

Franco – German Non-Paper on a Critical Raw Materials Act

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A regulatory initiative on raw materials was announced by the European Commission at the Competitiveness Council on June 9th 2022. In this context, French and German authorities call for a Critical Raw Materials Act (“CRM Act”) and wish to provide first inputs on the content of such an initiative. This initiative could be accompanied where relevant by an update of the Raw Materials Action Plan (September 2020).

1/ Content of a Critical Raw Materials Act

For French and German authorities, a legislative initiative on raw materials should:

- Focus on the 30 raw materials identified as critical by the European Commission in order to concentrate available resources on reducing our strategic dependencies;
- In close consultation with industry and on the model of the EU Chips Act, set objectives for reducing European manufacturers’ supply vulnerabilities by 2030, with targets for developing primary and secondary production within the European Union for these critical raw materials as well as for ensuring secured access to extra-European sources;¹
- Focus in particular on actions helping “closing the loop” of the circular economy by 2050;
- Ensure that the highest European ESG standards are used as the reference point for appreciation of raw materials project performance;
- Provide for new actions, or a recasting of existing instruments, without duplicating other existing initiatives pertaining to raw materials.
- Ensure, in the actions that it will deploy, that partner countries’ needs are met.
- Contain clear, comprehensible and transparent figures on investment and financing issues.

On this basis, French and German authorities foresee a Critical Raw Materials Act articulated around the following pillars:

- ***Pillar 1: Strengthen crisis management of CRM supplies:***

The CRM Act must include a set of provisions aimed at anticipating crises and mitigating resulting risks. To this end, a CRM Act, through a dedicated structure, could:

- Establish an early warning system to anticipate shortages of strategic inputs, by introducing regular information exchange obligations;
- Implement mechanisms for strengthening the internal identification and analysis by companies of their supply vulnerabilities. These could include measures to inform administrations, downstream industrial clients and, if necessary, investors, in order to enable the market to better internalize its current vulnerabilities;
- Monitor and screen raw materials supply chains, in particular assessing high supply dependencies, using considerable analyses that have been undertaken by the COM (RMSG) and Member States agencies, e.g. German and French raw materials agencies and Geological Surveys;
- Introduce a toolbox that would help implement corrective measures inspired by other crisis instruments: no lever should be a priori ruled out;
- Include provisions/options on the implementation of a stockpiling policy for certain critical raw materials, joint purchasing, as well as legal incentives for diversification at the level of

¹ This could include, inter alia, a target of sufficient diversification to ensure no more vulnerabilities on a unique external supplier and/or chokepoint exist by 2030.

the European Union, Member States and the main strategic industrial sectors², by first studying the benefit/risk balance of such policies.

- *Pillar 2: [Check and evaluate existing financing instruments to] support the necessary investments in projects for the production of raw materials and critical metals (mines, refineries, and recycling capacities) within the Union and outside it*

A CRM Act would provide a pool of funding based on existing financing instruments to encourage, and complement where needed, private investment in primary and secondary raw material projects located in the EU. To this end, a CRM Act could:

- Amplify and create synergies between all existing funding instruments (Horizon Europe, “Next Generation EU”, BEI, structural funds, funds set up with respect to the war in Ukraine...) to support the development of raw materials projects;
- Facilitate European productive industrial investments: French and German authorities propose to draw inspiration from the "Chips Act" with a new financing mechanism aimed at making easier the establishment of strategic production, processing and recycling facilities as well as substitution research of raw materials in the EU.
- Consider the creation of a sovereign public/private investment fund³, combining equity, loans and guarantees, in order to invest in mining, refinery, primary processing or recycling projects located in and/or outside the EU in accordance with the highest ESG standards. Particular focus should be put on recycling capacities and technologies.

The CRM Act, to these ends as well as to deliver actions envisaged under Pillar I, could introduce a structure along the lines of the Japanese JOGMEC or the Korean KOMIR. Such a structure, empowered to invest directly or support companies' investments in raw materials projects (including those in third countries), could also help anticipate disruptions in raw material supplies and strengthen European resilience.

- *Pillar 3: Ensure a fair-trade and sustainable market framework*

The CRM Act should promote the highest level of European environmental and social standards when it comes to critical raw materials placed on the European market regardless of their origin in full compliance with WTO rules. This is key to ensuring the long-term sustainability of European production. In particular, it will be important to ensure that Corporate Social Responsibility (CSR) obligations do not fall solely on European extractive companies or industrial actors importing raw materials: relevant obligations could apply to the placing on the market or putting into service of products that incorporate the raw materials concerned.

To this end, key provisions of the EU regulatory framework for Batteries could be extended to all other product groups, for instance the concept of a carbon footprint for all batteries placed on the European market. It would likewise be appropriate for a CRM Act to extend the principle of mandatory recycled content used in the proposal for the new batteries regulation to other pertinent products and associated critical raw materials. Such pertinent products, to be further defined, could for instance include permanent magnets.

The CRM Act, finally, could introduce a common European framework that would recognize a single (or a very small number of) benchmarks such as the “Initiative for Responsible Mining”

² These strategic sectors are defined as energy production/storage/distribution, transport and mobility, health, aeronautics, space, electronics, defense and their intermediate technologies.

³ This financial vehicle would have the same intention, amplified, as the European investment fund of 400 million euros for materials which could finance a dozen extraction or refining projects in Europe announced by Maros Sefcovic at the conclusion of the informal Competitiveness Council of 1 February 2022.

(IRMA) concerning non-European sourcing. Through this framework, particular points of concern could be strengthened, such as public access to reporting documents.⁴

2/ Complement the CRM Act through a renewed action plan

The different pillars of the future CRM Act will naturally have to be articulated with relevant initiatives announced or under negotiation in various bodies (future Single Market Emergency Instrument for the crisis management pillar, Waste Shipment Regulation, Duty of Care, Sustainable Products Initiative, etc.). The legislative initiative could also be accompanied by a communication reaffirming and updating the main lines of the raw Materials Action Plan of September 2020 in order to maintain a holistic approach to the challenges of raw materials.

Outside of the CRM Act, support to innovation and first industrial deployment⁵ in the field of raw materials should in particular be fostered, by incorporating, where pertinent, a component dedicated to projects for the production, processing and recycling of critical materials that serve as inputs for present and future Important Projects of Common European Interest (IPCEI). Extending the eligibility period of notified IPCEIs to include that dedicated component (i.e. the two Batteries and the first Microelectronics IPCEI) should be considered to this end.

Beyond this, the following ideas could be reaffirmed within this updated action plan:

- The need for a constant and thorough understanding of our raw materials vulnerabilities in the spirit of the Commission's ongoing work on strategic dependencies, with an update of the Union's critical raw materials list if pertinent;
- The importance of including raw materials in the scope of the taxonomy, with an ambitious timetable for completion;
- Support for raw materials diplomacy, with the conclusion of new strategic partnerships along the lines of agreements with Canada and Ukraine securing both European and partner countries' needs;
- Active and coordinated participation to actions undertaken under international initiatives to strengthen the sustainability of supplies at a European and international level;
- The imperative of ensuring social and environmental acceptability of European mining projects, with concrete proposals towards streamlining project approval processes where applicable.

⁴ For mining sites, failures in the event of accidents or the materialization of risks typically.

⁵ In the meaning of the Commission Guidelines on IPCEI.