MINISTRY OF INDUSTRY, BUSINESS AND FINANCIAL AFFAIRS

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European Critical Raw Materials Act – The Danish Government's response to the call for evidence

The European economy is dependent on access to a large number of raw materials to function smoothly and remain globally competitive. The disruptions caused by the COVID-19 pandemic demonstrated that certain raw materials are critical to businesses across a wide range of industries, as well as the negative ramifications that severe supply disruptions may result in. Recent geopolitical developments have put further stress on global supply chains and highlighted their vulnerabilities, which has prompted discussion about whether our security of supply around critical value chains is sufficient. At the same time, the economic transformation, with the green and digital transition is set to greatly increase Europe's future demand for certain raw materials. This might lead to supply crunches with negative effects on our competitiveness and implications for our ability to fast track the green transition as renewable energy technologies are heavily dependent on a number of critical raw materials.

Whilst Europe will be dependent on imports of large quantities of raw materials in the forseeable future, it is prudent in light of these developments to assess our critical dependencies and the degree of vulnerability of key value chains. We must also diversify and reduce critical dependencies in light of the risks that can arise from being overly dependent on one supplier country. Therefore, the Danish government fully supports the European Commission in its intention to consider a legislative initiative on critical raw materials.

The overarching guiding principles for this work should include the following:

- *We cannot expect to be fully self-sufficient with raw materials in the foreseeable future.* Whilst some raw materials are readily available in large quantities within the European Union, we are and will always remain dependent on imports. We must also bear in mind that efforts cannot solely focus on the extraction of raw materials, as critical dependencies also arise further downstream along the value chain in the ensuing processing and refining processes.
- *We should focus efforts on highly critical raw materials*. Some raw materials are vital for our economy and the well-functioning of our society, while others are less critical. We must concentrate our efforts and resources on those raw materials where a disruption or breakdown of supply would pose significant risks to the functioning of our society, our economy, including critical infrastructure, and for highly strategic objectives e.g. for defence purposes and the achievement of the twin transition. The

Danish government has shared a typology over different types of dependencies that we believe could serve as a guiding framework for assessment the strategic importance and criticality of individual raw materials.

- *A range of different policy measures is needed to mitigate supply risks around particularly critical value chains.* We must ensure that we set out a sound and evidence-based approach for strategically addressing our critical raw material dependencies, focusing on long-term structural solutions that address the root causes, rather than temporary short-term responses.
- *Key priorities for this work* should include
    - Promote the market's diversification of supply chains through strategic partnerships, including with relevant overseas countries and territories (OCT) and trade agreements with like-minded partners and reliable supplier countries. This is paramount in order to address the challenges posed by being overly dependent on few suppliers, especially from countries we do not share values or strategic interests with
    - Encouraging research and development activities to identify ways to substitute or reduce the need for particularly critical inputs
    - Developing circular economy solutions that will help reduce demand for critical raw materials and increase supply of secondary critical raw materials,
    - Ensuring that critical raw materials are extracted and processed with the lowest possible environmental impact and in compliance with high social and governance standards
    - Maintaining strong and vigorously enforced competition rules that are integral to the vitality of the Single Market and Europe's position as an attractive open-for-business investment destination.
    - Evaluate the comparative advantages of different methods of ensuring the available, secure and responsible sourcing of critical minerals

Current EU-level initiatives concerning critical raw materials

The European Union has developed a *list of critical raw materials* that serves as an evidence-based baseline that can inform public policy deliberations around the forthcoming legislative initiative. In particular, this can be helpful in terms of ensuring that the initiative is appropriately targeted towards raw materials value chains that are truly critical. We must however also acknowledge that the raw materials listed are not necessarily equally critical.

The European Raw Materials Alliance (ERMA) can contribute to fostering common risk perceptions and providing strategic guidance to inform the thinking amongst industry-level decision-makers through stakeholder dialogue. Informal industry and other stakeholder networks cannot replace formal political decision-making, especially when it comes to prioritizing limited resources, but industry-level action and consultation will be crucial for improving Europe's security of supply in key value chains.

Research and innovation into methods that can reduce or eliminate the need for particularly critical raw materials in industrial applications will have an important

role to play in mitigating Europe's supply risks. The deployment of funds from the EU's *Horizon Europe* programme and similar research programmes could be further explored without increasing the funds. It might also be beneficial to consider ways to step up coordination and information sharing between research projects, institutions and initiatives both within the EU and with trusted partners that seek to develop ways to substitute critical raw material inputs for less critical inputs and promote geoscientific investigation.

Monitoring and addressing supply risks

The state provides the overarching framework conditions under which companies organise their supply chains. It is therefore important that the state actively pursue security of supply through diversifying supply by opening up new supplier markets through strategic alliances and partnership agreements and through structural and strategic measures to alleviate market failure. Nevertheless, it is ultimately the responsibility of businesses to follow the market, and understand and react to risks to their supply chains. There may be some scope for public authorities to carry out supplementary monitoring activities to provide foresight and early warnings to industry actors, and conduct stress test to understand the vulnerabilities of specific highly critical value chains.

In particular, early warning is valuable since it might under certain conditions be possible for industry to cushion temporary supply crunches in key value chains by taking appropriate pre-emptive actions, for example by preparing contingency plans and expanding their inventories ahead of supply shortages.

However, we must recognise the limitations that such public initiatives would have in creating added value relative to what information is already available to market actors. In designing a monitoring system, it would be essential to weigh carefully the potential benefits against the administrative burdens and other costs for business and governments and generally keep burdens and costs at a minimum. Equally, the potential for better coordination and information sharing, both within the EU and with likeminded third countries and OCTs, will not require an EU-level governing capacity or other institutional developments.

Importantly, the proposed Single Market Emergency Instrument (SMEI) would establish a regime for monitoring and addressing supply risks. The SMEI should provide a sufficient framework for addressing supply risks pertaining to critical raw materials, including providing for monitoring activities and coordinating initiatives. A Critical Raw Materials Act should not develop a *lex specialis* relative to the SMEI, and thus not seek to establish an alternative monitoring or crisis management setup or similar measures, but instead leave this to be covered in the SMEI.

The question of relevant permanent strategic reserves in response to particularly serious supply challenges should be addressed based on sound general principles for such reserves to ensure that they are strongly evidence-based and highly targeted at exceptionally serious criticalities. Further, it should in each case be considered if the question of stockpiles is more effectively addressed nationally.

Permitting

Permitting for new raw material projects represents a complex challenge that impedes the development of new projects in the European extraction sector. While it is desirable to ensure fast permitting, all legitimate social and environmental concerns must be thoroughly assessed and given due weight.

Demonstrating full compliance with ESG standards and existing environmental regulation and carrying out thorough assessments as part of the permitting processes is crucial in order to secure public support.

Permitting is predominantly or solely an issue for national, regional or local authorities. However, insofar that appropriate measures, including potential EU-level initiatives, can be identified that would help accelerate permitting procedures without compromising legitimate concerns such as adherence to ESG standards and existing environmental regulation, they should be welcomed. This could for example include disseminating best practice, support to strengthen administrative capacity, setting up one-stop-shop style arrangements, streamlining administrative processes, and facilitating cross-border projects through information-sharing.

Investments

The EU's critical raw materials list and the ongoing stakeholder dialogues e.g. through ERMA has the potential to contribute to more resilient supply by signalling to markets which raw materials are seen as requiring specific attention and investments.

It has been suggested that the EU could also set specific targets or objectives about the share of specific raw materials usage in Europe that should be covered by domestic production. While EU Member States should consider ways to expand their domestic production of critical raw materials where appropriate, the EU should be equally open to exploring possibilities in likeminded or trusted third countries and OCTs. Suggesting that domestic production is of particular importance and to be prioritized would send the wrong message and may also set a problematic precedent for third countries.

It is in our European interest to seek to maintain a global level playing field and develop common solutions with likeminded partners, rather than taking steps that may prompt rising protectionism and advance "go-it-alone" type solutions. At the same time the proposal on Critical Raw Materials Act must be designed with a view to the necessary balance between various strategic concerns, in particular the EUs desire to develop its open strategic autonomy, and in light of the general geopolitical context.

In a similar vein, it could be helpful to identify Strategic Projects that would contribute to Europe's security of supply of critical raw materials. This should be open to projects within the EU as well as in third countries and OCTs, and reflect strategic considerations around the full value chain, from exploration, to extraction, processing and refining. The Strategic Projects should focus on projects concerning critical raw materials that adhere to high ESG standards and will benefit all of Europe in accordance with clear and evidence-based criteria. An appropriate

modus operandi would have to be established with the role of the council clearly laid out.

If designed well, Strategic Projects could play a key role in de-risking and crowding in private investments to projects that will enhance our security of supply. EU funding from relevant facilities such as investEU and financial institutions such as the EIB could be deployed, provided this would not lead to a hollowing out of other areas of critical importance to the EU's future competitiveness. Some Member States may seek to de-risk investments into national raw material projects by offering state aid. This will be fully possible under existing state aid rules, conditional on projects strictly meeting the necessary requirements for the granting of state aid.

Circularity

Recycled materials should meet a larger part of Europe's future supply but increased recycling is insufficient in the short term due to the rapidly increasing demand of critical raw materials. Therefore, transition to a circular economy – in terms of changed design and consumption patterns – is pivotal in order to mitigate the increasing demand for critical raw materials.

The circular economy can help alleviate some of the supply challenges in the medium and long term. The conditions for a circular economy, including but not limited to increased recycling, must be created. In this context, it is important to focus on a broad range of measures that would strengthen the circular economy, including:

- Extending the life time of products and increasing reparability.
- Reducing the quantity of new products and use of resources, e.g. through circular business models aiming at sharing and offering products-as-a-service.
- Increase recycling of critical raw materials, e.g. by improved product design enabling end-of-life separation and by investing in advanced sorting and recycling facilities.
- Supporting substitution of critical raw materials where possible.
- Strengthening traceability in supply chains and increasing the sharing of data on products and raw materials, e.g. through Digital Product Passports

Current EU waste regulation does not sufficiently ensure high quality recycling of critical raw materials, while EU product regulation does not sufficiently ensure repair, remanufacturing and life-time extension etc. in order to reduce the demand for critical raw materials.

International Partnerships

Ensuring better access and a more diversified supply will contribute to resilient value chains for critical raw materials. The EU should strengthen existing strategic partnerships and seek to conclude additional partnerships and trade agreements with reliable third countries and OCTs covering the key value chains for critical raw materials.

Close cooperation with likeminded countries, including through the Trade and Technology Council (TTC), the Minerals Security Partnership (MSP), and similar

initiatives, is essential. The EU must also develop closer ties with overseas countries and territories concerning critical raw materials, whilst fully respecting the institutional and constitutional arrangements in the OCTs in question.

While the EU must be ready to defend its interests as appropriate when necessary, international partnerships and agreements are crucial to fostering cooperative solutions where possible, and will help avoiding situations where policy decisions lead to damaging protectionist outcomes and trigger damaging "subsidy races". Such partnerships must be fully in line with high ESG standards and criteria, and the EU should carefully consider how to ensure actual compliance on the ground. Cooperation with likeminded third countries and OCTs concerning data and information sharing could also potentially contribute to the EU's security of supply.