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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council

establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) 168/2013, (EU) 2018/858, 2018/1724 and (EU) 2019/1020

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Subsidiarity Grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
The legal basis for this proposal is Article 114 TFEU[1], which allows the European Parliament and the Council to adopt measures to establish and ensure the well-functioning of the internal market.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
In the case of the approximation of laws/the internal market legal basis, the Union's competence is shared.
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2[2]: - Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?
The Impact Assessment accompanying the Critical Raw Materials Act was subjected to a thorough consultation process to gather the views of different stakeholders across Europe. The consultation activities carried out were: - A call for evidence published for feedback from the 30th of September to the 25th of November 2022 in the "Have your say" portal. The Commission collected 310 answers. - A public consultation published in the "Have your say" portal containing multiple choice and open questions covering regulatory and non-regulatory measures, running in parallel with the call for evidence. The public consultation received 250 contributions and 52 stakeholders attached a policy paper. A factual synopsis report summarizing the outcome of the public consultation activities is of public access at the "Europa" portal[3]. - Questionnaires on "Permitting in the EU Member States" and on "Stockpiling of raw materials in the EU Member States" shared on the 28th of October with the Raw Materials Supply Group (RMSG) which consisted of an online questionnaire of more detailed nature to collect specialised feedback. The Commission received input from 9 Member States, 2 non-Member States and 4 business associations. Around 30 additional policy papers were submitted by email from a wide variety of stakeholders groups. A synopsis report summarizing all the stakeholders positions and contributions to the critical raw materials act is attached as Annex 2 to the Staff Working Document on the Impact Assessment report. Chapter 3 of the Impact Assessment report and Section 2 of the proposal's explanatory memorandum contain a section on the principle of subsidiarity as presented in question 2.2 below.
2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

[1] EUR-Lex - 12016E114 - EN - EUR-Lex (europa.eu)
[2] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN
[3] European Critical Raw Materials Act (europa.eu)

The objective of the Critical Raw Materials Regulation is to ensure the EU's access to a secure and sustainable supply of critical raw materials. There is a clear-added value to establish a common framework at Union level that covers critical raw materials across the whole supply chain to achieve the objective set.

Effective action against supply disruptions requires a joint approach to gather expert-based, transparent and timely data to inform economic operators on market evolutions. Today, there is no Union-level mechanism in place that provides for monitoring and mitigation measures for critical raw materials, that supports the development of the critical raw materials value chain and the sustainability and circularity of the EU's critical raw materials consumption. In the absence of an efficient coordination and cooperation between Member States and the Commission to increase the Union's collective knowledge on critical raw materials trade flows, the EU will not be able to effectively anticipate supply shocks, nor react accordingly.

In addition, critical raw materials value chains are not only capital intensive but are subjected to the irregular geographical location of the mineral deposits. Increasing critical raw materials capacities requires a common framework at the European level able to (i) support companies' investments and competitiveness and (ii) establish harmonised procedures to facilitate value chain developments, particularly on permitting processes. Member States or regional or local authorities will also remain the competent authorities in terms of permitting and will retain the possibility to prevent the selection of a Strategic Project.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

No Member State alone is capable of effectively addressing the growing critical raw materials supply risks – not least due to the repartition of geological occurrences across Member States. The measures included in this initiative will not be as effective if implemented by Member States acting alone, as the problems they address concern the Single Market as a whole. The problems that this initiative tackle are not limited to single Member States or to a subset of Member States but to the EU industrial base and the EU-wide value chain of critical raw materials. In addition, approaches at Member States' level are unlikely to be adequate to serve the needs of closely intertwined supply chains within the internal market, neither will satisfactorily reply to supply chains operators necessities and demands.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

The identified problems are transnational to the EU as they involve all the stages of the supply chains widespread across Europe, starting from fixed production sites based on the geographical availability of mineral resources. Therefore, all the industrial value chains from producers to downstream and recycling industries are affected when a risk of supply disruptions arise as well as the final consumer.
As a result, the problems directly involve the core provisions of the internal market such as the cross-border movement of goods and workers but also the competitiveness of European business, the well-functioning and stability of the internal market and in general, the stability of the EU economy.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty[4] or significantly damage the interests of other Member States?

In light of the foreseen needs of critical raw materials for strategic sectors and the potential disruptions, Member States might decide to implement unilateral decisions to secure on a national

[4] https://europa.eu/european-union/about-eu/eu-in-brief_en

basis their own supply of critical raw materials. Member States might decide to implement decisions such as the introduction of uncoordinated risk preparedness mechanisms or incentives to support national sectors and businesses, which might end up distorting competition between Member States, creating intra-EU restrictions to the free movement of goods and triggering the fragmentation of the single market.
(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
A Regulation is of general application and is binding upon and directly applicable in all Member States. Nevertheless, the proposal ensures that Member States are represented in the Critical Raw Materials Board, enabling them to advise the Commission on all the actions taken to improve the security of supply of critical raw materials, in particular the selection of Strategic Projects, where approval from the Member State where the project is to be developed is required, and for the monitoring and risk preparedness actions carried out in the context of this Regulation, where Member States are expected to actively contribute with information and analysis, which the Commission will complement and coordinate. As mentioned previously, while this initiative sets out measures to incentivise national authorities to simplify and accelerate administrative procedures for Strategic Projects, Member States, regional or local authorities retain the possibility to prevent the selection of a Strategic Projects. Member States remain the solely competent authorities in terms of permitting and remain responsible for their staffing decisions. Finally, this Regulation requires Member States to perform geological exploration campaigns and to increase their efforts on waste collection, recovery of critical raw materials, in particular from extractive waste, and the use of secondary raw materials. These are obligations are designed so as to target those areas where Member States retain significant competence, and they define the areas where more actions is necessary to achieve the objectives of this Regulation, while leaving discretion to the Member States on how to fulfil and implement them.
(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?
Supply disruptions jeopardize EU industries and businesses and compromise EU main climate and digital goals. EU industries import most of their critical raw materials. Disruptions of supply would spill over across industrial sectors and stages of the value chain, eventually endangering citizens' well-being.
(e) Is the problem widespread across the EU or limited to a few Member States?
Action at the national level cannot contribute by itself to increase raw materials capacities. Most risks of supply come from geopolitical vulnerabilities that affect non-energy and non-agricultural raw materials of high economic importance, emphasized by the concentration of supply from a few third countries and an increasingly strong competition to secure critical raw materials for the digital and green transition. In the meantime, under the disjoined and mostly coordinative EU approach pursued so far, there has not been significant progress in increasing the Union's critical raw materials autonomous capacity. Few Member States have updated regulatory frameworks for critical raw materials, which slows down actions to improve raw materials access. Some Member States have developed national agencies to monitor raw materials market trends and domestic supplies, but their efforts cannot effectively mitigate the risk of disruption for the whole Union. Given that critical raw materials are essential for the Union economy and the adverse state of the raw materials market in the EU, the risks of supply disruptions are widespread across all the Member States.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
The proposal only sets up the minimum regulatory requirements needed at the Member States level for the objectives to be achieved.

The proposal sets general benchmarks to increase the capacities at the different EU value chain stages with the objective of guiding and accelerate actions towards the common goal of securing critical raw materials supply, as well as benchmarks for the diversification of supply chains
When it comes to the value chain, faster permitting procedures are required only for Strategic Projects. In addition, the Member State on whose territory the project is located retains the right to oppose the decision.
The proposal lays out provisions for Member States to develop exploration programmes in their territory, which is a necessary pre-condition to build critical raw materials capacities.
When it comes to monitoring and risk preparedness, this proposal aims at incentivising Member States to improve their monitoring and strategic stocks activities through information requirements. However, this proposal only covers information requirements for public stocks and data-gathering from key market operators.
Finally, regarding circularity provisions, the initiative does set rules for Member States to develop the circularity of the critical raw materials markets as they retain important competences in those areas, but Member States should devise their own measures to achieve general objectives.

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?

Overall, Member States are favourable to the proposal and acknowledge the need for a coordinated action at the European level to secure raw materials supply. Member States that shared their views with the European Commission agree that is a priority for Europe to strengthen EU critical raw materials' capacities and ensure that critical raw materials follow the highest environmental and social conditions. Most of the concerns pertained to the subject of the type of governance body to be established, the burden of public stockpiling and the diversification of supply from third countries.

2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?

The objectives of the proposed action be better achieved at Union level by reason of the scale, the urgency and the scope of the efforts needed.

(a) Are there clear benefits from EU level action?

There is clear added value from acting at the EU level. A common framework at the European level will guide and encourage companies' investments, de-risking strategic projects and boosting competitiveness. It will ensure that projects are developed taking into account the overall single market's needs, without leaving out a particular material or a value chain stage. EU action would also establish harmonised procedures to facilitate value chain developments, bringing long-term benefits to Member States, economic operators, and European citizens.

In particular, this initiative will save companies significant time and resources by coordinating monitoring activities at the EU level and deploying measures that mitigate the impact in case of a supply disruption. The regulation also conceives measures to accelerate joint efforts to achieve a more sustainable supply of critical raw materials for EU industry by setting measures to improve the circularity and sustainability of the raw materials that are consumed in the EU or placed on the EU markets, thereby incentivising the emergence of a more sustainable critical raw materials market and a greater share of secondary production, which creates new economic opportunities for European companies and workers.

(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

As mentioned previously, security of supply of critical raw materials can only be efficiently achieved

at the EU level. By defining a binding-list of critical and strategic raw materials and creating a framework to secure their supply, this proposal sets a solid basis for European markets and national authorities, providing certainty for investors and delivering a strong position for the global markets. The benefits of supply security are not quantifiable directly, but the costs caused by supply disruptions, shortages or demand/supply gaps risks being substantial, particularly if they hinder the EU's ability to meet the green and digital transitions.

In addition, by setting up a governance body comprised of Member States and the European Commission, Member States will save costs by preventing overlapping actions and market fallouts.
The cost to improve the coordination and information exchange with regards to monitoring and stockpiling at the EU level is overrun by the cost of non-acting. A coordinated approach towards critical raw materials monitoring should provide Member States with a strategic and coherent framework to support the CRM value chain, with positive effects on their supply chain's solidity and their industry's resilience.

As mentioned before, Strategic Projects should contribute to untap the potential of the EU strategic raw materials. The selection of Strategic Projects follows a comprehensive assessment that prioritises projects contributing the most to achieving EU capacity benchmarks while tackling the most pressing vulnerabilities across EU supply chains, therefore improving the resilience of the Single Market.

Measures to foster the development of a secondary raw materials will improve circularity. Environmental footprint measures are efficient as they reward companies' sustainable choices, improve transparency, and address the most polluting CRMs placed in the EU market without envisioning major costs.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

As stated in 2.2., if the EU wants to achieve the twin transition, it is efficient, effective or coherent to set a critical raw materials framework at the EU level. Individual actions by Member States could conflict in many ways, for example by outbidding each other on international raw materials markets, by imposing diverging regulation for market operators or supporting projects where financial resources are available rather than where the geological or other resources are the most favourable. Such an approach would also leave potential synergies untapped, such as on monitoring and strategic stocks, where resources can be shared, and lessons learned from each other. In fact, Member States are calling for a coordinated EU approach and waiting to adopt national strategies only after the European Critical Raw Materials Act is adopted.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

There is no loss of competence for Member States and local or regional authorities as they remain the main authorities in terms of permitting or exploration for instance. This regulation provides for a joint framework for their actions.

(e) Will there be improved legal clarity for those having to implement the legislation?

The Regulation sets up specific timelines to guide Member States actions when a specific requirement is established.
Many provisions of the Regulation will be specified through implementing or delegated acts, that should further harmonise the implementation of the obligations introduced under this Regulation, thus improving legal clarity.

3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

The proposed measures do not exceed what is necessary to secure the supply of critical raw materials with a demonstrable value added in acting at the Union level due to the scale, the urgency and the scope of the efforts needed.

The measures on Strategic Projects focus on strategic raw materials to ensure that the scope is of the Act captures the materials that are the most needed to achieve the Union's objectives for the green and digital transitions as well as for resilience and security.

The measures on exploration are proportional to the size of the Member States territory, and Member States would remain able to build on existing exploration policies. The national programmes of exploration are however necessary to foster the development of the value chain. The measures proposed include a review and engagement with Member States on a regular basis especially when it comes to monitoring and governance provisions.

The measures on monitoring leave Member State responsible for the identification and monitoring of key market operators. The burden on companies for providing information is very limited as it only captures large companies active in extraction, refining or recycling of critical raw materials.

The measures tackling companies risk preparedness remain conscribed to only a subset of large companies manufacturing strategic technologies with strategic raw materials and limited to internal audits and stress testing of their supply chains.

The measures on sustainability do not impose requirements that go beyond what is necessary to incentivise the development of the market for secondary raw materials or to ensure the increased sustainability of critical raw materials production, through a gradual and evidence-based approach.

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

The impact assessment that accompanies the regulation analyses the impacts of the policy option through a quantitative and qualitative assessment that proves that the proposals are proportionate and do not exceed what is necessary to secure critical raw materials at the Union level.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

Yes, the initiative only covers those aspects where actions at the Union level represent a competitive advantage compared at the national level.

(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?

The objectives of this proposal can be best pursued through a Regulation. Given the urgent and further increasing risk of supply disruption of critical raw materials, the need for transposition in the Member States and for regular reviews to ensure proper implementation required, a Directive would not be fit

for purpose. This applies even more so for a Recommendation or alternative regulatory methods. By contrast, a Regulation ensures immediate effect once it enters into force and greater legal certainty for operators and Member State authorities subjected to it.

(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)

Considering the objectives that this Regulation set, this initiative leaves as much scope for national decision as possible (see reply above to question 2.3.f).

(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?

To implement the regulation and the related delegated acts, the European Commission estimates that 31 full-time equivalents are needed over the period at full operational capacity of the EU Multiannual Financial Framework (MFF). New commitments would be needed on existing budget lines, amounting to EUR 14.969 million in Heading 7 (Administrative Expenditure) and EUR 18.169 million in total, with EUR 3.2 million in Heading 1.

For each Member State, the European Commission estimates that around 7 full-time equivalents are needed to cover administrative and coordination costs and around 26 full-time equivalents to cover exploration programmes. In addition, total costs for covering the whole EU with exploration programmes led by Member States amount to EUR 182,4 million.

The details costs assessment per measures per companies, for the ones falling within the scope, are detailed in the impact assessment. They can relate in total for the EU to:

- EUR 1 million per year in the EU for conducting risk assessment (stress test/audit) for large companies using strategic raw materials in the manufacturing of strategic technologies;
- EUR 700 000 of one off costs for existing mining sites of reporting available information on critical raw materials content of waste streams and composition of the waste
- EUR14.55 million of one off costs for studies underlying environmental footprint claims (total figures for all companies expected to make claims)
- EUR 49.000 of total yearly administrative cost of reporting for large companies operating along the strategic raw materials value chain
- EUR 38.000 of total administrative costs of reporting for large companies using Strategic raw materials

(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account.

Evidently, each Member State's economy has a different structure: In some Member States, the services sector is more important, in others industry and manufacturing; some Member States have a strong industry producing strategic technologies (electric vehicles, wind turbines, chips, etc.) that require critical raw materials, while others less. Nevertheless, it is clear that all Member States will benefit from greater and more secure availability of critical raw materials, given the interlinkages in the single market and the shared political objectives, such as the European Green Deal. Special circumstances in Member States have been taken into account by defining in many areas the objectives to be achieved (e.g. time limits for permitting of Strategic Projects, or greater collection of waste products and components rich in critical raw materials), while there is substantial discretion for Member States to take into account national specificities (such as federal structures in permitting) in the implementation. Also in the monitoring and strategic stocks framework, there is substantial scope for Member State authorities to focus their efforts on those raw materials and those sectors that are most important to them, while the Commission would coordinate these efforts and ensure that also

those raw materials that are not selected by Member States are covered.