global competition. The Regulation provides for the promotion of the replacement of raw materials that have become critical with other substances that present less supply difficulties. What are the tools to stimulate public investment, if private investment proves to be insufficient, in relation to the duration of the research activities, the uncertainty of the results and the amount of resources needed to arrive at results that can be applied on a large scale?

QUESTION 21

How will EU state aid law respond to the need for increased investment in technology sectors impacted by supply shortages of critical raw materials?

QUESTION 22

The regulation also introduces the possibility of developing a system for calculating the environmental footprint of critical raw materials (extraction, refining and recycling), including a verification process, to ensure that critical raw materials placed on the market publicly display the information related to their environmental footprint. The system should be based on scientifically sound assessment methods and relevant international standards in the field of life cycle assessment. Once the relevant calculation methods are in place, does the Commission plan to develop performance evaluation classes for critical raw materials, thereby allowing potential buyers to easily compare the relative environmental footprint of available materials and steering the market towards more sustainable materials?

QUESTION 23

How does the Commission intend to reconcile activities related to the monitoring of the supply risk of critical raw materials with potential national security interests?

OTHER COMMENTS

A further critical aspect that we want to highlight concerns **neon**, a fundamental gas for the semiconductor industry which is used in mixtures, in the lasers of photolithography equipment.

Following the conflict between Russia and Ukraine, this gas has been missing from the supply chain to the extent of an important quantity that was extracted and purified in those areas. Although some suppliers, especially in Germany, are investing in increasing capacity, we still believe that there is a risk, so we hope that the right focus on this issue can be maintained in Europe as well.

We suggest to add an index that facilitates the reading of the document and also a correspondence table of critical raw materials and strategic ones.



Industry Working Party - EU Critical Raw Materials Act

Member State questions - Ireland

18th April 2023

Chapter 1

Article 1

- Will exploration projects be eligible as a strategic project?
- Does the term 'strategic raw materials' as used in Article 1(2) intend to also encompass both strategic raw materials and critical raw materials as defined in the Act?
- How will it be determined quantitatively whether a capacity is 'approaching' a benchmark?

Chapter 2

Article 7

- Can clarity be provided on the intended roles of project promoter and MS in relation to Strategic Projects
- Could the commission provide its definition of "human health" as outlined in the Act?
- Could the commission provide any further clarity on apparent equivalence of project promoter and MS in relation to Strategic Projects

Article 8

- What is meant by 'responsible' – would it be those responsible for coordination or responsible for another authority's role?
- Could the commission provide further clarity on the term 'simple procedures' - What does the commission mean by the phrase 'simple procedures' and is there a legal definition that the commission is using? What would a simple procedure mean in cases where there are a number of separate permissions required in the process.

Article 9

- Can the commission give more consideration for stakeholder profile for public engagement outside of individuals or local communities

Article 10

- Can the commission provide clarity on the legality of relevant permit granting application to being "considered as approved"?



Article 7

- Has a legal opinion been sought from the commission as to the legality of providing a single assessment of the Environmental Impact under relevant legislation?
- Clarity on the meaning of “joint procedure between the competent authority and the public promoter?”

Article 12

- What is the Commissions legal definition of “brownfield” for the purposes of this act?

Article 18

- Given this Act is a regulation, does the Commission intend to provide Member States a period of time to amend its legislation in order to enforce the provisions outlined

Chapter 5

Article 34

- Can all intended roles/scope of activities of the CRMs board be listed in this article, they are currently spread amongst articles.

General Questions

Critical Raw Materials & Strategic Raw Materials List

- Could you confirm the reasoning behind Zinc not being included on either list, did Irelands supply play a meaningful role in its status?

Social Licenses

- What measures at Commission level, rather than member state or project level, will be considered to ensure public engagement and to foster social acceptability for strategic projects

Circular Economy

- Can the Commission incorporate a measure on reducing consumption, and specifically address the requirements of SDG 12 Sustainable Production and Consumption?
- The Regulation proposes a 15% target for recycling as a contribution to the EU’s CRM requirement. More information as to the current contribution and where



opportunities are possible for improvement are needed before Ireland can fully assess the proposed target.

- Can the Commission address the need for supports for reuse and repair, to maintain incentives for investment in correct proportion to recycling.

Geoscience Policy Division

Department of the Environment, Climate and Communications

Government of Ireland

18th April 2023



PUBLIC



**PREMIER
MINISTRE**

*Liberté
Égalité
Fraternité*

Affaire suivie par :
Tanguy LARHER
Bureau MINUME
Tél. : + 33 1 44 87
Mél : tanguy.larher@sgae.gouv.fr
Réf. : SGAE/MINUME/2023/210

**Secrétariat général
des affaires européennes**

Paris, le 18 avril 2023



NOTE

pour la Représentation permanente de la
France auprès de l'Union européenne

à l'attention de
Ségolène MILAIRE

Objet : Questions et commentaires concernant le règlement sur les matières premières critiques.

Réf. :

Vous voudrez bien trouver ci-joint les questions et commentaires des autorités françaises concernant le projet de règlement sur les matières premières critiques.

Ce document est à diffusion limitée et n'a pas vocation à être partagé. Nous vous prions de le transmettre de façon sécurisée à la présidence suédoise du Conseil de l'Union européenne, adressé aux seuls destinataires concernés et de nous garder en copie de cette transmission, notamment aux fins d'archivage par le SGAE.

Tanguy LARHER

Le chef de secteur
Marché intérieur - Industrie – Recherche & Innovation
Numérique et Espace



Paris, le 18 avril 2023

Objet : Questions et commentaires concernant le règlement sur les matières premières critiques.

Lors de la réunion du groupe COMPCRO Industrie du 29 mars 2023, la Présidence suédoise a invité les Etats membres transmettre leurs questions et commentaires sur le projet de règlement « Critical Raw Materials Act ». Vous trouverez ci-dessous les questions et commentaires des Autorités françaises :

Article 1 :

- L'étude d'impact prévoit une mise à jour en 2030 de la définition des objectifs de production pour 2040 et 2050, à l'issue d'une évaluation par la structure de gouvernance. Cette mesure n'a toutefois pas été reprise dans l'article 1er, qui ne prévoit d'ailleurs que des objectifs pour 2030 et pas d'objectifs pour 2040 et 2050. Pourquoi ces dispositions ont-elles été écartées ? En effet, les autorités françaises estiment qu'avoir des objectifs pour 2040 et 2050 donnerait une trajectoire-cible aux Etats membres et aux entreprises.
- Le règlement ne précise pas si les extractions en provenance des pays et territoires d'outre-mer (PTOM) des Etats-membres de l'Union européenne sont incluses ou non dans le quota intra-européen. Toutefois, un passage de l'étude d'impact (page 120) sur la fixation des objectifs semble inclure les extractions des PTOM dans ces quotas. Les autorités françaises se sont interrogées sur le champ d'application du règlement vis-à-vis des matériaux en provenance des pays et territoires d'outre-mer (PTOM) des Etats membres de l'Union européenne, et sur leur prise en compte pour le calcul des quotas d'extraction ou de transformation intra-européennes de matières premières, ainsi que sur l'exclusion de l'objectif de diversification des pays d'approvisionnement des importations de matériaux en provenance des PTOM des Etats membres. Lors de la réunion du 29 mars 2023, les services de la Commission ont indiqué que ce sujet devrait faire l'objet d'analyses plus approfondies au niveau technique en lien avec les Etats membres concernées (France et Danemark notamment). Dans quel calendrier la Commission envisage-t-elle ces échanges ?
- Comment les différents objectifs ont été définis (l'étude d'impact ne le précise pas) ?
- Toutes les étapes de la chaîne de valeur sont-elles couvertes ? Le laminage et autres activités métallurgiques sont-elles bien incluses dans la capacité de transformation ?
- S'agissant de l'objectif de recyclage prévu à l'article 1er, que signifie « *Union recycling capacity* », s'agit-il de la production de matières premières à partir de déchets ou de l'utilisation de ces matières recyclées dans de nouveaux produits ?
- Que signifie précisément la notion de « capacité » : une capacité de production théorique ou de production réelle ?

Articles 3 et 4, annexes I et II :

- Pourquoi la Commission a-t-elle retenue une périodicité de 4 ans pour la mise à jour des matières premières stratégiques et critiques ? Ne faudrait-il pas prévoir que la mise à jour puisse se faire plus fréquemment ?
- Concernant les matériaux pour batteries, certains sont stratégiques et critiques quel que soit leur usage (cobalt), stratégiques pour l'usage batterie et critiques pour les autres usages (lithium, manganèse, graphite naturel), et stratégiques et critiques uniquement pour l'usage batterie et rien pour les autres usages (nickel). Pourquoi de telles différences, sachant que l'usage des matières premières ne sera pas forcément connu dès la phase d'extraction ?
- Pour être considérée comme stratégique, une matière première doit-elle forcément être recyclable compte tenu des objectifs de recyclage prévus à l'article 1^{er} ?
- La matière première critique bauxite concerne-t-elle uniquement la bauxite ou plus largement l'aval de sa chaîne de valeur (alumine, aluminium par exemple) ?
- Quels sont les dispositifs prévus afin de gérer les transitions, pour des entreprises qui auraient engagé des projets de matières premières qui sortiraient du champ des matières stratégiques et/ou critiques lors d'une mise à jour ?
- De manière générale, quelle méthode la Commission a-t-elle utilisée pour déterminer les mesures s'appliquant aux matières premières stratégiques et celles s'appliquant aux matières premières critiques ?
- Comment expliquer l'absence sur la liste de l'alumine, l'aluminium, le noir de carbone, et le caoutchouc naturel ?

Article 5 :

- Le CRM Act précise que pour reconnaître un projet stratégique, celui-ci doit avoir des bénéfices transfrontaliers. Les projets qui concernent des matières premières stratégiques mais dont l'aval de la chaîne de valeur se trouve dans le même pays que le pays d'extraction ou de première transformation pourront-ils être considérés comme des projets stratégiques ou en seront-ils exclus ?
- Que signifie l'exigence de maturité technique des projets « *the project is or will become technically feasible within a reasonable framework* », en particulier en niveaux de TRL attendus ? Comment est évaluée la contribution du projet à la sécurisation des approvisionnements de l'UE, et le bénéfice mutuel pour l'UE et les pays tiers ?
- Le développement de projets stratégiques hors Europe concerne-t-il l'extraction en priorité ? ou l'ensemble de la chaîne de valeur est-elle concernée ? *A contrario*, les projets autres que ceux concernant l'extraction sont-ils destinés à être réalisés en Europe ?

Article 8 et 10 :

- S'agissant du périmètre des procédures d'autorisation des projets stratégiques, nous souhaitons avoir des clarifications sur le périmètre des autorisations couvertes, notamment si l'étape d'octroi du titre minier est nécessaire. En effet, l'inclusion de cette étape aura un impact important sur la durée d'instruction des autorisations, mais potentiellement également sur la désignation de l'autorité compétente nationale prévue à l'article 8. Le statut de « Projet Stratégique » ne concerne-t-il que les « projets » au sens de la directive 2011/92/UE relative à l'évaluation des incidences sur l'environnement ?
- Concernant l'autorité compétente nationale prévue à l'article 8, s'agit-il d'une autorité centrale comme un ministère, qui doit être la porte d'entrée de tous les projets et avoir une vision globale de tous les projets, ou d'une autorité locale comme le préfet de département, qui sera notamment en charge de l'instruction des permis et des contacts réguliers avec le porteur de projet ?

Article 15 :

68, rue de Bellechasse
75700
Paris

- Quelle la portée du comité (*Board*) lorsqu'il : « conseille sur la manière dont le financement de son projet peut être mené à bien » dans la mesure où il n'existe aucun outil financier dédié pour soutenir les projets ?
- La Commission pourrait-elle clarifier les contreparties dont les projets stratégiques pourraient bénéficier pour justifier une sélection au niveau européen, à l'exception des *off-takes* ?

Article 16 :

- Pourquoi le système de facilitation des *off-takes* a-t-il été limité aux *off-takes* des projets stratégiques et n'a pas été ouvert à l'ensemble des projets concernant des matières premières critiques et/ou stratégiques ?
- La Commission envisage-t-elle d'aller plus loin que la mise en contact entre porteurs de projets et *off-takers* et auquel cas avec quel degré de confidentialité ?
- Ce système pourrait-il bénéficier à un projet situé en UE identifié comme « stratégique » et qui a besoin de sécuriser des intrants dans un pays tiers ?

Articles 19 à 22 :

- La diffusion d'informations, impliquée par la mise en place des mesures relatives au *monitoring*, aux stocks stratégiques et à leur *reporting* (aux articles 19 à 22), peut présenter le risque de mettre à jour des vulnérabilités économiques des Etats membres ou bien d'opérateurs économiques stratégiques (par exemple les industries de défense) et ainsi affaiblir la protection de la sécurité nationale (bien que pourtant mentionnée au considérant 36). Elle pourrait également mettre en difficulté certains opérateurs généralement insérés dans des environnements fortement concurrentiels et prédateurs, voire affecter le cours de certains marchés de matières premières sensibles aux comportements des opérateurs ou des Etats. En ce sens, l'article 19§4 est préoccupant car il prévoit la mise en place par la Commission d'un site internet public présentant un tableau de bord contenant les résultats des tests de résistance des chaînes d'approvisionnement. La Commission peut-elle préciser ce qui est attendu de ces *reporting* et du tableau de bord qui sera mis à la disposition du public ?
- Les volumes et compositions de stocks stratégiques au niveau européen ainsi que le coût relatif de leur mise en place auraient également mérité d'être évalués. Dans l'option 3, comment la Commission est-elle parvenue à proposer un niveau de stockage équivalent à 60 jours de consommation ? S'est-elle inspirée de l'étude de la Commission ITRE du PE, publiée en décembre 2022 et intitulée « *Strengthening the security of supply of products containing CRM for the green transition and decarbonisation* », qui offre un éclairage intéressant notamment sur le coût d'une politique de stockage au niveau européen ?
- La Commission prévoit-elle des outils pour faciliter la mise en œuvre des stocks stratégiques ?

Article 25 :

- S'agissant du volet « circulaire » du CRM Act, le projet de règlement prévoit, dans son article 25, des obligations de moyens en précisant que les déchets qui doivent être ciblés en priorité sont ceux qui présentent un potentiel significatif de récupération des matières premières critiques et qui ne font pas encore l'objet d'une réglementation européenne spécifique. Le texte renvoie à des décisions d'exécution spécifiant la liste des produits, des composants et des flux de déchets qui doivent *a minima* être considérés comme ayant un potentiel significatif de récupération de matières premières critiques. La Commission Européenne peut-elle apporter des précisions sur le type de produits, composants et flux de déchets qui seront potentiellement ciblés. Peut-elle également préciser les délais dans lesquels elle prévoit de publier ces décisions d'exécution ?
- La Commission Européenne peut-elle également préciser ce qu'elle entend par programmes nationaux de mesures auxquels il est fait référence dans cet article 25 ?
- À cet article 25 également, il est imposé aux acheteurs d'intégrer dans leurs marchés, lorsque cela s'avèrerait approprié, un critère d'attribution prenant en compte le recours à du contenu recyclé notamment pour des matériaux critiques. De quelle manière la Commission envisage-t-elle de concilier

cette détermination de la consistance d'un critère vert pour un champ potentiellement très large de contrats avec d'autres initiatives sectorielles à large portée (Ecoconception, RPC, Packaging, etc.) ainsi qu'avec les conclusions du Conseil sur le développement de l'achat public durable qui visaient, certes, notamment à ce que des critères d'attribution durable soient introduits dans les contrats de la commande publique, mais tout en laissant aux acheteurs la liberté d'en définir la consistance ?

Article 26 :

- Comment la Commission Européenne a-t-elle fixée les différentes échéances relatives à la l'établissement puis à la réalisation de la base de données concernant les installations de déchets miniers fermées et abandonnées ?

Article 27 :

- La Commission Européenne prévoit-elle d'élargir le champ de la directive D3E pour y intégrer les équipements listés au paragraphe 1 de l'article 27 qui ne le sont pas encore ou prévoit-elle une réglementation spécifique pour ces équipements ?
- Au (b) du paragraphe 4 de l'article 27, le projet de règlement crée, entre autres, une obligation d'affichage de la composition chimique des aimants permanents présents dans la liste des produits mentionnés au paragraphe 1 de ce même article. La Commission Européenne peut-elle préciser ce qu'elle entend par composition chimique ? S'agit-il d'identifier la catégorie d'aimant permanent présent ou de quantifier les différents composants chimiques présents dans les aimants permanents ?
- Au paragraphe 8 de l'article 27, la Commission Européenne peut-elle préciser ce qu'elle entend par « autres réglementations européennes d'harmonisation » ?

Article 28 :

- Au paragraphe 2 et 3 de l'article 28, la Commission Européenne prévoit de passer par des actes délégués pour fixer des objectifs de contenu en recyclé pour un certain nombre de substances dans les aimants permanents et pour définir les règles de calcul, de suivi et de contrôle relatifs ? La Commission européenne peut-elle expliquer pourquoi elle souhaite passer par des actes délégués et non des décisions d'exécution ?
- De façon générale, la Commission Européenne peut-elle préciser les différentes articulations entre le projet de règlement sur les matières premières critiques, le règlement relatif à l'écoconception, et les réglementations sectorielles sur les déchets (et en particulier le projet de règlement sur les véhicules hors d'usage et la révision de la directive D3E). Quels sont les volets qui seront traités/discutés dans le règlement sur les matières premières critiques et quels sont ceux qui seront traités dans les réglementations sectorielles ?
- Quel est l'impact potentiel des dispositions du CRM Act sur les filières REP potentiellement concernées, en particulier la filière D3E ? De même quelle est l'articulation du CRM Act avec le Règlement sur le transfert transfrontalier de déchets ?
- Pourquoi certaines échéances (au-delà de 2030 par exemple) sont si lointaines, et ce compte tenu notamment du fort niveau de dépendance actuel de l'UE vis-à-vis de pays tiers concernant les terres rares ?

Article 29 :

- S'agissant de la reconnaissance des référentiels privés et des critères ESG permettant d'habiliter des projets stratégiques, quel est le périmètre des référentiels (amont et/ou aval de la chaîne de valeur) pouvant entrer dans ce processus? La Commission a-t-elle prévu de préciser les critères d'éligibilité et la méthodologie d'homologation dans un acte délégué ou d'exécution?

Article 30 :

- Pourquoi avoir écarté l'option d'un seuil d'impact environnemental contraignant la mise sur le marché des produits les plus polluants ?
- Pourquoi avoir retenu seulement la catégorie d'impact environnemental la plus impactante pour l'affichage environnemental ? Si cette catégorie d'impact environnemental est différente selon les métaux critiques (ex : émissions GES pour l'un et consommation d'eau pour l'autre), comment effectuer des comparaisons entre métaux ? Ne faudrait-il pas avoir une métrique commune afin de pouvoir effectuer des comparaisons ?
- Pourquoi l'impact du stockage des déchets miniers n'est pas pris en compte dans le calcul de l'impact environnemental des matières premières critiques ? (Cf. annexe V)

De manière générale

- Le CRM ACT présente de nombreuses obligations de transmission de données, quelles sont les garanties de sécurité et de confidentialité dans ce cadre ?
- Quel sera l'articulation entre le Critical Raw Materials Board et ERMA ?
- L'étude d'impact indique de potentielles synergies entre la déclaration d'empreinte environnementale pour les matières premières critiques et les dispositions d'écoconception sur les produits finis (notamment ceux contenant des matières premières critiques) en application du nouveau règlement Ecoconception, encore en cours de négociations. L'empreinte environnementale des matières premières brutes prévue dans le CRM Act sera-t-elle prise en compte dans le cadre de ce règlement Ecoconception ? Dans quel calendrier est prévue l'obligation d'affichage pour les produits finis via le règlement Ecoconception ?
- La Commission n'a pas précisé dans son étude d'impact quelle articulation était envisagée entre le SMEI et le CRM Act en cas d'activation du mode de vigilance ou du mode d'urgence : le principe de *lex specialis* s'appliquerait-il ?
- En l'état actuel du projet du CRM Act, l'approche de devoir de diligence n'est pas la même pour tous les métaux critiques. En effet, les obligations en matière de devoir de diligence seront différentes selon le type de matières premières critiques, ce qui crée une certaine confusion :
 - **Cobalt, nickel, graphite, lithium** : devoir de diligence au sens du règlement batteries, c'est-à-dire évaluation et mitigation des risques sociaux, environnementaux et de gouvernance spécifiques aux chaînes de valeur de ces métaux pour les metteurs sur le marché de batteries (produit fini), à l'exception des PME ;
 - **Tantale, tungstène** : devoir de diligence au sens du règlement sur les minerais de conflit (3TG), c'est-à-dire, évaluation et mitigation des risques de violation des droits humains, spécifiques aux chaînes de valeur de ces métaux pour les importateurs européens de ces matières premières (et non des produits finis les contenant) dépassant un certain seuil de tonnage ;
 - **Autres matières premières critiques** : devoir de diligence au sens de la future directive CSDD, c'est-à-dire a priori, un devoir de diligence non spécifique aux chaînes de valeur des matières premières critiques, applicable aux entreprises de plus de 500 employés dont le chiffre d'affaires dépasse 150 millions d'euros, ainsi qu'aux entreprises de plus de 250 salariés réalisant plus de 40 M€ de CA dont 50% dans les secteurs à risques, pour lesquelles certaines exigences sont également prévues. Les risques environnementaux et de violation des droits humains pris en compte ne sont pas spécifiques aux chaînes de valeur des métaux critiques.

Dès lors, pourquoi ne pas avoir introduit dans le CRM Act un devoir de diligence spécifique et harmonisé aux chaînes de valeur des métaux critiques dont les risques sociaux, environnementaux et de gouvernance sont particulièrement élevés, comme c'est le cas par exemple pour les terres rares (mines illégales notamment) et le silicium métal (travail forcé notamment) ? Pourquoi ne pas avoir repris la liste des risques sociaux, environnementaux et de gouvernance figurant dans le règlement batteries en annexe X ?

- Les autorités françaises s'interrogent sur l'articulation du projet de règlement avec les volets environnementaux et sociaux des accords de commerce de l'UE, en particulier les chapitres *Trade and*

Sustainable Development, dans lesquels peuvent figurer des aspects concernant les droits des travailleurs ou le respect de principes environnementaux ; ou les chapitres « *Energy and raw materials* ».

- La Commission aurait pu développer davantage les déterminants de ses choix en matière de financement des projets stratégiques. Par ailleurs, les besoins de financement public et privé doivent être évalués. La Commission prévoit-elle de procéder à des projections/estimations sur les financements privés (estimations de l'appel de fonds privés par les financements publics, effet de levier potentiel, etc.) ? Le CRM act est-il pris en compte dans l'analyse des investissements présentée dans le cadre de NZIA ?
- La Commission mentionne « l'observatoire des technologies critiques ». Où en est sa mise en œuvre ? Aurait-il un objectif lié au CRM Act ? Quelle serait sa composition ? Quel calendrier ?
- Dans quelle mesure, la Commission s'est-elle inspirée de l'étude prospective du JRC (*Foresight study which assesses the European Union's future needs for critical raw materials and the potential supply chain bottlenecks in key strategic technologies and sectors*) ?
- Enfin, la Commission Européenne peut-elle préciser les raisons pour lesquelles la création d'un « Critical Raw Materials Club » est traitée dans le cadre du Net Zero Industry Act et non pas du CRM Act ? Afin d'en maximiser l'effet utile pour l'UE et de prévenir une possible redondance avec le rôle et la composition du *Mineral Security Partnership* (qui regroupe principalement des Etats consommateurs), cette initiative pourrait réunir autour de la Commission les Etats membres de l'UE et les principaux pays producteurs et/ou riches en métaux critiques.