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Orgalim recommendations on the European Critical Raw Materials Act

Executive summary

Securing stable and resilient supply chains for raw materials is a key priority for Europe's technology industries. We believe that the European Critical Raw Materials Act (ECRMA) is a step in the right direction and will support our industries in delivering the high-tech solutions that are needed to support the EU's twin digital and green transitions. Orgalim however wishes to put forward the following recommendations to ensure a smooth and successful implementation of the ECRMA:

- The lists of Critical Raw Materials (CRMs) and Strategic Raw Materials (SRMs) should be extended to include aluminium, aluminium oxide and zinc. The two lists should also be updated at least every two years
- While provisions on facilitating permitting procedures for SRM projects in the ECRMA are most welcome, their impact will be limited. Orgalim would like to stress that the existing EU environmental regulatory framework substantially hinders CRM extraction in the EU. We therefore call on the European Commission to revise key pieces of EU legislation such as the Habitats Directive and the Water Framework Directive to ensure that they are aligned with the need for increased extraction of CRMs to support the green transition.
- Information sharing and supply chain monitoring requirements for companies should be kept to a minimum. In particular, Orgalim calls for a deletion of Article 23, or alternatively substantial amendments to limit and clarify the scope of its application to companies.
- Articles 27 and 28 on recyclability and recycled content of permanent magnets will have far-reaching implications for European technology manufacturers. In principle, we believe that requirements for products including permanent magnets should be set under the Ecodesign for Sustainable Products Regulation (ESPR), rather than the ECRMA, to avoid the risk of double regulation. If such requirements are to be set under the ECRMA, we wish to put forward the following recommendations:
 - The information that manufacturers have to provide pursuant to Article 27 is sensitive and should be shared only on a need-to-know basis. Therefore, we support information sharing via a data carrier rather than a label.
 - The information sharing requirements on recycled content of permanent magnets of Article 28(1) should apply to manufacturers of permanent magnets rather than to manufacturers of products incorporating such magnets, who typically do not have access to the required information.

1. Introduction

Europe's technology industries provide the high-tech solutions that will enable a more sustainable, circular and decarbonised economy in Europe. We support the EU's ambition to scale up domestic manufacturing of clean technology to fuel the green transition. However, in order to effectively achieve such an ambition, our industries need unfettered access to a stable and reliable supply of raw materials.

Over the past few years, volatile prices and supply chain disruptions due to Covid-19 and the Russian invasion of Ukraine have caused persistent shortages of raw materials. Looking ahead, the challenge of securing a stable and reliable supply of raw materials will only become more daunting as geopolitical volatility increases and supply chain disruptions become more frequent. Nevertheless, our industries will require an even larger supply of raw materials, from steel and aluminum to lithium and rare earth elements.

Therefore, Orgalim welcomes the publication of a legislative proposal for a *Regulation 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*¹ (hereinafter "European Critical Raw Materials Act" or "ECRMA"). Our industries believe that the ECRMA has the potential to constitute a good basis for supporting European technology companies in building more resilient supply chains for CRMs and delivering on the green transition.

The aim of this paper is to provide some key recommendations to ensure that the ECRMA achieves its full potential in supporting the technology industries' efforts towards a greener, circular and decarbonised European economy.

2. Subject matter and objectives

We welcome the objectives set out in **Article 1(2)(a)**, as they provide clear and ambitious goals for EU policymaking in this area for the years to come. However, we wish to stress that the stated objectives are quite broad and general. For example, taking into account certain CRMs, a recycling rate of 15% would not be realistic until 2030, whereas for others, the EU already has a much higher recycling rate. Therefore, while we support the overall objectives, we believe that it is essential to account for the huge differences in capacity of extraction, recycling and processing of different raw materials in Europe.

3. Critical Raw Materials and Strategic Raw Materials Lists

Orgalim welcomes the establishment of a revised list of Critical Raw Materials (CRMs), as well as a sub-list of Strategic Raw Materials (SRMs) that are especially needed for the EU twin digital and green transitions. It is crucial that the lists are updated regularly and in close cooperation with relevant industry stakeholders. It is also important to take into account that material use is under constant development: for this reason, innovation and technology advancement must not be hindered.

Therefore, Orgalim wishes to stress the following:

- We regret that aluminium has not been included in the lists of CRMs and SRMs. Our industries are experiencing increasingly frequent challenges in securing a stable and reliable supply of aluminium, which constitutes an essential manufacturing input for many technologies that are at the heart of the green transition. We believe that **aluminium should be included in the CRM and SRM lists**. It would also be important for **aluminium oxide (alumina)** to be included, as the vast majority of aluminium producers use fused alumina to produce aluminium. Finally, we would support the inclusion of **zinc** in the lists of CRMs and SRMs.

¹ https://eur-lex.europa.eu/resource.html?uri=cellar:903d35cc-c4a2-11ed-a05c-01aa75ed71a1.0001.02/DOC_1&format=PDF

- Our industries are facing an increasingly volatile and fast-changing geopolitical environment, which requires rapid adaptation to changing circumstances. For this reason, we believe that the CRMs and SRMs lists should be updated more frequently than currently foreseen in the ECRMA (four years after entry into force and every four years thereafter), especially considering that, since its establishment in 2011, the CRM list has been updated every three years. In our view, **the lists should be updated at least every two years**. Furthermore, the Commission should maintain a **close dialogue and consultation with industry** during the process of updating the lists.
- The ECRMA currently allows the Commission to update only the list of CRMs and SRMs, but does not allow the Commission to also update the methodology to establish such lists. It is important to ensure that the ECRMA also allows for a **revision of the methodology** to ensure it can be adapted to future economic and geopolitical developments.

4. Strengthening the EU raw materials value chain

Orgalim welcomes the objectives of Chapter III of the ECRMA, aimed at facilitating permit granting procedures for projects throughout the SRM value chain. However, the industry needs technology-neutral solutions at system level that create predictability as well as the best conditions for technology development and innovation. Effective processes in general throughout the value chain are a prerequisite for a green transition.

Our industries therefore believe that promoting increased production of SRMs from primary and secondary sources in Europe will be essential to increase the supply of SRMs for technology companies.

Orgalim welcomes that the proposed regulation clearly also includes circularity. Metals can be recycled again and again, for example from batteries and electrical products, and there is also potential for large quantities of critical raw materials in existing mine tailings. To increase circularity, recycling and production from secondary sources, continued technology development and innovation is required. An innovation-friendly regulatory framework – which rests on the principles of the new method/NLF – together with investments in research and development are important factors for circularity and secondary use of raw materials.

Substantial stocks of primary SRMs (e.g. cobalt, lithium, titanium) can be found in Member States such as Finland and Sweden. Norway may have Europe's largest Rare Earth Elements (REE) deposit in the Fen Complex, a mineral deposit situated 110 kilometers southwest of Oslo in Nome Municipality in Telemark County. Tapping into these reserves, while encouraging the expansion of processing and refining facilities within the EU, will enable the success of the green and digital transitions and reduce the EU's risk of excessive and concentrated dependencies on third countries.

While the ECRMA is certainly a welcome step, we believe that more structural legislative interventions are needed to create the right framework conditions to promote increased extraction of CRMs and SRMs in the EU. For example, the **Habitats Directive and the Water Framework Directive** are two cornerstones of EU environmental legislation, which were introduced respectively in 1992 and 2000. While Orgalim supports the overall objectives of the directives, in their current form they constitute obstacles to the implementation of new mining projects in the EU and would therefore **need to be revised to align with economic and defence interests, and implementation of applicable EU directives**. Similarly, the **Revised Industrial Emissions Directive** will result in lengthier and more difficult procedures to obtain permits in the EU and appears to contradict the stated objectives of the future ECRMA.

Orgalim also believes that the Commission should systematically take into account the impact of any future piece of EU legislation on European CRM value chains. We would therefore support the inclusion of a **CRM tool in the Better Regulation Toolbox** for this purpose, to ensure that this will be the case.

5. Risk monitoring and mitigation

Orgalim believes that the **development of stable and resilient CRM value chains should be primarily guided by market forces and private investment decisions**. In general, public surveys of value chains where companies have to disclose sensitive information concerning, for example, stocks and suppliers, do not follow this principle and risk discouraging private investment. In general, reporting and information-sharing obligations for companies should be kept to the bare minimum in the ECRMA. Similar considerations apply to state-led interventions in industrial value chains, for example by means of mandatory provisions on the development and/or redistribution of strategic stocks by private companies. Orgalim believes that these measures amount to unnecessary distortions of the single market and would have counterproductive effects. This is why our industries view with extreme caution the provisions of **Articles 19, 20, and 23** (on monitoring and reporting), **Article 24** (on joint purchases) and **Articles 21 and 22** (on strategic stocks).

We believe that Article 23 on company risk preparedness is particularly problematic, because it will create mandatory and burdensome requirements for companies to map their whole supply chains for CRMs and report periodically on such mappings to their board of directors. Furthermore, it does not include clear thresholds clarifying which companies fall under the scope of the article, as it would only apply to *"large companies that manufacture strategic technologies using strategic raw materials"*. Given that the ECRMA only provides a definition of "large company" in Article 2(30), this would create significant legal uncertainty and lead to non-uniform implementation across EU Member States.

For this reason, Orgalim suggests the **deletion of Article 23 of the ECRMA in full**. If Article 23 is to be maintained, Orgalim calls for a more limited scope of application by (1) amending the definition of "large company" in Article 2(30) and (2) setting clear quantitative thresholds to clarify the exact scope of application of Article 23 to companies, by means of delegated acts. We believe that Article 23 should only apply to companies that play a significant role in CRM value chains (i.e. consume a significant amount of CRMs). Also, it should only apply to companies for which the manufacturing of strategic technologies accounts for a considerable share of the company's total net turnover. Finally, the Commission should define an exhaustive list of "strategic technologies" for the purposes of the application of Article 23 to companies.

6. Sustainability

6.1 General remarks

Evidence suggests that until 2040 most of Europe's CRM demand will be covered by primary production (both from Europe and third countries). However, by 2050 recycled materials could cover 45-65% of Europe's demand for key industrial metals, and over 75% for lithium and rare earth elements. There is therefore an **urgent need to lay the foundation for a well-functioning market for recycled raw materials**, primarily by boosting the development of a high-quality collection, sorting and recycling infrastructure across Europe.

Many elements of the ECRMA are therefore welcome, such as the proposed expansion of recycling capacities and measures to promote the circular economy. However, given the extent of the challenges our industries face, we are concerned that the approach proposed by the Commission might not be sufficient to achieve the planned objectives of the ECRMA, as outlined in **Article 1(2)(a)(iii)**.

Article 25 indeed only includes an obligation for Member States to develop national programmes aimed at promoting circularity in the CRM value chain. We fear that this could result in **substantial fragmentation** across the EU single market, with disparities in implementation across Member States. We would instead recommend the **adoption of a more harmonised EU approach** to achieve the stated objectives of the ECRMA.

Also, it is essential to ensure that secondary raw materials meet the technical specifications required by manufacturers. This could be achieved by setting **minimum quality criteria for secondary raw materials based on international and EU standards** to stimulate a long-term market for recycled materials. On this point, we welcome that the development of standards on the exploration, extraction, refining and recycling of critical raw materials has been identified as a priority by the Commission in the 2023 Annual Union Work Programme for European Standardisation².

Our members also wish to stress that it is essential to ensure an **effective integration and avoid regulatory overlaps between the ECRMA and other pieces of EU legislation under development**, which include provisions on the integration of recycled materials in products; for example, the **Ecodesign for Sustainable Products Regulation (ESPR)** and the revised **Construction Products Regulation**.

6.2 Recyclability and recycled content of permanent magnets

Orgalim is concerned about the requirements of **Article 27 and Article 28** of the ECRMA. These articles provide the framework for specific requirements for products incorporating permanent magnets and disclosure obligations applying to manufacturers of such products. In principle, we strongly believe that **sustainability and circularity requirements for permanent magnets should be set under the ESPR (a product-focused piece of legislation) and not under the ECRMA, to avoid double regulation**.

We also note that Articles 27 and 28 impose burdensome disclosure obligations on manufacturers of certain products, including detailed information concerning permanent magnets and the share of certain secondary SRMs present in such permanent magnets. These requirements are problematic because disclosing this information would undermine trade secrets and manufacturers' IP. To protect trade secrets and confidentiality rules, **we recommend giving access to this information on a need-to-know basis**. This can be better achieved through a **data carrier** (granting different access rights) rather than labelling requirements.

In addition, such disclosure can be counterproductive from a sustainability point of view. For example, **products such as electric motors are not designed to be easily dismantled, to ensure product durability and the highest safety standards**. Requirements to provide information enabling access to, and removal of, all permanent magnets included in a product *de facto* entail a prescription on how products should be manufactured to ensure easy removal of permanent magnets. This would be likely to come at the expense of product safety and durability. We therefore propose to **eliminate the requirement to provide information enabling access to, and removal of, permanent magnets (Article 27(4)(c))**. Furthermore, information disclosed pursuant to Article 27 **should only be accessible to market surveillance authorities and customs authorities**, to ensure adequate protection for company secrets, which should not become available to competitors. For those cases in which the removal of permanent magnets might be possible without compromising the safety and durability of the product, we propose to add the possibility for manufacturers to establish their **own take back scheme**, in order to take back, disassemble, recycle and reuse the permanent magnets.

In addition, we note that manufacturers depend on suppliers' information. A recent CEPS study showed that imports from China account for 98% of the EU market for permanent magnets³. Therefore, we do not see how European technology manufacturers could comply with the obligation to disclose information on the share of certain SRMs recovered from post-consumer waste contained in the permanent magnets, pursuant to **Article 28(1)**. In our experience, such information is not provided by our suppliers.

² [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023XC0313\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023XC0313(01)&from=EN)

³ <https://circulareconomy.europa.eu/platform/sites/default/files/2023-01/Developing%20a%20supply%20chain%20for%20recycled%20rare%20earth%20permanent%20magnets%20in%20the%20EU.pdf>

We therefore believe that, rather than imposing an obligation on European technology manufacturers only, **Article 28 should impose appropriate obligations on any natural or legal person placing permanent magnets on the EU market (regardless of whether they are based in the EU or exporting from a third country and including permanent magnets as components) to make available information on the share of SRMs included in such magnets.** Orgalim is convinced that this is a much more effective way of achieving the intended objectives of Article 28, without creating an unmanageable and unbalanced burden for Europe's technology industries, especially for SMEs and microbusinesses.

Furthermore, it is essential to ensure that standardised, global, digital formats for such information disclosure are established, for example via ISO/IEC. Our industries have complex international supply chains; therefore, we call on the EU to develop harmonised global digital formats for information disclosures, to ensure that the ever-increasing demands for information are workable in practice for technology manufacturers. We note that, pursuant to **Article 27(6)**, if a digital product passport is defined in ESPR for a product type within the scope of **Article 27(3)**, then information shall be communicated via that product passport. For products for which a digital product passport is not yet provided, we urge the Commission to use the same standards, formats, identifiers etc. as will be developed in support of the DPP, and therefore not to develop any other formats or approaches.

Finally, in relation to **Article 28(3)**, it is extremely difficult in ongoing series production to adjust the material composition of permanent magnets. If the necessary magnet properties cannot be achieved with a different material composition, the required machine performance might not be achieved. This can, for example, lead to losing the certification for a certain turbine type and thus to a production stop. In this respect, **the EU must provide regulations with sufficient lead time (more than five years) or allow sensible exceptions for existing products.**

7. Trade

Orgalim welcomes the Commission Communication accompanying the ECRMA, titled "A secure and sustainable supply of critical raw materials in support of the twin transitions". In particular, we wish to stress the importance of the second pillar of the Communication, "*Boosting the diversification of supply and partnering in a mutually beneficial manner in support of global production*".

Domestic production of CRMs alone, from either primary or secondary sources, will not be nearly enough to cover our industries' demand for CRMs and SRMs. Trade will therefore play an essential role in securing a stable and reliable supply of CRMs for Europe, and without an ambitious trade and international partnerships policy the EU will fall short of achieving the green transition.

In this respect, Orgalim wishes to restate the importance of our key priorities in this area as outlined in our response to the public consultation on the ECRMA:

- Ensure the **timely entry into force of already concluded Free Trade Agreements (FTAs)** with third countries that can supply CRMs to the EU, such as Mercosur, Chile, New Zealand and Mexico.
- Ensure the **speedy conclusion of FTAs currently being negotiated** with other key trading partners that could play a role as suppliers of CRMs to the EU market, such as Australia, Indonesia and India.
- Negotiate **ad-hoc agreements on raw materials** with countries with which the EU already has an FTA that does not feature a dedicated chapter on raw materials. These would notably include Vietnam, a country that is rich in raw materials and is one of the most important suppliers of phosphorus.
- Conclude **additional international partnerships** focused on cooperation on CRMs with like-minded trading partners worldwide (e.g. the United States). Recent positive examples of partnerships that we would support include the one signed with Canada in June 2021, as well as the one signed with Kazakhstan in November 2022.

According to a recent study⁴, supporting diversification of production in raw materials via non-trade policy appears most feasible/effective as tariffs on raw materials tend to be low. The Global Gateway Initiative is well suited to support investments in improving infrastructure and strengthening industrial capacity locally.

- **Maintain stable trade relations with China in the field of CRMs**, taking into account that unilateral dependencies must be avoided and/or undone whenever possible. The EU should leverage its market power in any future trade negotiations with China to ensure its EU market access is to some degree conditional on maintaining a steady supply of CRMs to the EU.
- **Lift safeguard measures on steel and ensure that EU trade defence measures currently in place do not disproportionately constrain the EU's access to key raw materials** such as steel and aluminium.

⁴ [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/740058/IPOL_STU\(2022\)740058_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/740058/IPOL_STU(2022)740058_EN.pdf)

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