EU critical raw materials act


This briefing provides an initial analysis of the strengths and weaknesses of the European Commission’s impact assessment (IA) accompanying the above-mentioned proposal, put forward by the Commission on 16 March 2023 and referred to the European Parliament’s Committee on Industry, Research and Energy (ITRE).

Critical raw materials (CRMs), such as antimony, arsenic, barite, bauxite and beryllium, to name just the first five of the Commission’s latest proposed CRM list, are essential elements for EU industry, and indispensable for Europe’s digital and environmental transition. They are crucial for a range of strategic sectors and applications, such as green technology, the digital and defence industries, aviation, micro-electronics, medical devices, batteries, and everyday devices, such as smartphones. The latter contain dozens of different metals and rare earths, including nickel, gallium and tantalum. However, while CRM demand faces exponential growth, the EU relies heavily on imports, as it extracts and processes only a fraction of its CRM needs. Meanwhile, CRM recovery is slowly gaining traction: many CRMs being metals, they theoretically allow for nearly endless recycling, although recycling of some CRMs still poses technical and economic challenges.

A Commission document accompanying the 2021 update of the new industrial strategy identified CRMs as an area of strategic dependency for the EU. The present proposal would be the first EU act to specifically regulate the EU’s supply of CRMs, and would contribute to strengthening the EU’s open strategic autonomy. It aims to secure the EU’s CRM supply by introducing a monitoring, stockpiling and risk preparedness system, and contribute to ramping up EU capacities along the value chain. However, as the projected steep rise in future CRM demand risks outpacing supply, the IA admits that this proposal alone would not be sufficient to ‘ensure secure and sustainable supplies of CRM for the EU economy’ and that further efforts are required (IA, pp. 6 and 52).

Featuring under the heading ‘A Europe fit for the digital age’, the proposal is included in the 2023 Commission work programme and the EU’s 2023 joint declaration on legislative priorities. It responds to Parliament’s resolution on a European strategy for CRMs (November 2021), the European Council’s Versailles Declaration (March 2022), and Commission President von der Leyen’s commitment in her 2022 State of the Union address to reduce the EU’s dependency on CRMs and rare earths. The proposal is accompanied by a Commission communication stressing the importance of CRMs for the green and digital transition and mapping out complementary action.

Problem definition

The IA identifies the EU’s lack of secure and sustainable access to CRMs as the core problem. The EU is highly dependent on CRM imports from third countries, thereby facing strong supply concentration in mineral extraction and also – further up the value chain – in processing and refining. For example, the EU depends on China for over 90% of its supply of rare earths, gallium
and magnesium; the IA notes a risk of dominant CRM suppliers leveraging market power in downstream industries.

Spurred by technological innovation and the twin transition, projections for the coming decades suggest a steep rise in CRM demand, which is expected to largely outpace supply levels. This future supply-demand gap risks exacerbating supply shortages and market volatility.

The IA presents three sub-problems together with their underlying drivers (IA, pp. 11-25). Firstly, insufficient anticipation and mitigation of supply risks make the EU prone to supply chain disruptions. This lack of anticipation may have major economic consequences, as exemplified by the disruptions that affected the chips value chain in 2020-2021, which cost the car industry alone €100 billion (IA, p. 15). The IA states that – apart from the Commission’s triennial criticality assessment – systematic monitoring of CRM supply and risk preparedness are currently widely lacking at EU and Member State level.

Secondly, according to the IA, the EU’s domestic CRM potential is not sufficiently exploited and lacks capacity in key stages of the value chain. The IA suggests the EU could ramp up its investment into the CRM value chain, identifying seven drivers for the EU’s untapped CRM potential:

1. insufficient exploration of European mineral resources;
2. challenging CRM permitting procedures at all stages (exploration, mining, processing, refining, and recycling);
3. difficulties in accessing financing, which poses a major barrier to investment;
4. lack of CRM-related skills and expertise in the EU;
5. low CRM recycling rates, as EU waste legislation does not specifically target CRM recovery (the only exception being the proposed Batteries Regulation);
6. lack of high-quality technical standards for CRM-related industrial processes;
7. limited public acceptance for CRM mining in Europe (environmental concerns).

Thirdly, the IA finds that the EU’s CRM sourcing is not sufficiently sustainable because the market does not take sufficient account of the environmental footprint of CRMs. It also notes that the footprint of recycled CRMs is lower than that of primary materials. Existing measures, such as certification schemes or sustainability chapters in EU free trade agreements (FTAs), are considered insufficient by the Commission, as they cover only a limited number of countries producing or trading CRMs. For instance, the EU has no FTA with China, one of the main CRM suppliers.

Overall, the problem definition appears well substantiated and adequately supported by evidence (e.g. findings from various studies, examples and views gathered from stakeholders).

Subsidiarity/proportionality

The Commission bases the proposal on Article 114 TFEU, explaining that the problems and risks related to CRM supply concern the single market as a whole and therefore require a coordinated EU approach. No Member State alone would be capable of effectively addressing the problems. Each policy option is analysed for its proportionality, with policy option 1 (PO 1) scoring highest, and PO 3...
lowest. An annexed subsidiarity grid, which typically accompanies significant or politically sensitive proposals (BRG, tool #5), substantiates the added value of EU-level action. The subsidiarity deadline for national parliaments expires on 3 July 2023; at the time of writing, no national parliament has raised subsidiarity concerns.

Objectives of the initiative

The IA briefly outlines the initiative’s objectives (IA, pp. 26-27). The general objective – to ensure the EU’s secure access to critical raw materials, while incentivising the development of sustainable supply sources – is broken down to the following three specific objectives:

- raising EU industry’s awareness and mitigating CRM risks in the global supply chain;
- increasing the capacity of the CRM value chain in the internal market (e.g. by increasing public and private exploration efforts, streamlining permitting procedures, improving financing conditions for CRM investments, enhancing CRM recovery from waste);
- reducing the environmental footprint of the EU’s CRM consumption.

The specific objectives broadly correspond to the identified problems and drivers, with two exceptions: they do not address the lack of CRM-related skills and expertise in the EU, nor the limited public acceptance of mining, two aspects the IA says are ‘tackled through actions outside the scope of this impact assessment’ (IA, pp. 52-53). In general, the specific objectives appear to meet the SMART criteria of being specific, measurable, achievable, realistic and time-bound (BRG, tool #15).

Although the IA does not put forward any detailed operational objectives, the set of monitoring indicators (IA, pp. 78-79) implicitly defines deliverables for each specific objective. In line with the BRG, the IA also explains how the initiative would contribute to the achievement of the Sustainable Development Goals (IA, pp. 27 and 109).

Range of options considered

The IA first presents a well-developed dynamic baseline scenario, which would mainly implement the 2020 action plan on critical raw materials. In view of the projected rapid growth in CRM demand, the IA explains for each specific objective why the underlying problems could not be solved under the do-nothing option. Then, the IA examines three policy options (POs) that largely build on one another, representing different levels of ambition. As shown in Table 1, there are some major overlaps in the POs. This is due to the fact that some measures were discarded beforehand in an interim analysis that developed so-called ‘policy approaches’. Annex 5 provides additional detail on the policy approaches considered, and is transparent on why certain measures were discarded.

Policy option 1 provides for a legal definition of critical and strategic raw materials and a target-setting framework for strategic raw material capacities. It would establish a dedicated CRM Board within the Commission, supported by a network of national agencies. This board would have monitoring capacities, enable the coordination of EU strategic stocks and ensure that companies are better prepared for supply disruptions (through diversification and stockpiling). PO 1 provides for support measures during the exploration phase and throughout the value chain; streamlining permitting; and better access to finance. To enhance circularity, PO 1 envisages a Commission recommendation targeting small consumer electronics. It also aims to enhance (EU and international) standardisation, set minimum requirements for sustainable CRM certification schemes, and have information requirements regarding the environmental footprint of CRMs placed on the EU market.

Policy option 2 is similar to PO 1 with regard to legal definitions, the governance mechanism, monitoring and companies’ risk preparedness, but goes further in some aspects. In particular, it provides for stricter targets for each strategic raw material to be achieved by 2030, introduces the concept of ‘strategic projects’ (only vaguely defined in the IA, pp. 41-42) along the CRM value chain and requires Member States to develop exploration programmes for strategic and critical resources and extractive waste. Moreover, PO 2 mandates the streamlining of permitting for strategic projects, coordinated access to funding of (strategic) CRM projects and standardisation. Circularity provisions
in the CRM Act and targeted amendments to the Extractive Waste Directive would encourage higher recycling levels. To reduce the environmental footprint, maximum thresholds for CRMs would apply.

**Policy option 3** sets out a new governance structure that would be in charge of managing a dedicated European CRM Fund (combining EU funds and Member State contributions). It proposes ambitious measures on strategic stocks (e.g. joint purchases of strategic raw materials), monitoring and risk preparedness.

The description of the range of options (as derived from the pre-examined policy approaches) is clear and coherent, and the level of detail balanced across all policy options. Table 1 compares the different policy options, with **PO 2 highlighted in blue** as the IA’s preferred option.

**Table 1 – Policy options (POs) assessed in the IA**

<table>
<thead>
<tr>
<th>Pillars</th>
<th>Policy option 1</th>
<th>Policy option 2</th>
<th>Policy option 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Defining critical and strategic raw materials</td>
<td>Developing a framework for setting EU-level guiding targets for strategic raw materials regarding capacity</td>
<td>Legal definition of both critical and strategic raw materials</td>
</tr>
<tr>
<td>B</td>
<td>Setting strategic raw materials targets</td>
<td>Setting EU-level targets obliging the governance structure to work towards them through strategic projects and performance review</td>
<td></td>
</tr>
<tr>
<td>C</td>
<td>Governance</td>
<td>Developing a dedicated EU CRM Board supported by a network of national agencies and operational capacity within the Commission</td>
<td>Developing an operational capacity as a separate structure to implement the CRM Act</td>
</tr>
<tr>
<td>C.1</td>
<td>Monitoring and risk assessment</td>
<td>Developing monitoring capacities and risk assessment</td>
<td>PO 1/2 + developing monitoring and risk management capacities</td>
</tr>
<tr>
<td>C.2</td>
<td>Strategic stocks</td>
<td>Ensuring EU-level coordination and stock assessment for stockpiling strategic raw materials</td>
<td>PO 1/2 + enabling the common purchase of strategic raw materials</td>
</tr>
<tr>
<td>C.3</td>
<td>Company risk preparedness</td>
<td>Developing requirements for company diversification and stockpiling</td>
<td>PO 1/2 + providing direct support to foster companies’ resilience</td>
</tr>
<tr>
<td>D</td>
<td>Exploration</td>
<td>Requiring Member States to report on mapping and evaluation of strategic (and critical) mineral resources and EU extractive waste areas</td>
<td>Requiring Member States to report on, develop and implement national exploration programmes for strategic (and critical) mineral resources and extractive waste</td>
</tr>
<tr>
<td>E</td>
<td>Support to the value chain</td>
<td>Requiring Member States to set up strategies for achieving more secure CRM supply</td>
<td>Developing strategic projects, in Europe and partner countries abroad</td>
</tr>
<tr>
<td>E.1</td>
<td>Permitting procedures</td>
<td>Considering CRM projects in spatial planning</td>
<td>PO 1 + mandatory measures to make permitting for strategic projects more predictable</td>
</tr>
<tr>
<td>E.2</td>
<td>Access to finance</td>
<td>Encouraging setting up an investment platform for the CRM value chain and leverage finance through existing instruments</td>
<td>PO 1 + promoting/advising on setting up a dedicated CRM Fund (Member State and EU funding). It would provide loans and equity (and grants) to projects along the value chain, in compliance with state aid rules.</td>
</tr>
<tr>
<td>F</td>
<td>Waste legislation</td>
<td>Adopting a Commission recommendation for future CRM circularity actions</td>
<td>PO 1 + targeted amendment to Extractive Waste Directive and circularity provisions in CRM Act</td>
</tr>
<tr>
<td>G</td>
<td>Actions on standards for the CRM value chain</td>
<td>Efforts to have EU rules and principles reflected in international standards</td>
<td>PO 1 + mandatory development of standards and standardisation deliverables for relevant industrial processes</td>
</tr>
<tr>
<td>H</td>
<td>Environmental footprint of CRMs</td>
<td>Minimum requirements for sustainable CRM</td>
<td>PO 1 + putting in place a mechanism for setting performance classes and maximum thresholds</td>
</tr>
</tbody>
</table>
The assessment of impacts is predominantly qualitative. Quantitative data are provided where possible; however, the IA deems some costs and benefits to be ‘not quantifiable’ (IA, p. 103). According to the IA, securing access to CRMs would contribute to economic growth, benefit the single market and increase the competitiveness of European businesses. Therefore, the primary focus of the IA is on economic impacts (IA, pp. 54-59, 60-67, 69-72), comprising impacts on companies more generally (while also singling out SMEs), competitiveness, competition, and international trade. With regard to trade, the IA looks, inter alia, into CRM supply diversification targets and compliance with WTO standards. However, it does not assess the impact on environmental and human rights of CRM mining and processing in third countries, arguing the due diligence requirements of the proposed Corporate Sustainability Due Diligence (CSDD) Directive would apply to the present initiative (IA, pp. 8, 9 and 49). To foster sustainable production, CRM imports from third countries would need to comply with recognised schemes for environmental claims, and would need to declare the environmental footprint of the imported materials.

The analysis of social impacts touches upon small electronics collection (take-back schemes, e.g. for mobile phones) and an increased awareness of the relevance of CRMs for citizens. Strategic projects supporting the CRM value chain are expected to create economic value and jobs, not least through revitalisation of former mining regions, which are often affected by high unemployment.

The analysis of environmental impacts first recalls the crucial role CRMs play for technologies enabling the green transition, before focusing on exploration, permitting, standards, and waste legislation. Overall, the IA suggests that measures under the preferred policy option would have a positive environmental impact (IA, p. 68). It is, however, not clear how comprehensive this assessment is, as, for example, it explicitly excludes the drilling phase of CRM exploration (IA, p. 67). There are gaps in quantification: for instance, the IA does not quantify the estimated impact of amended waste legislation and increased CRM recovery levels ‘in the absence of an elaborate economic model’ (IA, p. 68). All policy options are positively tested against the do no significant harm principle. With regard to other impacts, the IA deems measures targeting information sharing and reporting to be in line with the digital by default principle and does not expect any impacts on fundamental rights.

The preferred option would affect businesses, citizens, Member States and the Commission (IA, Annex 3). Costs for Member States’ public authorities and the EU budget are calculated in full time equivalents. Further recurrent costs (monetised) would arise from the CRM governance structure. Moreover, Member States would need to bear one-off costs for exploration projects (such as aerial geophysical surveys and geochemistry mapping surveys), and they would be required to create a database of all closed and abandoned waste sites.

The initiative is subject to the ‘one in, one out’ approach. The IA provides a cost estimate for the preferred option (IA, p. 77), which is summarised in Annex 3 (IA, p. 108), although the indicated amounts are not entirely coherent. According to these estimates (IA, p. 77), the initiative would create the following administrative costs for businesses:

- one-off costs of €14.55 million for all businesses selling CRMs for declaring the environmental footprint;
- recurrent costs of €87 000 in reporting obligations (only for large companies);
- recurrent costs of €700 000 for reporting obligations regarding CRM content of waste streams and the composition of waste for existing mining sites;
due to streamlined permitting, cost savings are expected for businesses involved in strategic projects, though the IA deems it impossible to quantify the benefits (IA, p. 104).

In addition, large companies operating in strategic sectors using strategic raw materials would face direct adjustment costs:

- recurrent adjustment costs of €1 million per year for requirements regarding risk assessments (mandatory stress tests); and
- one-off adjustment costs related to certification of general sustainability claims and studies required for the underlying environmental footprint amounting to between €3.75 million and €10 million.

Following a thorough analysis of how each policy option would meet the initiative’s general and specific objectives and of their impacts (IA, pp. 54-72), the IA compares the options with regard to effectiveness, efficiency, proportionality and coherence. It identifies policy option 2 as the preferred option (IA, pp. 72-76); according to the IA, this option enjoys support from stakeholders and Member States and benefits the functioning of the single market.

**SMEs/Competitiveness**

Numerous measures under the preferred option, such as improved awareness of CRM supply risks, streamlined permitting and improved access to finance, are considered to have a positive effect on European competitiveness. However, the IA also identifies some factors that could negatively affect businesses, namely information requirements and costs for companies for making claims on sustainability and environmental footprint. Moreover, high energy prices – an exogenous factor the proposed CRM Act does not seek to address – present a threat to the competitiveness of the energy-intensive CRM value chain.

According to the IA, SMEs would benefit from monitoring of supply chains and from better access to finance, which could help to strengthen their resilience. Due to the initiative’s relevance for SMEs, an SME test was carried out in four steps (IA, Annex 6), in line with the BRG (tool #23). With regard to SME stakeholder consultation (step 2), the SME test relied on the 32 SME contributions from the open public consultation. The IA considers most of the measures analysed in the IA to have a positive impact on SMEs. To mitigate negative effects, SMEs would be exempted from reporting obligations (not further specified in the IA (p. 144)).

**Simplification and other regulatory implications**

According to the IA, this new regulatory initiative would not prompt any simplification of EU legislation. Rather, it would require targeted amendments to EU waste legislation in order to ramp up CRM recycling and reuse. This concerns the automotive sector (Directive on end-of life vehicles and Directive on the type-approval of motor vehicles); the WEEE Directive for electrical and electronic waste; and the Extractive Waste Directive (IA, pp. 45-46 and 77). In addition, the initiative would empower the Commission to adopt a number of delegated and implementing acts.

**Monitoring and evaluation**

The IA provides for monitoring and future evaluation. To monitor the performance of the initiative, the IA presents eight indicators in relation to the three specific objectives (IA, pp 78-79). These include, for example, the number of strategic projects in the EU and abroad; their average permitting time; and recycling input rates. For each indicator, the IA provides the data source, the frequency of measurement, the baseline and the target. The IA proposes that an evaluation be carried out 'four to six years after the date of application of the legislative act'.

**Stakeholder consultation**

Stakeholder views were duly considered throughout the IA. The IA provides a summary of all consultation activities ('synopsis report') in Annex 2 (pp. 87-100), as required in the BRGs. The call
for evidence on the inception IA was open for feedback between 30 September and 25 November 2022; it yielded 310 responses (predominantly from companies and business associations), and over 100 policy papers. According to the IA, the initiative received broad support, as stakeholders saw a need to reduce CRM dependency by diversifying supplies and increasing the EU’s domestic capacities. Challenges flagged by businesses include financing and permitting processes.

In addition, a public consultation was open for 8 weeks, which is less than the default 12 weeks foreseen by the BRG (not further explained in the IA). It gathered 263 replies and 49 policy papers, again mostly from the business side. The synopsis report presents the consultation results in a detailed manner, but they are not broken down by stakeholder group. According to the IA, around 75% of respondents considered current EU policies to be ‘insufficient to effectively manage supply chain disruptions, shortages and price hikes’, and a majority deemed the EU’s current CRM sourcing – primary, secondary, refining and processing – to be ‘underexploited or insufficient’ (IA, p. 90).

Finally, a targeted consultation with the Raw Materials Supply Group explored Member States’ views on permitting issues and stockpiling of raw materials.

Supporting data and analytical methods used

The IA draws on data collected via desk research, including research by the Joint Research Centre (JRC) and the International Energy Agency (IEA), the IA on the Single Market Emergency Instrument (SMEI)9, academic publications, and stakeholder input. No dedicated supporting study was undertaken, although this renders the evidence base ‘limited’, as the IA itself concedes (IA, p. 110). The IA admits ‘significant data gaps’ (IA, p. 110), which concern areas such as up-to-date data on raw materials across the EU (IA, p. 89) and geological data (IA, p. 94). It seeks to justify quantification gaps (‘the aim of this assessment is to provide ranges of the magnitude of potential impacts generated by each policy option, rather than exact monetisation’; IA, p. 110).

The proposed EU list of critical raw materials (IA, p. 5) stems from the Commission’s 2023 criticality assessment, while the concept of strategic raw materials draws on a 2020 JRC foresight study that examines the supply chains of the strategic sectors of renewable energy, e-mobility, defence and aerospace.10

Follow-up to the opinion of the Commission Regulatory Scrutiny Board

The Regulatory Scrutiny Board (RSB) first issued a negative opinion on an earlier draft version of this IA. On 16 February 2022, the revised IA received a positive opinion with reservations. Among other things, the RSB found that (1) the content of the options and the key measures were not sufficiently explained; (2) the funding structures for the CRM value chain, and associated risks, were not sufficiently clear; and (3) the comparison of options was not sufficiently granular in terms of effectiveness. It appears that the final IA addressed the RSB’s comments, although the details of the adjustments are difficult to assess, given that the Commission does not publish draft IAs.

Coherence between the Commission’s legislative proposal and IA

The proposed regulation is not fully coherent with the IA. It adds a further, fourth, specific objective, namely to diversify the EU’s CRM imports to reduce strategic dependencies, although without explaining in the explanatory memorandum what prompted the change. In fact, the IA mentions diversification as one of the aspects tackled ‘through actions outside the scope’ of this IA (p. 52), addressed in the accompanying communication. It is also noteworthy that the proposal deviates somewhat from the IA’s preferred option, as it contains four measures that were either not explored at all in the IA, or assessed outside the preferred PO 2. The proposal is transparent about these deviations, and duly justifies them. This concerns (i) joint purchases of strategic raw materials (assessed under PO 3); (ii) recyclability of rare earth magnets; (iii) strategic partnerships on raw materials; and (iv) stress tests of strategic raw materials value chains (assessed under PO 3). Moreover, for some measures analysed in the IA, the proposed regulation suggests a different legal approach. For instance, the proposal integrates the extractive waste measures that the IA sought to
achieve through a targeted amendment of the Extractive Waste Directive. Compared with the IA, the aforementioned changes broaden the scope of the initiative.

As the first EU act specifically regulating the EU's CRM supply, the proposed initiative aims to address an area previously identified as one of the EU's strategic dependencies. Following a clear problem description, the IA presents three (partially overlapping) policy options and a thorough analysis of their possible impacts, with a clear focus on economic impacts. The identification of the preferred policy option appears justified. The predominantly qualitative assessment draws merely on desk research and stakeholder input. In this respect, the IA admits to having 'significant data gaps' and a 'limited' evidence base, owing in part to 'the lack of a supporting study'. With regard to stakeholder input, the IA does not explain why the public consultation was open for only 8 weeks (instead of the default 12). It is notable that the proposed regulation deviates somewhat in scope from the IA: it adds a further specific objective – namely to diversify CRM imports in order to reduce strategic dependencies – and provides for a few measures that were either not assessed at all in the IA, or which were outside the preferred policy option.

ENDNOTES

2 The others being batteries, active pharmaceutical ingredients, hydrogen, semiconductors, cloud and edge technologies.
3 E.g. diversifying trade and investment; promoting human rights and high social and environmental standards in third countries; increasing research and innovation efforts; enhancing skills; and raising societal acceptance of mining.
4 Since 2011, the Commission has prepared a periodic criticality assessment of CRMs that reviews global production shares, EU imports and recycling rates for a number of raw materials in order to identify those that are the most critical. The 2023 criticality assessment is based on 2016-2020 data for 85 screened raw materials (IA, p. 5).
5 The IA notes that only Germany and France have institutions to monitor industrial raw materials supply (IA, p. 14).
6 In particular, goals SDG #7: Affordable and clean energy; SDG #8: Decent work and economic growth; SDG #9: Industry, innovation and infrastructure; and SDG #13: Climate action.
7 WTO obligations cover aspects such as export restrictions in raw materials, subsidies, dumping, etc. (IA, p. 150).
8 The number of policy papers received is not clear. The IA once states 190 (p. 87) and once 115 (p. 88).
9 The present IA explains that no dedicated CRM early warning mechanism would be developed, since the mechanism of the proposed SMEI could cover critical or strategic raw materials in the contingency planning framework (IA, p. 125).
10 A new JRC foresight study, released in March 2023, assesses supply chain dependencies and forecasts materials demand until 2050. While the IA mentions this study as being 'in preparation', it draws on data from the 2020 study.

This briefing, prepared for the ITRE committee, analyses whether the principal criteria laid down in the Commission’s own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal.

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