



CRM Alliance
Critical Raw Materials

CRM DAY Webinar

THE IMPACT OF NEW DUE DILIGENCE & SUSTAINABLE CORPORATE GOVERNANCE RULES ON CRM VALUE CHAINS

REPORT

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CRM Day Webinar 22 September 2021

The impact of new Due Diligence & Corporate Governance rules on critical raw materials value chains

On 22 September, the Critical Raw Materials Alliance (CRM Alliance) hosted its bi-annual CRM Day on “The impact of new Due Diligence & Corporate Governance rules on critical raw materials value chains”. The event discussed the upcoming EU horizontal legislations on due diligence and sustainable corporate governance and was an occasion for experts to discuss the benefits and challenges associated with these two policy initiatives.

The event, opened by Martin Tauber, President of the CRM Alliance, featured two different sessions.

The first expert panel focused on the views of industry on the upcoming EU legislations on Due Diligence and Sustainable Corporate Governance. The panel included Pedro Oliveria from BusinessEurope, Luc Hendrix from SME United and Gert Meylemans from EUROBAT. The panelists discussed the potential impact of the horizontal set of legislative actions and elaborated on what can be done to ensure a coherent package of policies for all industry stakeholders.

The second expert panel addressed the challenges that raw materials could face in the regulatory frameworks on due diligence and corporate responsibility, how they may impact raw material value chains and the possible solutions that already have been implemented or will be implemented in the upcoming years. The panel included Susannah McLaren from the Cobalt Institute and Mark Ministry from the Nickel Institute.

The first panel was moderated by Chris Heron, Director for Communication & Public Affairs at Eurometaux, while the second panel was moderated by Rebecca Lentini, Secretary General of the CRM Alliance.

Panel 1: Industry



Pedro Oliveira is Director for Legal Affairs at BusinessEurope since October 2009. Beyond leading the department, he deals with consumer affairs, access to justice, company law and corporate governance. He has been a member of different European Commission expert and stakeholder groups on online dispute resolution, European contract law and comparison tools. Before joining BusinessEurope, he worked at the College of Europe in Bruges as a legal researcher.

Mr. Oliveira began his speech by outlining the reasons why the European Commission has taken action on the issues of due diligence and corporate governance. He then reported on BusinessEurope's position which is open on a future due diligence initiative provided the right conditions are met but has strong reservations on corporate governance.

The following concerns emerged during his speech:

1. Firms should not be held accountable for all phases of the supply chain, indistinctively from where they operate. In this regard, the rules on reversal of liability and on proof (no guilty until proven innocent approach) should be balanced.
2. Corporate governance and due diligence files should not be mixed up. Two separate discussions would provide a more sensible focus on each proposal
3. On corporate governance it is important to respect the principle of free enterprise, whereby companies should be free to balance the interests of different stakeholders and to identify which interests may be relevant to them.

Lastly, Mr. Oliveira summed up his proposal to the European Institutions in one sentence: “let’s go for an evolution, not a revolution of the current framework”.

Luc Hendrickx is Director of Enterprise Policy and External Relations at SMEUnited, the European employer's organisation representing the interests of crafts and SMEs at EU level. In this function, he is responsible for SME policy, better regulation, legal affairs, internal market issues, retail, digitalisation, trade and standardisation. He is member of EFRAG’s PTF-ESRS SME Cluster, and other advisory groups at EU level.



Mr. Hendrickx started his presentation by stating that corporate governance and due diligence are two different topics that should be developed in different ways and distinguished in approach and scope.

Concerning corporate governance, Mr. Hendrickx stated that the particularities of SMEs cannot be overlooked. There is no reason to assume that stakeholder-centric models would be substantially better than shareholder-centric models. He argued that SMEUnited does not see the need for EU-level regulation on corporate governance and that the legislator should turn its attention to national codes of corporate governance, which have existed for a long time and have proved effective in several countries.

On the issue of due diligence, Mr. Hendrickx claimed that the expected requirements should be limited to selected high-risk industries, in an attempt to adopt a more balanced approach. One must take into account that SMEs have less capacity, knowledge, information and resources to build on diversified supply chains and to effectively implement the proposed obligations in their operations.

EUROBAT

ASSOCIATION OF EUROPEAN AUTOMOTIVE
AND INDUSTRIAL BATTERY MANUFACTURERS



Gert Meylemans joined EUROBAT, the Association of European Automotive and Industrial Battery Manufacturers, in August 2018. As Communications and Stewardship Director, Mr. Meylemans strategically communicates key messages to the targeted audience and

makes sure EUROBAT's voice will be better heard in the Brussels arena and across Europe.

Mr. Meylemans mentioned that EUROBAT welcomes the European Commission's initiative on Sustainable Corporate Governance, stating that the proposal could help battery manufacturers to produce green and sustainable batteries. However, members of the association call for legislative coherence between this initiative and the supply chain due diligence policy included in the Batteries Regulation. They believe that a tailor-made approach should be adopted to consider the specificities of each company.

The implementation of due diligence supply chain policies is also supported by EUROBAT. Mr. Meylemans argued that the respect of social and environmental criteria, with particular reference to respect for human rights and for sustainable raw material extraction techniques, would allow Europe to produce the most sustainable batteries in the world.

However, he outlined some suggestions for policymakers, which EUROBAT considers essential:

1. Adapt timeline to task and priorities. 24 months are needed to allow industries to adapt to the due diligence requirements. The 12 months indicated in the proposal are not sufficient.
2. The Commission and Member States must clarify how to ensure the enforcement of the Regulation even for batteries manufactured outside the EU.
3. Products competing with batteries or battery-equipped applications should respect similar requirements on due diligence.

Panel 2: Substances

Susannah McLaren leads the Responsible Sourcing and Sustainability strategy and programmes at the Cobalt Institute. She represents the Cobalt Institute on several prominent platforms, including the Global Battery Alliance, ICMM Responsible Sourcing Working Group, PEF Batteries Technical Secretariat, and Eurometaux Sustainability and Trade Committees.



Ms. McLaren argued that the cobalt industry will be impacted by a number of ambitious due diligence requirements through horizontal, product specific and non-specific pieces of legislation. For the Cobalt Institute, it is important that these proposals will evolve in parallel with other pieces of legislation affecting critical minerals. It will be crucial for industries and businesses that the legislations are aligned and coherent.

Finally, Ms. McLaren presented a project that the Cobalt Institute is currently implementing. This project addresses the challenges present in the different phases of the cobalt value chain, together with key statistics and analysis.

By adopting a holistic approach, the project allows the identification of actual and potential ESG risks across the cobalt value chain and to identify issues where the Cobalt Institute could leverage collective action to help mitigate these risks.



Mark Mistry is responsible for public policy and life cycle management issues in the Health and Environment Public Policy team at the Nickel Institute (NI).

During his presentation, he stated that the Nickel Institute supports ethical production of nickel to address ESG risks and that responsible and sustainable production practices are a priority for the Institute's member companies.

He then outlined the action implemented by NI to ensure a responsible supply of raw materials, divided into three areas:

1. Trading platforms: since the LME from 2023 will require all brands to comply with OECD Due Diligence requirements, the NI, together with other associations, established the Joint Due Diligence Standard, currently reviewed by the OECD, which will allow companies to continue being traded at LME.
2. Downstream initiatives: the NI joined the Responsible Steel initiative to ensure that steel industries take into account specific characteristics of the nickel industry.
3. Industry activities: NI is analysing the tools that companies are using to extract raw materials responsibly, and is discussing the possibility of working together with other associations to identify specific standards to meet the needs of nickel producers.

Dr. Mistry reported on the major concerns of nickel producers. For example, mentioning how responsible sourcing is complex and requires time to prepare, he argued that it is crucial that metals and the mining industry have sufficient time to implement the requirements properly.

He then stressed the importance of achieving consistent and coherent legislation aligned with regulatory activities. And lastly, he mentioned urged legislators not to focus only on a few raw materials and value chains, but to take a more consistent approach, considering all raw materials and all value chains.

The CRM Alliance would like to extend its gratitude to all the speakers and participants for the interesting and fruitful discussions.