

Euromines policy requests - EU Critical Raw Materials Act – Executive Summary

Fostering the license to operate for mining (legal and political)

- *Lack of investment in mineral exploration and later lengthy, unforeseeable, and complex permitting procedures hinder the uptake of mining projects in the EU. We urge the Commission to model guidance to policies similar to the provisions of the Trans European Network Regulation for Energy infrastructure to facilitate permitting procedures by providing a general interpretation of the EU legal framework, ensuring that raw material projects receive adequate funding when venture capital is not sufficient and bringing raw materials into the scope of projects of overriding public interest (IROPI).*

State aid and OPEX Level Playing field

- *To ensure long-term investment certainty for raw materials mining in Europe and to keep supply chains in the Single Market, certain state aid provisions will be necessary for primary raw materials extraction to be able to model OPEX within a reasonable margin of fluctuation to be competitive on and in global markets. This pertains in particular to indirect CO2 cost compensation and CEEAG.*

Interaction of the Raw Materials Act with other policy areas

- *Raw materials mining and production is an energy-intensive process that is limited and hampered by the current energy price crisis. While REPowerEU provides some references to the raw material needs for the roll-out of its objectives, the interaction between raw materials provisions and REPowerEU objectives remains rather vague in as much as high energy prices are not being tackled. In addition, we urge that the CRM-Act will be accompanied by guidance for interpreting the EU environmental acquis to ensure a streamlined and efficient permitting procedure.*
- *In line with the Commission's Better Regulation agenda, we urge to refrain from using this mandate to add additional layers of regulation but follow the one-in-one-out approach. Moreover, a "raw materials check" for new legislation should be introduced to avoid a legislative burden that could weaken domestic raw materials production and would contradict the aim of the EU raw materials policy.*

Identification of priorities and objectives for improving the security of supply to European industries – how to future-proof the Critical Raw Material Act

- *Widen the scope to strategic materials rather than only what is critical today. We call for an industrial eco-system-based approach that takes into account all materials and the whole production value chain (exploration, mining, processing and recycling) necessary to achieve a solid degree of autonomy for strategic sectors (e.g. clean energy technologies, defence, micro-electronics, fertilisers).*
- *Build up a long-term EU pipeline for future primary production; focus on facilitating and attracting investments in exploration and mining in Europe.*
- *Apply the TEN-E principles of PCI and IROPI to mining and raw material projects*

Monitoring and data exchange: the need for an EU Raw Materials Agency/Governance

- *To avoid data-silos and adequate monitoring for the Single Market on raw materials, a fully equipped EU raw materials agency/governance could better provide the needed services and support the data exchanges between national agencies.*
- *The agency/governance should be tasked to promote EU raw materials projects, with a particular focus on the development and production of raw materials within the EU. This must go hand in hand with a mandate to inform about and increase the public standing and acceptance of the EU mining industry.*
- *Also, the agency could support and incentivize increased mineral exploration projects (e.g. funding).*

Introduction

Euromines very much welcomes the Commission's initiative to address the paramount issue of securing the necessary raw materials supply for essential value chains and the green and digital transition. We support the multi-pronged approach as proposed in the Inception Impact Assessment of securing access to raw materials via diversification of raw materials through trading relationships as well as an increased emphasis to develop own resources and mining projects in the context of an open strategic autonomy.

We believe the initiative is very timely considering last year's awakening of supply deficiencies due to the pandemic, the Russian invasion of Ukraine and the fact that other world regions and economies are strategically stepping up efforts to secure their own supply or further concentrate their market-dominant position. This could increase the EU's vulnerabilities and structural supply risks. The absence of a coherent EU raw materials policy fostering EU production with an internal mining and external trading dimension could affect the EU's ability to achieve the green and digital transition.

To ensure and increase the domestic supply of strategically important raw materials, we believe that facilitation through guidance and incentivization to expand and open mining operations in Europe, paired with a level playing field in state aid provisions for environment and climate protection costs throughout the mining value chain from exploration to processing is needed.

Fostering the license to operate for mining (legal and political)

The Inception Impact Assessment rightly points out that the main issues around mining are:

- ⇒ Lengthy, unforeseeable, and complex permitting procedures with ample possibilities to hold up and derail the process
- ⇒ Lack of guidance on the EU level to interpret policies and objectives of existing legislation that lead to conflicting objectives regarding environmental protection and security of supply from own sources
- ⇒ Access to finance for exploration projects up to the stage of feasibility studies
- ⇒ And last but not least the legal and political license to operate.

We believe that the Critical Raw Materials Act offers a unique opportunity to tackle these in many instances interrelated issues. A strong signal would be to focus specifically on ensuring raw materials supply security through EU mining and production by adapting the provisions of the Trans-European Networks for Energy (TEN-E) to the mining industry. As a policy, linking the energy infrastructure of the Single Market to the prerogatives and strategies of EU member states it has several advantages. In essence:

- The subsidiarity principle for permitting remains intact and the competence of Member States
- Focus on boosting prioritization in project identification, permitting and implementation via strategic plans that can be geared towards the security of the supply of raw materials
- The possibility to provide de-risk finance and targeted support as well as the designation of Projects of Common Interest and Important Projects of Overriding Public Interest

In addition, clear guidance on boosting permitting for projects that help attain the strategic raw material objectives for the Green Deal and Sustainability Transition would be a big step forward in streamlining and speeding up processes once a project is designated PCI (or even IROPI) status as spelt out in Chapter III of the TEN-E Regulation. This should also apply to projects with proven geological and technical feasibility but where conflicting interpretations related to land use/access to

land are blocking the project. Risk Finance in chapter VIII provides very useful guidance for projects that cannot raise the necessary venture capital and would require support via different – including public – sources (three-step logic).

Taking the EU's Projects of Common Interest (PCIs) list for interconnecting energy system infrastructure as an example, we believe that the EU strategic raw materials project list should take a similar approach:

- A projects list that is reviewed and updated every two years
- Allowing for accelerated permitting processes and easier finance eligibility
- Subjecting projects to a sustainability assessment during project selection (e.g. linked to the EU principles for sustainable raw materials)

Thus, the example of the TEN-E regulation and related provisions for renewable energy projects in the amendment to the review of the EED and RED in the context of REPowerEU would be a useful way to go forward and ensure tapping the full potential of EU raw materials deposits.

As regards permitting (cf. interaction with other policy areas), an EU guidance should outline best practices, drawing from similar jurisdictions (Canada, Australia). Best practices include the creation of "ad hoc" working groups for each mining project that arrive at the relevant administration, comprising members from the public service, the industry and academia to solve one by one the different questions and issues in a well-defined procedure. The guidance could pick up this idea to solve mining permitting issues for individual projects in time and allow for projects to efficiently establish a roadmap.

This would keep national authorities in the driving seat for permitting and retaining rigour in assessing economic and ESG impacts but incentivize them at the same time to accompany strategic projects in their workstream with indicative deadlines for reaching a decision. In addition, such a guidance can help by providing a sufficient degree of legal certainty to avoid delays in permitting and operations by litigations raised bid losers as it would ensure sound procedural accountability.

State aid and OPEX Level Playing field

Mining and extraction projects are highly capital intensive and, in some instances, would require priority financing from EU and national tools. The first option is to launch a new EU Raw Materials fund or to ensure that all available EU finance tools are open for strategic raw materials mining projects.

The European Investment Bank (EIB) and European Bank for Reconstruction and Development (EBRD) should be more active in de-risking priority projects and financing primary raw materials projects. Financial needs of a mining operation change over its lifespan with venture capital investments during the exploration phase coming at a large risk. These would need to be cushioned with state aid if a project or a raw material for exploration is considered to be of strategic relevance. Another financing bottleneck is conducting a feasibility study once a permit is granted.

In addition, we would ask to use the launch of the Critical Raw Materials Act for a wider review of state aid guidance regarding raw materials to widen and ensure state aid eligibility for raw materials mining in existing tools such as CEEAG, ETS indirect CO2 cost guidance and earmarking in the Recovery and Resilience Facility. This would serve as a complementary option for starting projects or scaling up existing supply possibilities by addressing OPEX uncertainties.

This is salient for electricity (decarbonization commodity of choice, both direct and indirect) – which is necessary to take informed investment decisions until 2030. For this, we would need regulatory changes in energy markets that incentivize direct and indirect electrification, including the eligibility for indirect cost compensation.

Interaction between policies and importance of coherence: policy alignment with the Raw Materials Act

Tapping the EU raw material mining potential needs a coherent environmental policy framework to facilitate permitting and supporting guidance to help solve conflicting land use interests as the need for strategic metals and minerals becomes more visible. The existing environmental policy framework consists of legislations that include requirements that in some instances lead to a blockage of permitting at the national and regional level causing a high degree of unpredictability in permitting processes from different interpretations and applications. The Commission should also take this opportunity to further investigate certain parts of the EU legislation that regulate the use of land and water in order to identify inconsistencies or obstacles.

A suggested solution is the creation of EU and National Guidance and establishing a “Strategic Autonomy in Raw Materials Working Group” evaluating projects and inconsistencies in the regulatory framework. The Commission should assess current EU legislation to allow efficient permitting to foster the EU mining potential along the full lifespan of a mining project, from exploration to post-closure. It must be acknowledged that mineral deposits of economic value are few, hard to find, capital intensive to explore and cannot be relocated as other industrial installations. To guarantee a sufficient level of EU raw materials supply autonomy, all EU legislation should undergo a “raw materials check” to avoid conflicting policy objectives without jeopardizing a high level of environmental protection.

Raw materials exploration, mining and production is an energy-intensive process that is limited and hampered by the current energy price crisis. While REPowerEU provides some references to the raw materials needs for the roll-out of the objectives, the interaction between raw materials provisions and REPowerEU objectives remains rather vague in as much as high energy prices are not being tackled. We would welcome to use of the Critical Raw Materials Act to also facilitate the economic environment of raw materials extraction in terms of energy costs.

Finally, while we appreciate the mandate of the Commission to ensure adequate raw materials supply through the development of own resources and strengthening of supply chains, we request to follow the Better Regulation approach of one-in-one-out and avoid adding additional regulatory layers on top for our industry. Mining is highly regulated on a regional and national level for good reasons of environmental protection and the subsidiarity-based reasoning that certain issues are better dealt with locally. Thus, the Critical Raw Materials Act should in its details take into account the subsidiarity principle and avoid using the mandate to increase regulatory and compliance burden.

Identification of priorities and objectives for improving the security of supply to European industries – how to future-proof the Critical Raw Material Act

- *Identify strategic raw materials as a complement to the Critical Raw Materials List*

Certain minerals and metals are currently in the limelight for their demand in clean energy technologies and advanced electronics. Economically viable mineral resources are rare and hard to find and require an eco-system of expert skills, technologies and innovation, risk-willing finance and access to land to be explored, extracted, produced and recycled. In addition, some of these minerals are a by-product co-located in the bedrock with a carrier ore (i.e. REE in iron ore and nickel

in copper ore), relies on a carrier metal in the mining phase in order to be less economically vulnerable and subject to market manipulation and often they rely on auxiliary minerals and metals in the production process (i.e. magnesite to ensure heat resistance in processing).

The EU methodology to define the criticality of raw materials might miss out on the materials that are of *strategic* importance to the EU or individual Member States' industries, and also miss the materials that might become critical in the future in light of the Sustainable and Digital Transition, as well as from a security policy perspective. Therefore, a *wider definition of strategic materials defined at the MS level needs to be an addition to the current definition in order not to risk new strategic dependencies* to avoid shifting bottlenecks from one material to another.

This needs to be mirrored in the scope of the act; not to focus on an ex ante-determined list of raw materials such as the Critical Raw Materials List but to keep the scope open to react and adapt to future trends and developments of strategically important raw materials.

Refraining from a fixed set of pre-determined minerals and metals – given that many are a by-product or are mined in conjunction with other materials – would allow us to stay prepared for the dynamics of the future and encourage the development of projects for all types of raw materials used and necessary for a robust raw materials ecosystem supporting the digital and green transition.

- ***Build up a long-term EU pipeline for future primary production***

One of the EU priorities needs to be on building up a pipeline of potential production within the EU - starting from exploration and primary raw material production. Especially *exploration needs to be carried out widely and without limitations to certain substances or areas*. Europe is under-explored and the basic information provided by the national geological surveys is in many cases old, and lacking modern analysis and performed at a time when it was not even possible to detect some of the critical raw materials. *Emphasis needs to be put on building up the knowledge of the European bedrock as well as attracting investments into the exploration and development of mining projects*.

- ***Apply the TEN-E principles of PCI and IROPI to mining and raw material projects***

Mining enables raw material ecosystems necessary for the green and digital transition. Thus, when identifying priorities for EU action, we urge the Commission to apply the principles of “Projects of Common Interest” (PCI) and “ projects with imperative reasons of overriding public interest” (IROPI) to mining projects as it is used in the TEN-E regulation and for achieving REPowerEU objectives.

In addition, it should be possible to cascade the “overriding public interest” status not just to specific policy objectives (i.e. REPowerEU and the installation of wind turbines) but to the entire industrial eco-system that allows this installation – including the raw materials base starting from exploring and developing a mineral resource deposit into a mine, manufacturing capacity and technology availability.

The idea of Projects of Common Interest (PCI) and Strategic Raw Materials Plans related to the functioning of the integration of the electricity market could be applied to the raw materials in as much as it could cover project identification and planning security. Such an approach can be merged with strategic foresight reports for raw material needs and equally PCI-status for projects for which there are no alternative funding solutions.

Monitoring and data exchange: the need for an EU Raw Materials Agency/Governance

Defining and executing the basic principles of the strategic approach requires a sound governance framework, coordinated at the EU level with participants from industry and member states. The EU needs an EU Raw Materials Agency tasked with coordination in modern geological information, identifying concrete projects across Member States, defining de-risking needs and operating as an interface between Member States' projects and DG Competition helping greenlight state aid.

Coordinated action and data exchange to channel funds into exploration projects is also a major task that such an agency needs to take up. As exploration is cost-intensive without security for a long-term success of such an endeavour, with different data repositories in every member state on deposits and geological formations, a streamlining of this so far fragmented knowledge would be of great help to incentivize and facilitate upstream raw material projects. Euro Geo Surveys (EGS) and its national member organisations should be given a strong role in building a knowledge base on the geological potential for Europe and in creating a project base for mining in Europe.

While there are national raw materials agencies, many of them focus on the development of third-country projects to ensure raw materials availability for their downstream industries. An EU raw materials agency should be tasked with promoting raw material and mining projects around deposits within the EU as well as serving as an expertise and information provider to the Commission about prerequisites for developing and fostering mining projects, potential conflicting policy objectives and safeguarding measures to take into account when designing legislation and policies on issues that could jeopardize the ability to secure a sustainable and responsible supply of raw materials from EU sources. In many instances, this requires overcoming the not-in-my-backyard attitude, so this agency must have the mandate to promote and inform about the EU mining industry, its practices and necessity and to increase the standing and reputation of our industry in the public.