

The Norwegian Government's position to the Critical Raw Materials Act

We refer to the European Commission's proposal of March 16th 2023 for a Critical Raw Materials Act (CRMA), following up the Green Deal Industrial Plan for a Net-zero Age, and aiming to ensure the EU's access to a secure, diversified, affordable and sustainable supply of critical raw materials.

Executive summary

The Norwegian Government

- shares the main ambition of the Critical Raw Materials Act to strengthen European green and digital industrial transformation, all while supporting a stable and rule-based global trade system.
- welcomes measures in favour of more efficient national permit-granting processes, as stated in the new Norwegian Mineral Strategy.
- considers the Regulation's proposal to establish a «one stop shop» as worth exploring, if defined as (1) the main, but not sole contact point to every project, and (2) a coordinating authority that does not take over, nor interfere with current delegation of powers between competent national and local authorities.
- emphasizes that any proposed time limits and streamlining of procedures for assessments and authorisations shall comply with current environmental, social and safety requirements, as well as local consultation processes.
- underlines our obligations to protect indigenous peoples' rights as set in the ILO convention nr. 169 and the International Covenant on Civil and Political Rights Article 27.
- cannot support the proposed mechanism of tacit approval of permit applications in the case of exceeded time limits.
- suggests that the local planning process and environmental impact assessments are considered as preliminary to the «permit-granting process», and therefore not included in it. In our understanding this would make the proposed time limits more realistic and the application process more resource efficient.
- supports measures to increase circularity and the environmental footprint declaration, as important contributions towards a more sustainable extraction and production of critical raw materials
- favours the use of environmental criteria in public procurement, also as a means to increase the use of secondary critical raw materials in manufacturing.
- suggests that aluminium and graphite – both natural and synthetic – are included in the Annexes of the Regulation, as key raw materials for the green transition and for securing strategic autonomy in Europe.

Introduction

The Norwegian Government shares the overarching ambition of the proposed Critical Raw Materials Act to strengthen European green and digital industrial transformation, all while supporting a stable and rule-based global trade system. We welcome this initiative from the

EU to ensure Europe's access to a stable and sustainable supply of critical raw materials. This is a field of great interest to Norway, as a major producer and exporter of critical raw materials such as graphite and titanium minerals (with a new mine opening next year), and with substantial industrial production and exports of metals including aluminium, silicon, nickel, zinc, palladium and cobalt. Norway has mining projects under development for copper, rare earth elements and phosphate rock intended to produce yellow phosphorous. Emerging industry projects of particular interest are a separation plant for Rare Earth Elements (REE) opening next year, and production of synthetic anode graphite.

The Government's overarching ambition is for Norway to develop the world's most sustainable mineral industry. The proposal's emphasis on circularity and sustainability of raw material value chain is therefore in line with Norwegian policy, and a valuable measure for facilitating profitable recycling. We also share the ambition of the proposal to reduce the administrative burden on future raw mineral projects. However, we see as imperative that some of the provisions in the proposed Act are modified, both to avoid insurmountable challenges and ensure clarification. On this background, please find below Norway's comments to the proposal.

These comments are without prejudice to our subsequent consideration of the EEA relevance of the Regulation as adopted, as well as possible EEA-adaptations which would be necessary for the Regulation to be implemented into the EEA Agreement.

Chapter 3 of the proposal – Strengthening the Union raw materials value chain

Norway welcomes efforts and targeted measures to reduce the administrative burden on companies through more efficient administrative and permit-granting processes. This is important for any sector of the economy and could be key to encouraging more strategic mineral projects in Europe. However, we need to strike the right balance, between improving the investment climate for critical raw material projects and allowing inclusive planning processes to ensure support locally. Streamlining of the procedures for assessments and authorisations combined with the introduction of time frames should not affect the standards of environmental protection, nor public consultations.

One stop shop

We support, in principle, the initiative of streamlining permitting processes for raw materials projects. However, as regards the designation of a "one stop shop", defined as a facilitating and coordinating authority per project, the proposed Article 8 of the Regulation can be improved further. Firstly, by assuring that this authority must act as a contact point ("service centre"), and not interfere with current national structures of responsibility and delegation of powers at any point. Secondly, by specifying that this coordinating authority should be considered the main/reference contact point of the project, but not its sole/exclusive contact point. We emphasize this, as the proposed Article 8 (2) may be understood as excluding direct interaction between the project promoters and any other involved responsible authorities.

In our experience, local planning processes in particular tend to benefit from direct contact between the planning authority and the project promoter, as such interaction improves the quality of the outcome, in the interest of both parts. Consequently, the text of the Regulation should in our view ensure sufficient flexibility to adapt to national administrative structures and various situations. The possibility to designate more than one national coordinating/competent authority should also be considered.

Duration of the permit-granting process

We acknowledge the need to accelerate permitting processes and we support targeted measures to reduce the administrative burden of companies through more efficient permit-granting processes. For mineral projects this has been addressed by the Norwegian Government in its new Mineral Strategy¹.

The proposed time limits for strategic projects in the proposed Regulation's Article 10, are however very ambitious due to the obligation to comply with requirements following from environmental, social and safety legislation. The proposed time limits could in many cases turn out to be unrealistic, especially if local planning and environmental impact assessment processes are included. It is important to be aware that certain investigations related to the environmental impact assessment are time-consuming due to seasonal climate variations. Furthermore, possible transboundary consultations according to the Espoo Convention requires sufficient time to be concluded.

The proposed Article 11 regarding the environmental assessments for strategic projects is challenging, as it implies time limits and processes that deviate from the current Norwegian processes and requirements. In our view, Article 11 should be sufficiently flexible to allow for different national structures. For example, the proposed Article seems to indicate that the "national competent authority" shall elaborate on the scope and the level of information to be included in the impact assessment. In Norway, this is currently carried out by the municipalities. In our view, letting the local community influence the scope of the environmental impact assessment and the approval of such assessments, makes the projects better and more solidly anchored.

Hence, we would like to emphasize that shorter time limits during the permit-granting process cannot come at the expense of adequate consultations and participation through local planning processes. Streamlining the required assessments and authorisations should also not be lowering the level of environmental protection and qualities in projects. Furthermore, it is important that the Regulation is explicit on which of the various administrative processes that are included in the time limits. Local planning processes should be exempted from the time limits. Also, the national coordinating authority should be able to extend any time limits in exceptional circumstances.²

Mechanism of tacit approval of permit applications

Article 10 (4) of the proposal states that exceeding the time limits for strategic projects only involving processing or recycling would result in the application to be considered as

¹ [Norway mineral strategy - regjeringen.no](https://www.regjeringen.no/en/dokumenter/mineral-strategy-2022-2025)

² Cfr. Similar provision in Regulation 2022/869/EU Article 10 (2), second paragraph.

approved. Norway has strong objections to this mechanism, as it could lead to a new project being started without complying with the relevant and necessary conditions set by the competent authority. Furthermore, this would probably not be in accordance with requirements that follow from the Industry Emissions Directive and the Water Framework Directive, and in the case of Norway, it would not be compatible with the strict permit-granting regulation system in the national Pollution Control Act.

Grid connection permits

According to the proposed Article 2 (19), a “permit-granting process” includes “grid connection permits” to plan, build, expand and operate strategic Projects, where these are required. In Norway, grid connection as such is not governed by a permit-granting regime. All consumers of electricity shall be given access to the grid by the system operators. Consumers shall be given a response without due delay. If there is not sufficient capacity in the existing grid, the system operators are obliged to invest in upgrades. However, a permit is required for the construction of new installations or upgrades in the grid.

Our understanding of the definition in Article 2 (19) of “permit-granting process” is meant to be of an indicative nature, regarding different administrative permits that are considered relevant for strategic projects, according to national law. The indicative nature of the definition in this respect should be further clarified in the final wording to establish its scope. Our current understanding is that in national systems where no administrative permits are required for grid connection, the Regulation will not apply.

Moreover, to ensure consistency and legal certainty in the EU framework, the proposed provisions on grid connection permits should be assessed thoroughly against the obligations on system operators pursuant to Directive 2019/944, and its amendments, on rules for the internal market for electricity, regulating third party access to transmission and distribution systems.

Protection of indigenous peoples' rights

As regards critical raw materials projects in traditional Sami territories, Norway emphasizes the need to secure indigenous peoples' rights as set in the ILO convention nr. 169³ and ICCPR Article 27⁴. The Norwegian government is obligated to consult with the Sami Parliament and with reindeer herders with land use rights. We are concerned that the ability to carry out substantial consultations may be reduced due to the proposed time limits for the permit-granting process. In our view, sufficient time should be allocated to enable the parties to carry out genuine and effective consultations. In a joint statement to the proposal, the Sami Parliament in Norway and the other Sami Parliaments have expressed similar concerns regarding the suggested time limits.

Consultations are an important part of the Norwegian authorities process of verifying that projects adhere to international human rights standards, such as the International Covenant

³ The International Labour Organisation (ILO) Convention no 169 on the Right of Indigenous Peoples.

⁴ International Covenant on Civil and Political Rights. Article 27 regulates a legally binding provision on minorities.

on Civil and Political Rights. In the Nordic countries, mineral extraction will often take place in indigenous areas and may thus often require consultations.

Chapter 5 of the proposal – Sustainability

Circularity

We support the strong initiative to increase the circularity of critical raw materials through national measures, as expressed in Article 25 of the proposal, and the specific requirements on circularity (Articles 26, 27 and 28). In this context we also want to emphasize the importance of promoting resource efficiency in product design through technological developments and material substitution. When it comes to circularity of critical raw materials, it is important to be aware of the lack of knowledge in this field, and the implication of this on both the national programmes⁵ and the permitting processes. There is a lack of knowledge when it comes to the actual content of the materials in relevant products and the potential for reuse and recycling. In addition, there is a need for development and investment in new technologies. It is important to prioritise increasing of such expertise for all stakeholders involved through close cooperation and partnership to ensure sustainable processes.

Public procurement

We also support the initiative to include award criteria related to circularity in public procurement as a measure to increase circularity of critical raw materials. However, there are numerous legislative proposals at EU-level regarding important and necessary measures for the EU to reach the target on climate neutrality within 2050. In these proposals there is a fragmented approach to public procurement related provisions, and we would like to encourage the EU to take action to coordinate its approach when drafting and adopting legislation on these public procurement related provisions. This is based on our previous experience with, and proposed development of, what we consider to be a fragmented legal domain. We also encourage the Commission to provide updated guidelines covering the different public procurement-related provisions, with clear indication of their enforcement date. This would provide contracting authorities and companies with a complete and updated overview into legal requirements that are applicable in a specific procurement.

Environmental footprint declaration

The proposal states that critical raw material with significant environmental footprint during the life cycle, shall have an obligation to declare the environmental footprint when placed on the market (see the proposed Article 30). It will be up to the Commission to assess whether such declaration is necessary and proportionate. We note that the proposed provision regarding environmental footprint declaration is limited to the environmental impact category which has the most important impact category. In our view, this is a possible weakness in the Commission proposal.

Our understanding is that one of the reasons behind the CRMA proposal is to harmonise requirements for placing a product on the market and ensuring the well-functioning of the single market. However, some products may have high environmental impact in several categories. A requirement for a declaration for all the highest environmental impacts would

⁵ See the proposed Article 25 regarding national measures on circularity.

ensure a better comparison of the environmental footprint for different materials. If e.g., for a battery manufacturer to be able to make sustainable choices when purchasing raw materials, it is important that the information on environmental footprint is comparable. Critical raw materials that are placed on the market can thus be assessed to a greater extent against the climate and environmental impact.

Annexes to the proposal: List of raw materials

The proposed Act and its annexes specify EU's critical and strategic raw materials. Norway is a highly relevant producer of several raw materials, and we see the initiative as an important step forward for EU's green industrial policy. We recognize that the EU must act urgently to avoid unhealthy dependencies or supply bottlenecks for the metals and minerals required in its energy and digital transitions, and the proposed shortlisted strategic raw materials are eligible for accelerated permitting measures and possible financial support. As a result of this we would like to express some concerns related to the lists of raw materials.

Aluminium

Aluminium is an enabling material in the green transition, as well as an important metal in defence technology applications. While the global supply of aluminium is expected to keep in pace with demand, the primary aluminium production in the EU is experiencing strict competition from third countries. Thus, the growing demand for aluminium may lead to more imports from non-EU/EEA countries due to energy crisis and uneven trade conditions. Furthermore, primary European aluminium production has recently plummeted by 50 per cent, and if the issue remains unaddressed, this could have significant implications for both jobs and future investment plans. As stated in the impact assessment accompanying the proposed Act, aluminium is likely to face future supply challenges without further investment. The potential growth of and start-up of production of aluminium in EU/EEA countries may also experience competition from the US as aluminium is considered a critical raw material in the US.

We therefore believe that aluminium fulfils all the relevant criteria to be featured in the list of strategic raw materials, and in order to support the green and digital transition, we encourage EU to include aluminium in the Act. In our view, EU should not wait until the planned review of the list in accordance with the proposed Article 3 (3).

Graphite

The proposed Annexes to CRMA is limited to "natural graphite - battery grade", and thus exclude *synthetic* graphite from the lists. We would like to emphasise that the synthetic graphite is processed material using a minor by-product from oil as feedstock and represents a clear industrial synergy. The two materials may be substitutes to each other and should be treated equally. Synthetic graphite-based anode production based on renewables in Europe will significantly reduce the carbon footprint in batteries. Synthetic graphite will, as natural graphite, contribute to the strategic autonomy of the European battery value chain and contribute to the proposed benchmarks. We therefore encourage EU to replace "natural Graphite" with "Graphite" on the list of both strategic and critical raw materials in the proposed Article 3 and 4, and Annex I and II.