

Netherlands non-paper on the external dimensions of the Critical Raw Materials Act

The Netherlands welcomes the Commission's proposal on a Critical Raw Materials Act (CRMA) and the related Communication published on March 16th 2023. The CRMA is an important step to strengthen the open strategic autonomy of the EU. Reliable access to the raw materials and related strategic components and final products that are essential to the twin transitions is of economic and geopolitical importance to the EU. The European Union and its member states should build resilience and strengthen their position in critical raw material value chains. The EU should also step up its efforts to increase responsible production of critical raw materials in the EU and in third countries, thus building both sustainable and reliable supply chains. According to the Netherlands, the CRMA is a major step towards mitigating the risks of strategic dependencies and building resilient supply chains, but more could and should be done.

The Netherlands identifies five essential elements to build resilience: 1) circularity and innovation; 2) sustainable European mining and refining; 3) diversification; 4) sustainable global value chains; and 5) knowledge building and monitoring.¹ For the purpose of discussion in the FAC(Trade) and FAC(Development) the present non-paper deals with the external dimensions, which mainly relate to diversification and sustainable value chains, not implying that other elements are less relevant.

Trade and investment policy instruments

Diversifying the supply of critical raw materials and related strategic components and final products is vital for the EU's security of supply. Although companies are primarily responsible for their own value chains, national governments and the EU can facilitate diversification. In particular, trade and investment policy instruments can create new opportunities for diversification. Hence, the Netherlands shares the Commission's vision set out in the communication accompanying the CRMA with regard to the role attributed to trade and investment policy.

First and foremost, trade policy instruments improve market access to critical raw materials and related strategic components and final products. Trade agreements (FTAs) are an important tool in this regard. Countries with which the EU is currently negotiating an FTA or has recently concluded negotiations with, including Chile, Australia and Indonesia, are important sources of critical raw materials such as lithium and nickel. FTAs not only improve access to the raw material itself, but also to goods and services associated with different stages of the value chain, including extraction, refining and further processing. The latter stages are also important for the EU, given its strong dependence on imports of components and final products containing raw materials. Improved market access allows European businesses to choose from a larger set of suppliers to source their raw materials, semi-finished and finished products, and consequently allows them to de-risk their strategic dependencies. Other arrangements in FTAs, such as reducing or preventing trade restrictive measures, customs cooperation and promoting sustainable development, further boost trade and encourage foreign direct investment in extraction.

Along similar lines, promoting investment through investment policy further contributes to the security of supply of critical raw materials and related strategic components and final products. By including investment protection commitments in trade agreements or concluding Sustainable Investment Facilitation Agreements (SIFAs) the EU can strengthen the investment climate for EU investors in third countries and boost bilateral investments in critical raw materials. SIFAs focus on promoting sustainable investments and include additional provisions on energy and raw materials. The EU recently concluded negotiations on a SIFA with Angola and exploratory talks are taking place with Nigeria. Member states also have a role to play here. The Netherlands already has a strong network of bilateral investment protection agreements. These agreements contribute to security for Dutch investors in partner countries and can therefore indirectly promote commodity-related investments. The Netherlands is committed to modernizing these agreements.

¹ NL non-paper on the Action Plan on Critical Raw Materials and the Critical Raw Materials Act, 26 January 2023

It is key to strike a careful balance between facilitating the development of mining, refining and processing capacities in Europe through improving market access and reducing and preventing trade restrictive measures, and giving resource rich countries the required policy space to develop their own local industries and improve value addition. For example, dual pricing strategies could be condoned in exceptional circumstances. Such policies should, however, not go at the expense of EU's security of supply of critical raw materials. In our view, the provisionally agreed chapter on energy and raw materials in the EU-Chile Advanced Framework Agreement is a good way forward in this regard.

Strategic partnerships and the Critical Raw Materials Club

Strategic raw material partnerships can be part of bilateral trade agreements or be developed independently. The Netherlands is in favor of establishing such partnerships, including with African and Latin American countries. The partnerships may for instance focus on reciprocal adaptation of policy and regulatory frameworks for mining and processing, integration of value chains and local value addition, responsible and climate-smart mining practices and research and innovation. The Commission and member states should work together to make these partnerships a success.

The Netherlands also welcomes a Critical Raw Materials club (CRM-club) as an important instrument to bring together consumer countries and resource-rich countries. The Netherlands is ready to become a member of the CRM-club. The CRM-club should consist of a broad set of likeminded countries, including those in the Global South. We agree the CRM-club should foster investment in resource-rich countries and allow such countries to move up critical raw materials value chains. It should also focus on minimizing export restrictive measures and on international standard setting and alignment of standards, including sustainability criteria, in order to create a level playing field.

All of this asks for policy coherence of European policies on trade, development, industry and the environment. It is also important that there is policy coherence and coordination between the CRM-club, CRM-board and different existing and announced partnerships. And finally, coherence should be ensured in terms of specific provisions and obligations in EU legislation and policy initiatives that apply to conflict minerals, battery minerals and critical and/or strategic minerals.

Strategic projects

Strategic projects can play an important role in increasing our security of supply. The CRMA proposes to provide faster and easier financial support for strategic projects, using existing resources. Strategic Projects require additional effort by the private sector, which is not necessarily financially viable. Therefore, the Netherlands intends to explore whether an Important Project of Common European Interest (IPCEI) could be used as an instrument and whether this would be supported by EU Member States.

The Netherlands supports the idea that strategic projects could also take place in third countries and would welcome further guidance on the way in which strategic projects in third countries are identified and prioritized vis-à-vis strategic projects in the EU. Such projects should be developed together with national and local governments and local communities in the countries concerned under the framework of Global Gateway and align with national development priorities and climate ambitions.

The Netherlands would like the Commission to take national demand for raw materials and related strategic components and final products into account, in addition to European demand when determining critical and strategic raw materials. In addition, further clarification on the method and broadening (including strategic semi-finished products and final products from strategic sectors) is necessary.

According to the Commission proposal, only the subset of *strategic* raw materials should be eligible for strategic projects. In our view the EU should be flexible here, at least when it comes to projects

in third countries. Flexibility is needed, because strategic metals are often mined as a coproduct of another currently non-critical or non-strategic metal.

Taking local impact into account in strategic partnerships and projects

When fostering investments and local value addition in the extractives and midstream sectors in third countries through strategic partnerships and projects, it is important to keep the local context and possible negative impacts into account. This means ensuring environmental and social impact assessments of new projects and transparent compliance with human rights and environmental norms, as well as relevant legislation that requires (transparency on) due diligence as a measure to promote RBC, such as Conflict Minerals Legislation, the CSRD, or the CSDDD. In order to make a positive impact with strategic partnerships, the EU should encourage multi-stakeholder engagement, especially of local communities and women, when negotiating MoU's and developing roadmaps with strategic partners. These stakeholders are both impacted by new interventions and can address issues like working conditions and environmental pollution in critical raw material supply chains.

Partnerships with countries where artisanal small-scale mining (ASM) plays a significant role, specific attention and action is needed to understand and leverage the opportunities for ASM-miners in order to prevent undue negative impacts, including on women. With regards to regions that can be identified as conflict-affected high-risk areas, or that face high levels of corruption, a differentiated approach to partnerships is necessary taking into account such issues as the role of conflict, corruption and (regional) illegal flows in order to have a positive development impact. Such differentiated approaches are currently missing in the CRMA proposal and communication.

The EU and its members states, together with their partners, should seek to incorporate climate-smart practices and decarbonization technologies in roadmaps to reduce the environmental footprint of the extractives and midstream sector – focusing specifically on strategic projects. This can also help third parties to abide to a potential environmental footprint declaration.

Where appropriate, the EU should be open to including cooperation on access to renewable energy and accelerating the energy transition in third countries as a component of raw materials partnerships and vice-versa, therewith also seeking to enable access to energy and just energy transitions in resource-rich developing countries.

Financing instruments

To increase mutual benefits and local value addition in strategic partnerships with third countries, International Financial Institutions, export credit facilities and the further development of the EU taxonomy can play a key role. The Netherlands encourages the Commission to raise public-private funding in the context of partnerships with developing countries through existing instruments.

We believe Global Gateway investments and international financial institutions have an important role to play. By dovetailing Global Gateway investments strategically to the security of supply of critical raw materials both the EU's trade and geopolitical interests as well as our partner countries' development interests are served. In this respect, the Netherlands supports the Commission's approach to earmark current relevant Global Gateway investments as flagships and would like to see funding reprioritized and reserved for Global Gateway investments related hereto, particularly in the area of those critical raw materials and related strategic components and final products necessary for a successful digital and green twin transition within the current MFF. The Netherlands supports the Commission's work to further explore what role international financial institutions such as the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD) can play in sustainable raw material extraction in developing countries (also in relation to the Global Gateway). In case Official Development Assistance (ODA) is deployed with these instruments, it is essential that activities primarily contribute to the Sustainable Development Goals (SDGs).

The Netherlands is examining the role that our national export credit facility, operated by Atradius Dutch State Business, can play in improving access to critical raw materials and related strategic components and final products for example by contributing to the development of new production facilities abroad through reducing associated investment and financing risks. In addition, enhanced coordination at EU level as proposed in the Communication, through a possible EU credit facility, could provide additional support to the competitive position of European companies and access to critical raw materials, but this depends on its design.

Meanwhile, it is important that the EU member states bring together information on European companies which are international active in mining, trade and processing of critical raw materials and have (potential) interests in expanding their activities in countries abroad. We need these companies and their knowledge to work together with local governments and companies in the strategic projects and otherwise.

Sustainable international value chains

In striving to achieve greater security of supply, one important prerequisite is to avoid any adverse effects on people and the environment. The growing demand of critical minerals provides an opportunity to alleviate poverty in resource-rich developing countries but can also deepen existing problems in international supply chains of critical raw materials. Only if these materials are extracted and processed responsibly can the UN Sustainable Development Goals and climate goals be achieved.

Improving the way mining, refining and processing are carried out also helps to make production processes more stable and reduces investment risks in the supply chain. Moreover, pursuing a trade agenda while focusing on sustainability makes the EU an attractive alternative partner for resource-rich countries encountering investors who do not have the interests of people and the environment at heart.

The Netherlands welcomes the sustainability criteria for strategic projects in the regulation, because we believe that projects must be in line with relevant Responsible Business Conduct (RBC) legislation and standards. A commitment to security of supply, such as through accelerated permitting procedures for strategic projects, must also go hand in hand with strong environmental and social impact assessments and engagement of stakeholders, both within the EU as in third countries. In order to take environmental and social issues into account, the Netherlands suggests to introduce a subgroup specifically focused on sustainability that advises the CRMA board.

The Netherlands would like to see a further explanation of the conditions for recognition of certification schemes in the regulation, including how these conditions relate to the 'sustainability principles' to be developed by the CRM Club. It is essential that recognized certification schemes are at least in line with RBC standards and (EU) legislation, and with climate agreements such as the Paris Agreement and the Global Biodiversity Framework, and that the certification schemes do not serve as exemption from (European) legislation. Lessons from the conflict minerals regulation in this regard should be incorporated.

An underexposed element in the quest for greater supply of critical raw materials for the energy transition, is the environmental impact of production and processing of critical raw materials itself, including the Green House Gas (GHG) emissions. Therefore, climate smart mining and decarbonization of production processes are key to not undermine the climate objective of the energy transition and should sit at the heart of the EU's approach.

The Netherlands welcomes the proposal to calculate the environmental footprint of critical raw materials, since addressing environmental impact starts with quantifying it. Regarding the environmental footprint declaration, we are in favor of disclosure on all impact categories. Impact on the environment consists of various footprints, such as in terms of emissions, biodiversity, water, land use and pollution. With steering on a 'highest' category, other impact areas should not be forgotten. Furthermore, the environmental footprint can differ locally and change over time, which makes periodic renewal of the declarations desirable.