A3M comments on the CRM Act following the adoption of the Council and Parliament mandates and the launch of interinstitutional negotiations.

Paris, October 5th, 2023

In the final stretch of the interinstitutional negotiations, the French mining and metallurgy industry (A3M) would like to share to the policymakers its comments to build a sustainable and reliable CRM supply chain in the EU.

A3M is extremely pleased with the progress of the legislative process and supports the adoption of this regulation before the end of 2023. A3M takes note that the Parliament and the Council have converging views on many essential points, although certain provisions still need to be strengthened, such as CSR (Corporate Social Responsibility) ambition and the visibility of strategic partnerships.

Nevertheless, A3M notes once again with regret that the financing aspect is absent from the text.

Finally, we would particularly like to draw attention to the Parliament's proposals, which could be contrary to the objectives of the Regulation, proposing exemptions to the recycled content of permanent magnets (see point 6).

1/ Effective control of environmental and social risks (Article 29 and Annex IV)

Achieving an environmental and social "level playing field" is an essential condition for the development of a sustainable and competitive EU value chain. A3M welcomes the provisions of Article 29 enabling the Commission to be empowered, via implementing acts, to recognise certain certification systems. A3M believes that only the most ambitious standards, such as IRMA and ICMM, should be recognised.

A3M supports the wording of Article 29 as adopted by the Parliament, which allows industry associations to submit their certifications. The article, as adopted by the Parliament, requires that these standards are revised by the Commission at least every two years, and strengthens Annex IV.

2/ Securing supply, in particular by establishing strategic international partnerships (Chapters 6 and 7 and Annex I)

A3M reiterates that diversifying supply of raw materials for strategic European industries requires supporting extra-European extraction, involving European stakeholders.

We support the provision related with the establishment of list of priority countries for strategic partnerships, as set out in the Council's position. This list should be updated annually.

The European Union should develop strategic partnerships with countries that have the capacity to supply large volumes of critical raw materials over the next three to five years. For example, it is essential that agreements are signed with Indonesia for nickel and with Latin American countries for lithium, particularly Chile.

A3M is calling for including chapters on environmental and social safeguards in these partnerships, to guarantee that any EU investment made in third countries, is carried out within the appropriate CSR framework. This is the only way to differentiate the European offer from that of competitors. These agreements must consider compliance with WTO rules.

Finally, A3M welcomes the Council's proposal to extend the list of strategic raw materials in Annex I beyond battery grade, which is not included in the Parliament's position. We continue to support the inclusion of zinc and indium as strategic materials, which are currently not included by either the Parliament or the Council.

3/ Strengthening the provisions on the circular economy (Article 3. a) and recitals 3 and 6)

A3M positively welcomes the provisions reinforcing the circular economy, enabling a better response to the challenges of resource availability within the EU. In particular, ***we welcome the amendment adopted by the European Parliament, creating an article 3. a) which calls for the creation of a list of secondary strategic raw materials including ferrous scraps. We note that recital 9 of the Council's version is also along these lines.***

A3M is pleased to note the provisions that encourage greater flexibility in recycling, in particular ***recitals 3 and 6 as adopted by the European Parliament***. For instance, recital 3 allows the technical and economic feasibility of recycling capacities for each strategic raw material to be taken into account.

4/ Adopt a definition of processing that includes the entire value chain (Article 2 (9))

We support the definition proposed by the Commission and the European Parliament in Article 2 (9), which does not include any explicit exclusion. On the contrary Council's position, seems to exclude essential segments of several key sectors in development such as batteries and permanent magnets (like P-CAM and CAM). We draw Member States' attention to this problematic wording, which could lead to a break in the supply value chain.

5/ Ensuring regulatory coherence with other legislations (Article 42. 2 b))

A3M supports the version of Article 42. 2 b) adopted by the Parliament, which ensures regulatory coherence by allowing the Commission to monitor coherence between the CRM Act and other European legislations.

6/ Creation of an ambitious specific legal framework for permanent magnets (Articles 27 and 28)

A3M wishes to draw particular attention to the Parliament's position, which could jeopardise the development of the European permanent magnet recycling industry.

The third paragraph of Article 28 (28.3), on the recycled content of permanent magnets, is amended by the European Parliament as follows:

> *"No later than 31 December 2030, the Commission shall adopt delegated acts supplementing this Regulation by laying down minimum shares for neodymium, dysprosium, praseodymium, terbium, boron, samarium, nickel and cobalt recovered from post-consumer waste that must be present in the permanent magnet incorporated in the products referred to in paragraph 1. In duly justified cases, different minimum shares may be applied for different products or certain products may be excluded from this obligation."*

This last sentence is problematic for two reasons: it opens a door to the non-use of recycled materials (1) and it creates a legal uncertainty (2).

(1) Non-use of recycled materials

This amendment allows companies not to use recycled materials to produce permanent magnets. As primary materials are cheaper than secondary materials, there is a risk that companies will turn to primary materials, to the detriment of the development of the circular economy. This is doubly damaging. On the one hand, it means extracting more and more materials, without worrying about the resulting waste. On the other hand, the European recycling industry will not be able to establish itself on a long-term basis and make the necessary investments for its deployment if the legal and regulatory framework is uncertain. The result would be additional costs for the recycling sector and a risk to its development, as the variability of inputs would be greater.

Without an obligation to include recycled content, manufacturers will continue to use primary resources, hindering the development of a virtuous recycling industry in Europe.

(2) Legal Uncertainty

The "duly justified cases" are not specified in the Parliament's mandate, and there is no obligation to do so. Consequently, the methodology developed by the European Commission in its delegated act could exempt many motor producers from these obligations. Indeed, they will be considered as operating in "duly justified cases" and they will be allowed to use primary materials - less durable - and therefore they will be able to offer permanent magnets at lower prices to increase their market share.

Thus, the last sentence of Article 28(3) as adopted by the European parliament should be deleted.

The French metallurgical industry strongly encourages the legislators to maintain the text as adopted in the Council mandate.

Furthermore, we also wish to draw the attention of the legislators to the addition in paragraph 10 of Article 27 in the European Parliament's position (***Specific information referred to in paragraphs 1, 3 and 4 may be omitted if it includes commercially sensitive information***).

This addition seems to us to contradict the element of 27.3 (***The data carrier shall, under no circumstances, contain or give access to commercially sensitive information***).

Therefore, to provide a predictable legislative framework suited to the development of a European recycling industry, ***A3M is in favour of deleting paragraph 10 from Article 27 as adopted by the European Parliament***.