

## Our position

# Industry perspectives: the Critical Raw Materials Act proposal

Further comments from US business to achieve the objectives of the CRM Act



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.7 trillion in 2022, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

## Executive summary

To support the EU's industrial competitiveness through the green and digital transitions, the European Commission's proposal for the Critical Raw Materials (CRM) Act must be made workable for industry and respect Single Market principles. Avoiding unnecessary administrative and regulatory burdens, as well as abiding by Better Regulation Principles, are key to providing industry with the investment certainty it needs to secure a reliable supply of CRMs. The CRM Act should also respect industry's competitiveness and economic realities by setting realistic targets and protecting confidential company information. Additionally, the Commission must clarify distinctions between critical and strategic raw materials. Finally, in partnership with industry groups, the EU should pursue comprehensive relationships with third countries, including the US, to meet its sustainability objectives.

## Introduction

On 16 March 2023, the European Commission published its proposal for the Critical Raw Materials (CRM) Act, designed to aid in the EU's green and digital transitions and bolster industrial competitiveness. The legislation is aimed at strategically securing reliable access to the essential component that power clean and digital technologies across sectors. As global markets race to develop these cutting-edge technologies and increase global demand for CRMs, it is urgent that the EU implement the proposal in the right way.

To do so, EU policymakers should consider the following the recommendations to ensure that the EU's CRM Act is workable for industry and compatible with a competitive Single Market. The EU should also seek partnerships abroad, including with the US, to ensure a diverse and resilient raw materials supply chain.

These recommendations respond to specific portions of the EU CRM Act proposal. For more general comments, see the American Chamber of Commerce to the EU's previous [position paper on the CRM Act](#).

## Set feasible targets and gain public acceptance

Achieving many of the EU's climate change goals and CO<sub>2</sub> emissions reduction targets requires critical and strategic raw materials for industry's zero-emission technologies. The Commission's proposed targets in the CRM Act are highly ambitious, and for some strategic raw materials, infeasible. Especially in the short term, extraction and processing capabilities may be constrained by geological circumstances, regulatory feasibility, realistic costs and the timeframe projections of opening new facilities, and the need to conserve scarce resources. The Commission should therefore clarify that the targets are flexible and that the ambition and focus of implementation depends on feasibility.

In addition, requiring a permit-granting process of a maximum of 24 months is not in line with the realities of extractive industries. The CRM Act should clarify when the 24-month timeline begins, given that permitting procedures differ in the Member States. For example, it is not clear if the 24-month timeline starts with the environmental impact assessment or earlier and how appeals are taken into account.

Public approval is another key consideration for the uptake of industrial projects in the EU, and one that could be challenging given shorter deadlines. The CRM Act should therefore ensure industries' projects benefit local communities and raise awareness about these benefits. The Commission's Energy Communities initiatives could be a model to build on.

## Provide flexibility in critical vs. strategic raw materials

In the proposal's annex, the Commission distinguishes between CRMs and strategic raw materials, requiring that only the latter be considered for strategic projects benefits. Given the rapid advancements in clean technology and unexpected changes to geopolitical circumstances, the Commission should ensure flexibility for strategic projects and not limit them to a predefined list. Regardless, to accomplish green transition goals, the Commission must review any list of raw materials regularly to ensure that it reflects changes in geopolitics and technologies.

## Adhere to Better Regulation Principles

As has recently become a trend in the European Commission, the CRM Act relies on a large number of delegated and implementing acts to accomplish its core objectives, deferring many technical and essential mechanisms to secondary legislation. To align with the Better Regulation Principles, the Commission must thoroughly assess the consequences of the CRM Act's timeline and implementation for industry. Secondary legislation should be limited to the bare minimum to provide industry with regulatory clarity and investment security.

## Achieve energy transition goals

CRMs are essential components in many of today's clean energy technologies. They are necessary to achieve energy transition goals and digitalise the energy system, through means such as renewable energy, energy storage, electric vehicles, heat pumps and electrolyzers for hydrogen production. Among others, these CRMs include:

- Lithium and cobalt that are essential for **energy storage technology such as emergency batteries for critical businesses and the public sector.**

- Boron, copper and germanium which are key for **solar photovoltaic technologies**.
- Rare earth elements, aluminium, chromium and platinum that are needed for **wind turbines, electric vehicles, heat pumps and electrolyzers**.
- Copper and metals that are fundamental for the **network that transports electricity** to households and businesses.

The shift to a cleaner energy system will significantly increase demand for minerals as more batteries, solar panels, wind turbines and networks are deployed. Likewise, the energy sector is set to emerge as a major force in driving demand growth for many minerals, highlighting the strengthening linkages between minerals, clean energy technologies and the twin transition.<sup>1</sup> However, the availability and supply of CRMs are limited, and ensuring the sustainable and responsible supply of CRMs is crucial for the success of the twin transition. This requires a comprehensive approach focused on promoting resource efficiency, recycling, substitution and diversification of supply sources, as well as addressing the environmental and social impacts of CRM extraction and processing.

## Harmonise environmental footprint calculations

Developing standardised approaches to calculate the environmental footprint of raw materials would help increase transparency and comparability. However, numerous methodologies are currently under development across various regulations, including the Batteries Regulation and possibly the Ecodesign for Sustainable Products Regulation. The Commission should harmonise its environmental footprint provisions across legislations into a common framework so as to not overburden industry and respect the Better Regulation Principles.

## Invest in recycling infrastructure

CRMs' use and production cycle should follow relevant circular economy principles that minimise the loss of primary CRMs and maximise the production and use of secondary CRMs. The smart and economical use of raw materials must be a key pillar in the EU's CRM strategy to improve and incentivise the innovation of CRMs recycling and recovering infrastructure. The EU must encourage further investment in upgrading recycling infrastructure to scale recycling of materials currently sorted and recycled in very small quantities. This requires capitalising on existing legislation and upcoming revisions (eg the Waste Framework Directive and the Waste from Electrical and Electronic Equipment Directive) to improve waste collection and recycling practices, enhance resource and material efficiency and increase recycling and upcycling rates.

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<sup>1</sup> IEA's report "The Role of Critical Minerals in Clean Energy Transitions". Available from: [The Role of Critical Minerals in Clean Energy Transitions – Analysis - IEA](#)

## Amend permanent magnets recyclability and recycled content requirements

Both Art. 27 and Art. 28 would require manufactures to disclose extensive information on the use of raw materials in permanent magnets, including their exact amounts, chemicals used and dismantling information.

Art. 28 would introduce a methodology to verify the presence of raw materials and in the future, a minimum amount of recycled content. A circular economy approach could ensure the sustainability of CRM supply in the EU, but the disclosure of any competitive or sensitive information should be in line with antitrust rules and existing regulations on chemicals.

Furthermore, recycled content targets should not hinder permanent magnets or CRMs' production process or timelines. Currently, it is impossible to predict the availability of recycled content in permanent magnets that guarantees the exact same quality as virgin material. European industry cannot risk production bottlenecks from mandatory recycling targets that would jeopardise its climate targets.

Finally, the CRM Act should clarify whether its targets for dependency, conversion, recycling and extraction are purely aspirational or become binding in the Member States. Investment security requires this regulatory clarity.

## Provide consistency between chemicals management and raw materials policy

Several substances fundamental for the energy transition are classified as hazardous or are undergoing a classification process despite contradicting or weak scientific evidence.

A stable and coherent legislative environment is a precondition for investments in mining and refining. However, the EU's chemicals policy acts in the opposite direction, with unpredictable five-to-ten-year processes to define risk management measures. In the absence of clear and predictable rules on the management of hazardous substances, investments in raw materials are at risk. In addition, these rules are often developed unilaterally, and other regions do not follow the same measures, creating disadvantages for companies operating in Europe. For instance, current regulatory proposals on cobalt and nickel and classification proposals on silver and lithium salts risk creating business uncertainties and preventing needed investments in strategic raw materials.

For these reasons, the Commission should develop risk management rules for strategic raw materials in a fast, scientific, stable and predictable way, considering the strategic importance of certain substances and ensuring business stability and predictability. The CRM Act and the revision of the Registration, Evaluation, Authorisation and Restriction of Chemicals regulation offer an opportunity to bring consistency between Europe's raw materials and chemicals policies.

## Protect company risk preparedness information

Supply chain auditing of large companies, as mandated by Art. 23, adds an unnecessary administrative burden to manufacturers of strategic technologies. The Commission must clarify the criteria for selecting companies for audit and the process for dependencies mapping and stress testing.

Furthermore, for companies to safeguard their competitiveness, they need to know which body would collect sensitive information related to risk preparedness. In addition, companies should be allowed to focus on the most relevant strategic raw materials for their business and be closely involved in the mapping and stress testing processes.

## Respect antitrust rules for joint purchasing

The Commission must provide more specific details on its plan for organising joint purchasing. Purchasing within industry is not only highly competitive but also sensitive in terms of information of pricing. The plan must fully respect antitrust rules.

## Establish strategic partnerships

The Commission is right to prioritise strategic partnerships with third countries to foster diversity and security in the EU CRM supply. While Member States have a key role to play in developing bilateral relationships, the Commission should lead in negotiating critical minerals partnerships with multiple like-minded third countries to promote Union coherence and preserve the integrity of the Single Market. When setting up these partnerships, businesses active in third countries could share valuable experience and expertise and help identify opportunities and challenges in potential partner countries.

Through these partnerships, the Commission should provide appropriate financial support to third countries to ensure that cooperative extraction and processing operations are in line with the EU's high standards. The Commission could, for example, extend the Important Projects of Common European Interest mechanism to relevant third countries to financially support its stated goal of contributing to mutually beneficial local value addition. Another model to consider is the existing Minerals Security Partnership, which mobilises public and private investment to allow third countries to reap the full benefits of their resources in line with the highest environmental, social and governance standards.

## Conclude an EU-US agreement on critical minerals

One promising avenue for deepening international cooperation to secure the supply of CRMs is the recent announcement of talks between the EU and US on a critical minerals agreement. Both sides should come to a speedy conclusion on an agreement that can be swiftly adopted by both EU and US policymakers. An agreement with clear parameters would provide the most certainty for businesses contributing to both the EU and the US' climate ambitions.

The prospect of a CRM agreement that resolves some of the concerns regarding the US Inflation Reduction Act is positive for the transatlantic economy and relationship. Any agreement should also spur EU-US cooperation to secure a sufficient and diverse supply of critical and strategic raw materials. Like the recent US-Japan agreement, the EU-US agreement should, at a minimum, bilaterally eliminate export duties on a range of critical minerals used in battery production, as well as provide for acceptance and implementation of existing international labour standards in mineral extraction and processing. To go further, the EU and US could develop joint extraction and/or processing ventures in strategic third countries through either the EU Global Gateway project or the US/G7 Partnership for Global Infrastructure and Investment. In any scenario, transatlantic cooperation and leadership will be key for securing the CRMs indispensable to meeting shared climate goals.

## Conclusion

The EU CRM Act is a critical part of the Green Deal Industrial Plan, as CRMs are the essential components of the green and digital transitions. If implemented, these recommendations would assist companies advancing clean technology in bolstering the EU’s global competitiveness and fight against climate change. These recommendations can also help the Commission and Member States pursue the necessary international partnerships, including with the US, to build resilient CRM supply chains. US companies stand ready to provide any additional input as the CRM Act continues to follow the legislative procedure.

