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## **REGULATORY SCRUTINY BOARD OPINION**

EU measures for critical raw material

{COM(2023) 160}

{SWD(2023) 161, 162}





Brussels,  
RSB/

## **Opinion**

**Title: Impact assessment / EU measures for critical raw materials**

**Overall 2<sup>nd</sup> opinion: POSITIVE WITH RESERVATIONS**

### **(A) Policy context**

Critical raw materials (CRMs) have special characteristics that make them essential for strategic utilisations where there are no reliable alternatives, such as for renewable energy production, micro-chips, aerospace, agriculture and defence applications. They are critical for EU industry because they may be subject to supply risks due to high extraction and processing concentration outside the EU. CRMs are mostly imported into the EU. Wellknown examples are rare earths used in magnets for wind turbines, lithium used for batteries and silicon used for semiconductors. CRMs are key enablers for the green and digital transitions. Both the European Parliament and the European Council have called for action on critical raw materials. In its 2023 Work Programme, the Commission announced the Critical Raw Materials Act consisting of a legislative proposal as well as a communication with complementary actions. The report accompanies the legislative initiative.

### **(B) Summary of findings**

**The Board notes the improvements made to the draft report responding to the Board's previous opinion.**

**However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:**

- (1) The content of the options and measures is not sufficiently explained in the main report.**
- (2) The report is not sufficiently clear on the operation of and risks relating to setting up permanent funding structures for the CRM sector.**
- (3) The comparison of options in terms of effectiveness is not sufficiently granular.**

This opinion concerns a draft impact assessment which may differ from the final version.

### **(C) What to improve**

(1) The report should provide a more coherent description of the overall policy context and include for example the Global Gateway. It should better explain the link and coherence with the flanking measures envisaged in parallel to this initiative, such as on research and trade. The link between this initiative and the battery regulation should also be clarified, since similar mechanisms apply and certain CRMs are covered also by the battery act with a risk of redundancy. Strategic partnerships, which are not specified as a policy option in the intervention logic, should not be assessed in the impacts section but clearly explained as flanking measures and in the context section and included in the baseline scenario. Lessons learnt should be activated for the purpose of the policy context and problem definition.

(2) The report should better explain to what extent the problem of sustainable sourcing of CRM is linked with the main problem of lack of secure access to CRMs for the EU.

(3) The content of the options and functioning of the key measures should be better presented in the main report. While the overview of policy options gives a broad idea of the available policy choices, these need also to be explained in a clear, but concise manner in the option definition section with corresponding references to the detailed description currently contained only in an annex. The report should explain what is behind each measure presented under each option (e.g. strategic projects, access to finance,...), how they are intended to function and what they are expected to deliver. Policy measures which will require further analysis (certain waste measures and thresholds for the environmental footprint) should be clearly indicated in the preferred option section.

(4) The report envisages financial support as a permanent feature of EU CRM value chains. It should explain how this long term framework for economic operators will ensure that public funding is used fully in line with principles applying to EU funding and state aid and sound economic incentives continue to apply. It should assess potential risks relating to permanent funding structures and specify under which conditions financial support could be granted.

(5) The report should clarify by when the envisaged technical standards for critical raw materials value chain could be realistically expected to be available, what the related uncertainty is and how this has been reflected in the impact analysis.

(6) The report should provide a more granular comparison of the effectiveness of options in terms of achieving the specific objective to increase the EU CRM value chain's capacity. This objective is very broad in terms of relevant measures that could contribute to it and thus requires a set of more specific criteria based on their difference in delivery on effectiveness which could be measured. On this basis the report should better justify the choice of the preferred option, including by explaining whether alternative combinations of option packages of measures (other than the three presented) have been assessed.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

**(D) Conclusion**

**The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.**

**If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.**

Full title	<b>EU measures for critical raw materials</b>
Reference number	PLAN/2022/1733
Submitted to RSB on	3 February 2023
Date of RSB meeting	Written procedure

## **ANNEX: Quantification tables extracted from the draft impact assessment report**

*The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.*

*If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.*

### ***Summary of costs and benefits***

<b>I. Overview of Benefits (total for all provisions) – Preferred Option</b>		
<b><i>Description</i></b>	<b><i>Amount</i></b>	<b><i>Comments</i></b>
<b><i>Direct benefits</i></b>		
Monitoring/stockpiling, companies' risk preparedness	Not quantifiable: but access to information and preparedness solutions.	Those measures would enable the companies to be more prepared ahead of any supply challenge that might occur in the CRM value chain and to better resist to them. It relates to the cost of not acting, which is very high if and when a supply disruption materialises.
Exploration	Negligeable: <10 k€ that can be saved.	The main benefit of exploration at national level is to put in evidence metal anomalies that will encourage local exploration by mining operators and will trickle down to support further investment down the value chain.
Strategic Projects	This assessment considers that at least 3840 direct jobs (lowest estimate) could be created per year through the development of Strategic Projects.	

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Access to finance	Not quantifiable, but benefits generated by improved access to finance for producers along CRM value chain.	De-risking of financial investment would also enable the uptakes by further private investment sources as well.  The overall benefits of this pillar will however be directly dependent on the size of the funds that can be made available.
Permitting provisions	Not quantifiable but benefits generated by time-gains, investment stability, etc.  Permitting delays can put the whole operations of a company on pause for years depending on the waiting time. In extreme cases, the company is dissolved before the permit issuance due to its inability to sustain the costs of waiting.	Benefits of streamlined permitting notably for companies developing a Strategic Projects
Provisions on circularity: recycling and waste	Framework for MS to work on circularity, notably on collection, public procurement and R&I, which should increase circularity, with all its environmental and security benefits; the amended Extractive Waste Directive would provide important access to information on CRM recovery potential from extractive waste sites, which should encourage the opening of new “re-mining” projects	
Provisions on standards	Standards to guide processes of activities along the CRM value chain. Such standards would develop the competitiveness of the EU CRM industry by supporting the development of more efficient and sustainable processes.	
Provisions on environmental footprint	The competitiveness of companies that sell or produce CRM with in a more sustainable way would increase by comparative advantage.	

	<p>These benefits would trickle down the value chain: downstream users will be able to use information on the sustainability of the CRM they purchase to make green claims about their products that contain them.</p> <p>Customers will directly benefit from this increased competition fostered by the sustainability of the products.</p>	
<b><i>Indirect benefits</i></b>		
Monitoring/stockpiling/companies preparedness	Contribution to the stability of the value chain of critical and strategic raw materials	Contribution to the stability of the value chain of critical and strategic raw materials
Support to the value chain	<p>Indirect benefits of providing security of supply for the ecosystems that rely on technologies of which strategic raw materials are a part of, needed for green and digital transitions as well as resilience.</p> <p>These positive effects would then trickle further down the entire economy.</p>	These measures would contribute to achieving the EU Green Deal objectives, amongst other objectives of the digital transition or of resilience.
<b><i>Administrative cost savings related to the ‘one in, one out’ approach*</i></b>		
(direct/indirect)	Permitting streamlining for Strategic Projects will substantially reduce the administrative burden on companies benefiting from those measures.	It is not possible to quantify these benefits, as they differ from MS to MS and company to company.
	Monitoring measures (e.g. with the creation of a monitoring dashboard, available digitally to all companies) will lower’s companies administrative costs of gathering data, including in interaction with public authorities, and building their own monitoring systems without a common basic information offer from the public system set up under pillar C.	No clear monetary equivalent, but certainly an important cost saving for companies.



	<p>The creation of a publicly and digitally accessible database of closed extractive waste sites, including valuable information from permitting files and geochemical campaigns, will allow companies interested in recovering CRMs from these sites, to directly access this information instead of having to correspond with authorities with uncertainty surrounding access to confidential information etc.</p>	<p>The monetary equivalent of these benefits is not possible to quantify without knowing the amount of information that MS will include and the number of companies interested in such operations, but it can be considered a significant reduction in administrative burden.</p>
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*(1) Estimates are gross values relative to the baseline for the preferred option as a whole (i.e. the impact of individual actions/obligations of the preferred option are aggregated together); (2) Please indicate which stakeholder group is the main recipient of the benefit in the comment section;(3) For reductions in regulatory costs, please describe details as to how the saving arises (e.g. reductions in adjustment costs, administrative costs, regulatory charges, enforcement costs, etc.); (4) Cost savings related to the 'one in, one out' approach are detailed in Tool #58 and #59 of the 'better regulation' toolbox. \* if relevant*

<b>II. Overview of costs – Preferred option</b>							
		<b>Businesses</b>		<b>Administrations (Member States)</b>		<b>For the Commission</b>	
		<b>One-off</b>	<b>Recurrent</b>	<b>One-off</b>	<b>Recurrent</b>	<b>One-off</b>	<b>Recurrent</b>
<b>Set of measures in policy option 2</b>	Direct adjustment costs	EUR 3.75 – 10 million for certification related to general sustainability claims	EUR 1 million per year in the EU for conducting risk assessment (stress test) for companies	- exploration: 10 FTE for aerial geophysics (already operative in some MS) ; 10 FTE for	- 1/4 FTE per year for reporting on the state of CRM projects on their territories; - 2 FTEs per year for		Around 31 FTEs for the Commission, that would be split by: - 2 FTEs for ensuring the secretariat of the governance structure, in addition to EUR 75.000 per year of organisational costs. - 17 FTEs for implementing monitoring, data gathering and risks

			<p>using strategic raw materials in the manufacturing of strategic technologies</p>	<p>geochemical survey (also already operative in some MS) ; Data reprocessing and predictivity maps: 1 unit of 5 FTE. (Some MS already have those capacity, notably for geochemical survey)</p> <p>- 182,4 Million EUR to cover the whole EU for exploration (dependent upon MS existing capacity and surface covered)</p> <p>- 3-4 FTE per MS to create the database of</p>	<p>participation to the governance structure;</p> <p>- 1/4 FTE per year for the coordination of strategic stocks;</p> <p>- 1/4 FTE to contribute to the development of EU-targets and report on them;</p> <p>- 1 FTE per Member State to develop and implement the national circularity strategy (recurrent costs);</p> <p>- Additional FTEs (not quantified) to enforce environmental footprint obligations.</p>	<p>assessment tasks, based on similar tasks performed by existing units in the Commission), which can be split as:</p> <ul style="list-style-type: none"> <li>o 10 FTEs for market monitoring;</li> <li>o 1 FTE for the management of studies and contracts;</li> <li>o 1 FTE for the building of a data set on projects</li> <li>o 5 FTEs for the coordination of information from Member States</li> <li>- 3 FTEs for the coordination of national stockpiles information and the development of guidance when possible;</li> <li>- 2 FTEs to coordinate the submission of national exploration activities;</li> <li>- 1 FTE to support the board in the selection of Strategic Projects;</li> <li>- 3 FTEs for assessing the suitability of environmental footprint, developing calculation methods and monitor the application of the measures;</li> <li>- 2 FTEs to enforce actions on standardisation and prepare standardisation requests.</li> <li>- 1 FTE to ensure the enforcement of Member States obligation under the Extractive Waste Directive.</li> </ul>
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				closed and abandoned waste sites and fill it with data from permitting files and geochemical campaigns			- 3 FTEs to develop the methodology and run the data-collection exercise underlying the national recycling targets.
Direct administrative costs	<p>EUR 700 000 for existing mining sites of reporting available information on critical raw materials content of waste streams and composition of the waste</p> <p>14.55 million for studies underlying environmental footprint claims (total figures for all companies expected to make claims)</p>	<p>Administrative cost of reporting for large companies operating along the strategic raw materials value chain [up to EUR 49.000 for the whole EU if the information is not already available]</p> <p>Administrative costs of</p>		<p>2 FTE per MS (reporting)</p> <ul style="list-style-type: none"> <li>- 1/4 FTE per MS on the transmission of information on strategic stockpiles</li> <li>- 1/4 FTE for the reporting of the Commission on the development of incentives for companies' resilience</li> <li>- 1/2 FTE for the classification and reporting to the Commission</li> </ul>			

			reporting for large companies using Strategic raw materials (on stress tests) – EUR 38.000 per year		of obligations under exploration		
	Direct regulatory fees and charges						
	Direct enforcement costs						- 1 FTE to increase enforcement of Member State obligations under the Extractive Waste Directive
	Indirect costs						
<b>Costs related to the 'one in, one out' approach</b>							
<b>Total</b>	Direct adjustment costs	EUR 3.75 – 10 million for certification	EUR 1 million				
	Indirect adjustment costs						

	Administrative costs (for offsetting)	EUR million	15,25	EUR 87.000 per year				
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<b>III. Overview of relevant Sustainable Development Goals – Preferred Option(s) (to adapt, this is an example)</b>		
<b>Relevant SDG</b>	<b>Expected progress towards the Goal</b>	<b>Comments</b>
SDG #7 Affordable and clean energy, SDG #13 Climate action	Enable the development of clean energy that relies on critical raw materials (such as wind turbines, batteries and electronic motors, etc), thereby reducing the impact on climate. It will also contribute to incentivising higher sustainability of CRM production through environmental footprint.	
SDG #8 Decent work and economic growth	The support for the CRM value chain is expected to leverage positive impacts on employment, reskilling and upskilling, particularly in former and current industrial regions. This will also have positive impacts over the whole value chain.	
SDG #9 Industry, innovation and infrastructure	The proposal is expected to strengthen industrial resilience, whether by better preparing companies or by directly increasing the availability of supply of CRM that the industry needs.	



Brussels,  
RSB/

## **Opinion**

**Title: Impact assessment / EU measures for critical raw materials**

**Overall opinion: NEGATIVE**

### **(A) Policy context**

Critical raw materials (CRMs) have special characteristics that make them essential for strategic utilisations where there are no reliable alternatives, such as for renewable energy production, micro-chips, aerospace, agriculture and defence applications. They are critical for EU industry because they may be subject to supply risks due to high extraction and processing concentration outside the EU. CRMs are mostly imported into the EU. Well-known examples are rare earths used in magnets for wind turbines, lithium used for batteries and silicon used for semiconductors. CRMs are key enablers for the green and digital transitions.

Both the European Parliament and the European Council have called for action on critical raw materials. In its 2023 Work Programme, the Commission announced the Critical Raw Materials Act consisting of a legislative proposal as well as a communication with complementary actions. The report accompanies the legislative initiative.

### **(B) Summary of findings**

**The Board notes the additional information provided and commitments to make changes to the report.**

**However, the Board gives a negative opinion because the report contains the following significant shortcomings:**

- (1) The report is not comprehensive on the policy context, the lessons learned from past actions and the interaction with parallel measures. It does not clearly define the remaining regulatory gap.**
- (2) The report is not sufficiently clear on the trade-offs between the objectives.**
- (3) The report does not clearly present the content and functioning of some policy measures such as targets, strategic projects, permits and access to finance. It is not sufficiently clear on what will be decided now and what will be decided in subsequent initiatives.**
- (4) Key impacts are not sufficiently analysed.**

This opinion concerns a draft impact assessment which may differ from the final version.

### **(C) What to improve**

(1) The report should provide more clarity on the policy context, the lessons learned from past actions and the planned interaction with parallel measures, including in the sustainability, external, development, trade and research policy areas. The report should be more specific on the regulatory gap to be tackled, particularly in the sustainability area. The impact of environmental legislation and public attitudes on EU CRM production should be also covered when presenting the problem drivers.

(2) The report should present a clear and consistent set of general and specific objectives and a timeline (or major milestones) by which these should be achieved. Specific objectives should be formulated in a way that they do not pre-empt the choice of policy options. Trade-offs (and any resulting prioritisation) as well as synergies between objectives, such as security of supply, EU industry competitiveness, EU's decarbonisation efforts and environmental and sustainability impacts should be explained clearly. The report should also be clearer on the envisaged economic and environmental model for the EU CRM ecosystem and value chain (e.g. improved autonomy of CRM extraction and refining in Europe, mainstreaming of circular economy models, more reliable and sustainable sourcing from third countries, increased use of alternative solutions). On this basis, it should explain what success would look like and how it would be measured.

(3) The measures considered under the policy options need to be presented in a clearer way. Measures which will be subject to analysis in later initiatives (such as certain waste measures and environmental footprint thresholds) can be referenced and would not need to be analysed in depth in this report. The report should provide greater clarity on the nature, types of targets, the supporting analysis required and the envisaged target setting process. The concept of strategic projects should be developed in more concrete terms. The report should clarify the streamlining of permitting processes related to strategic projects and how these would respect the subsidiarity principle. Diversification measures would need further precision on issues such as offtake agreements, private and public stockpiling. The role of the sustainability footprint and how it would work inside and outside the EU should be more thoroughly explained.

(4) The report should be clearer on the investment necessary to deliver on the objectives and the envisaged funding structure. It should clarify the role of and financial support to strategic projects, the envisaged mix of national and EU level funding and the role of state aid. It should explain how the long-term economic viability of high investment measures and strategic projects will be ensured.

(5) The report should better assess impacts of options on third countries and trade, including compliance with international and WTO standards. It should further assess the potential economic benefits and be clearer on the overall impacts of EU industry competitiveness (including for SMEs) as well as the EU based CRM ecosystem. The overall compliance with the 'do no significant harm' principle should be further developed, as well as explaining the role of the measures for the EU's overarching green transition strategies.

(6) The comparison of options should include the coherence dimension. This should allow for a reflection of the main trade-offs as indicated above and overall consistency with existing and parallel measures. The effectiveness comparison should be based on a revised

set of specific objectives. The preferred package of measures should be further justified. The report should also clarify the overall net impacts on main parameters. Costs and benefits should be quantified to the extent possible and the table in annex 3 further elaborated, including on the One In: One Out requirements.

*Some more technical comments have been sent directly to the author DG.*

**(D) Conclusion**

**The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.**

Full title	EU measures for critical raw materials
Reference number	PLAN/2022/1733
Submitted to RSB on	19 December 2022 – amended version 22 December 2022
Date of RSB meeting	18 January 2023