



## Compliance Advice

ERMA AND ERMA PARTICIPANTS MUST AT ALL TIMES COMPLY WITH ANY AND ALL APPLICABLE LAWS AND REGULATIONS, ETHICAL STANDARDS, GOOD GOVERNANCE PRINCIPLES AND RELEVANT POLICIES BOTH AT THE EU AND NATIONAL LEVELS AND AS IN FORCE FROM TIME TO TIME. IT IS THE INDIVIDUAL OBLIGATION AND RESPONSIBILITY OF EACH ERMA PARTICIPANT TO BE COMPLIANT WITH THE ABOVE AND ESTABLISH ITS OWN COMPLIANCE, CONTROL AND CORRECTIVE MEASURES SYSTEM. NONCOMPLIANCE MAY LEAD TO SERIOUS SANCTIONS INCLUDING BUT NOT LIMITED TO EXCLUSION FROM ERMA.

More specifically, ERMA and ERMA participants must comply with the following (without limitation):

1. Declaration of the European Raw Materials Alliance (ERMA)

ERMA Participants must sign up and adhere to the Declaration of the European Raw Materials Alliance (ERMA) attached hereto as [Annex 1](#).

2. European Laws and Regulations

ERMA Participants must comply with any and all applicable EU laws and regulations, including (without limitation)

- a. EU competition law (for further details see [Annex 2](#): Guidelines for Competition Law Compliance within ERMA).
- b. European Intellectual Property law.

3. European Industrial Policies

ERMA and ERMA Participant activities must give due regard to European Industrial Policies including (without limitation)

- a. sustainability (social, economic and environmental) in terms of the Green Deal, the UN Sustainability Goals and Circular Economy;
- b. digitalisation (in line with the EU Digital Strategy),
- c. development of European industrial value chains;
- d. future potential for new jobs in Europe.

4. Industrial Corporate Social Responsibility (CSR) Standards

ERMA and ERMA Participant activities must comply with CSR standards including (without limitation) of

- a. relevant European industrial associations,
- b. the World Bank (WB) / European Investment Bank (EIB),
- c. company guidelines applicable in individual EU members states.



## 5. Industrial Ownership and Confidentiality

ERMA and ERMA Participant activities must respect Industrial Ownership and Confidentiality standards including (without limitation)

- a. existing industrial ownership by patents, licenses and other protected IP rights;
- b. coverage of industrial ownership within projects by patenting, licensing and/or other IP agreements;
- c. protection of project-related industrial ownership by appropriate confidentiality arrangements.

## 6. Industrial Communication Standards

ERMA and ERMA Participant activities must comply with Industrial Communication Standards including (without limitation)

- a. platforms used must guarantee a neutral and legally secure communication;
- b. the agenda of all project-related meetings shall be transparently communicated;
- c. pro-active communication to stakeholders and taking of written minutes of meetings.

## 7. ERMA Investment Directives

ERMA and ERMA Participant activities must comply with ERMA Investment Directives that shall be issued and updated from time to time including (without limitation):

- a. project governance to be compliant with WB / EIB standards;
- b. targeting of internationally competitive projects;
- c. targeting of projects with non-corruptive jurisdictions.

Berlin, 01 February 2021

Annex 1

# Declaration of the European Raw Materials Alliance (ERMA)

## Context

Access to resources is a strategic security question for Europe's ambition to deliver the European Green Deal. The new Industrial Strategy for Europe identifies raw materials as key enablers for a globally competitive, green, and digital Europe, while the EU Recovery Plan recognizes raw materials as one of the areas that must contribute to strengthening crucial markets in a sustainable way.



The European Commission's Action Plan of 3 September 2020, 'Critical Raw Materials Resilience: charting a Path towards greater Security and Sustainability' identifies raw materials as critical to Europe's future. Industrial ecosystems such as construction, automotive, low-carbon energy-intensive industries and aerospace are highly dependent on secure access to raw materials. By 2030, these industrial ecosystems will have a combined added value of EUR 2,000 billion and provide employment for more than 30 million Europeans.

Action 1 is to create a dedicated alliance on raw materials, initially to build long-term resilience and strategic autonomy for the rare earths and magnets value chain, before extending to other raw material areas.

## Objectives

The European Raw Materials Alliance (ERMA) aims to make Europe economically more resilient by diversifying its supply chains, creating jobs, attracting investments to the raw materials value chain, fostering innovation, training young talents and contributing to the best enabling framework for raw materials and the Circular Economy worldwide.

The Alliance addresses the challenge of securing access to sustainable raw materials, advanced materials, and industrial processing know-how. By 2030, ERMA's activities will increase the production of raw and advanced materials and address Circular Economy by boosting the recovery and recycling of Critical Raw Materials. More specifically, the Alliance will:

- Bolster the creation of environmentally sustainable and socially equitable innovations and infrastructure
- Implement a Circular Economy of complex products like electric vehicles, clean tech, and hydrogen equipment
- Support Europe's raw materials industry capability, to extract, design, manufacture and recycle materials
- Promote innovation, strategic investment, and industrial production across specific value chains

## Scope

ERMA covers the full range of elements and minerals required by Europe's green and digital transitions, from critical raw materials to base metals and industrial minerals.

In addition to investing in infrastructure and capacity building within the EU, the Alliance will support activities aimed at securing a sustainable supply of raw and advanced materials for the EU's industrial ecosystems that support transition to a green and digital economy. These include the implementation of circularity solutions aimed at reducing consumption and waste.

## Working Methods

ERMA is an open and inclusive alliance that provides an open and independent forum for discussion and analysis, as well as a mechanism for translating potential projects into actual activities and infrastructures that will contribute to creating long-lasting added value and jobs for Europe.





ERMA will identify barriers, opportunities and investment cases to build capacity at all stages of the raw materials value chain, from mining to waste recovery. It complies with EU competition rules and EU international trade commitments.

ERMA's activities will be carried out across 'clusters' defined around specific value chains. The first cluster deals with the most critical value chain for many EU industrial ecosystems – rare earth element (REE) magnets and motors. The second cluster will consider raw and advanced materials for energy storage and conversion in stationary and non-stationary applications. Additional clusters will be defined later.

The underlying conditions for all the clusters are sustainability (social, economic and environmental, in line with UN Sustainability Development Goals), digitalization (in line with EU's Digital Strategy) and circularity (following the EU Circular Economy Action Plan). The clusters' work will contribute to capacity building and to the goals of the EU Just Transition fund through education, training, research and innovation across the wider society.

## Deliverables

As an EU alliance, ERMA will accomplish the following four deliverables:

- Establish an agile and inclusive stakeholder consultation process
- Support EU industrial policy to mitigate regulatory and financing bottlenecks
- Set up a Raw Materials Investment Platform (RMIP) to help leverage investment in a pipeline of key projects
- Foster a deeper strategic awareness, including public acceptance of and forward-looking perspective on the role of raw and advanced materials in the transition to the Green and Digital Economy

The deliverables will be achieved through two workstreams:

1. Value chain-specific consultation processes:
  - Identify and respond to raw material challenges along industrial ecosystems and within the wider society
  - Provide tailored solutions to industry needs
  - Unlock regulatory bottlenecks
  - Promote stakeholders' strong engagement and commitment through an open process
2. Investment channel for raw materials projects:
  - Select and prioritize cases to secure primary and secondary raw materials supply for European industrial ecosystems
  - Install Raw Materials Investment Platform (RMIP) to bring investors and investees together
  - Define case-specific financing strategies and mechanisms
  - Assess EU funding opportunities and financing sources for investment opportunities inside and outside Europe

## Actors

The European Commission launched ERMA on 29 September 2020.



EIT RawMaterials, initiated and funded by the EIT (European Institute of Innovation and Technology), a body of the EU, will manage ERMA and its activities.

The European Commission will ensure the governance framework for ERMA. It will use the European Innovation Partnership on Raw Materials<sup>1</sup> as the main forum to review progress and address issues that may require action at the EU level in order to remove barriers.

### Who can join?

ERMA welcomes all industrial and non-industrial stakeholders, including NGOs, trade unions, national governments, regions, European as well as non-European, that commit to developing sustainable raw material value chains for Europe, and to building resilience, competitiveness and skills.

ERMA should be an effective public-private collaboration platform, involving those industries, investors, researchers and innovators, Member States and regions, unions and civil society organizations that decide to become its partners.

To join the alliance, please visit [erma.eu](https://erma.eu) and submit the online application.

### Contact

ERMA ([erma@eitrawmaterials.eu](mailto:erma@eitrawmaterials.eu))  
EIT RawMaterials GmbH  
Tauentzienstr. 11  
10789 Berlin, Germany

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## Annex 2

### GUIDELINES FOR COMPETITION LAW COMPLIANCE WITHIN ERMA

The **EUROPEAN RAW MATERIALS ALLIANCE (ERMA)**<sup>2</sup> (“the Alliance”) is a voluntary collaboration of private and public stakeholders across the raw materials value chains, open to

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<sup>1</sup> [https://ec.europa.eu/growth/sectors/raw-materials/eip\\_en](https://ec.europa.eu/growth/sectors/raw-materials/eip_en)

<sup>2</sup> <https://erma.eu>.



participation by any company or organisation willing to sign and comply with the **ERMA** Declaration (“Declaration”)<sup>3</sup>.

ERMA and ERMA participants must at all times comply with any and all applicable laws and regulations, both at the EU and national levels, including EU and national competition rules. The following is an overview of certain principles and behaviours to be observed with a view to competition rules. It should be noted that the statements listed below are not exhaustive but highlight only certain aspects:

### General Principles

**ERMA** shall strive for certain principles:

1. **Open access:** As mentioned above, is open to all companies or organisations willing to sign the Declaration, regardless of industry association.
2. **Transparency:** Meetings, discussions, information exchanged and agreements reached will be well documented and minuted. Documents and minutes will be made available to the Commission, on request.
3. **Necessity:** Meetings, discussions, information exchanges will be strictly limited to what is indispensable to achieve the objectives set out below.

### Objectives

- Bolster the creation of environmentally sustainable and socially equitable innovations and infrastructure
- Implement a Circular Economy of complex products like electric vehicles, clean tech, and hydrogen equipment
- Support Europe’s raw materials industry capability to extract, design, manufacture and recycle materials
- Promote innovation, strategic investment and industrial production across specific value chains
- Specific objectives shall be set by the ERMA Steering Committee within the two ERMA activity workstreams for clusters, task forces and individual projects

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### Envisaged actions

The signatories join forces to reach the objectives stated above by promoting and, accordingly, engaging in discussions and dialogue, data exchange and collaborations<sup>4</sup> in order to fulfil the activities as described in the **ERMA** Declaration.

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<sup>3</sup> <https://erma.eu/app/uploads/2020/09/c31815ef.pdf>.





The following recommendations are provided to assist the **ERMA** signatories in taking care to ban any form of anti-competitive behaviour from their participation and activities in **ERMA**, and comply with EU and relevant national competition laws (hereafter the “competition laws”) **It should be noted that the below is not exhaustive but only highlights certain aspects. In particular, signatories are encouraged to visit the dedicated webpage of the Commission’s DG Competition, which provides authoritative information on compliance with EU competition law.**<sup>5</sup> .

### 1. Competition risks in industry alliances

**ERMA** signatories must always take into account that alliances may be exposed to certain anti-trust and competition law risks including – but **not limited to** – the following considerations:

- ✓ One single verbal or non-verbal exchange of commercially sensitive information (*e.g.*, related to price levels) can violate the competition laws;
- ✓ Conversations between signatories at both formal and informal (including social) meetings may turn to commercially sensitive information being unlawfully exchanged;

<sup>4</sup> In accordance with the below outlined guidelines to ensure full compliance with competition law.

<sup>5</sup>[https://ec.europa.eu/competition/antitrust/compliance/index\\_en.html](https://ec.europa.eu/competition/antitrust/compliance/index_en.html).

The Commission has issued several sets of guidelines that can help undertakings assess the compatibility of their business arrangements with EU competition law (see notably Communication from the Commission — Notice — Guidelines on the application of Article 81(3) of the Treaty ([OJ C 101, 27.4.2004, p. 97](#)) (“Guidelines on Article 101(3)”), the Communication from the Commission — Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements ([OJ C 11, 14.1.2011, p. 1](#)) (“Horizontal Guidelines”) and Commission Notice – Guidelines on Vertical Restraints ([OJ C 130, 19.5.2010, p. 1](#)) (“Vertical Guidelines”). See also Commission Regulation (EU) No 1217/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements ([OJ L 335, 18.12.2010, p. 36](#)) (“R&D Block Exemption Regulation”), Commission Regulation (EU) No 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements, ([OJ L 335, 18.12.2010, p. 43](#)) (“Specialisation Block Exemption Regulation”), Commission Regulation (EU) No 316/2014 of 21 March 2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements ([OJ L 93, 28.3.2014, p. 17](#)) (“Technology Transfer Block Exemption Regulation”), Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices ([OJ L 102, 23.4.2010, p. 1](#)) (“Vertical Block Exemption Regulation”).

- ✓ A court or regulator may use competitor meetings in the context of an alliance, together with other factors suggesting collusion, as evidence of a cartel or an anti-competitive agreement in the industry;



- ✓ Rules of an alliance or its signatories on, *e.g.*, standard setting, if any, may be deemed to restrict competition;<sup>4</sup>
- ✓ EU competition law provides that fines imposed on an alliance may be collected from any of its signatories unless that alliance or signatory can prove that it was not involved in the anticompetitive infringement (effectively reversing the burden of proof); and
- ✓ The involvement of the European Commission, notably in the context of **ERMA** meetings, does not exonerate participants from the application of competition law.

## 2. Information exchanges to be avoided

**ERMA** signatories must not have formal or informal discussions, in particular with other **ERMA** signatories who are or may become competitors, relating – but **not limited to** – the following prohibited subjects amounting, in the senses of competition law, to commercially sensitive information:

- ✓ Current or future individual company or industry pricing or any matters likely to have an impact on current or future prices such as competitive strengths and weaknesses, price changes, profit margins, discounts, rebates, surcharges, credit lines offered or other terms of sale;
- ✓ Individual company cost information including any cost components such as production or distribution costs, cost accounting formulae and cost computing methods;
- ✓ Individual company sales or production information including sales volumes, sales revenues, market share, production volumes, production capacity, capacity utilisation, stock levels and supplies, bid amounts and terms, and any limits on sales; current and future company plans and business strategy relating – but not limited to – bidding, investment, marketing and advertising, production, purchasing, sales or technology;
- ✓ Any matters relating to individual customers, distributors or suppliers such as, for example, boycotting or blacklisting; and
- ✓ Salaries and wages, or limitations on hiring a competitor’s employees.

## 3. Allowed Information exchanges

To the extent that they do not amount, in the sense of competition law, to commercially sensitive information, **ERMA** signatories may, in general, have formal or informal discussions, and exchange of information, on the following subjects:

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<sup>4</sup> See [Guidelines](#) on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (OJ 2011 C 11/1).





- ✓ Public policy and regulatory matters of general interest;
- ✓ Non-confidential current or historical information that is in the public domain;
- ✓ Non-confidential technical issues relevant to the industry in general such as standards or health and safety matters;
- ✓ General, non-proprietary technologies and related issues such as the characteristics and suitability of particular equipment (but not a particular company's proposals regarding the adoption of specific equipment or technology);
- ✓ General promotional opportunities such as possible new markets for, or new uses of, a product (but not a particular company's promotional plans);
- ✓ Non-strategic educational, technical or scientific data that result in consumer benefits; and
- ✓ Industry public relations or lobbying initiatives.

#### 4. Appropriate conduct at ERMA meetings

As a general matter, it should be highlighted that just being present when illegal discussions are taking place may be sufficient to consider a company liable for a competition law infringement, even if that company and/or its representative(s) did not proactively engage in those discussions.

Transparency, notably through the documentation of all exchanges in the context of **ERMA** meetings is essential. **ERMA** signatories should therefore, when attending **ERMA** meetings, always (without limitation):

- ✓ Be fully familiar with the contents of these guidelines for competition law compliance within **ERMA**;
- ✓ Carefully review the agenda and purpose of meeting in advance for possible problems under the competition laws and seek advice from the signatories' legal department if necessary;
- ✓ Insist on legal counsel being present at meetings where there is a possibility that commercially sensitive information may be discussed;
- ✓ Be vigilant to ensure that discussions at meetings stick to the agenda items and object if they do not, making sure such an objection is reflected in the meeting minutes; and
- ✓ Ensure that they make or promptly receive detailed, accurate minutes of meetings and immediately voice any objections to the minutes.

#### 5. How to address competition law related problems?



If, while present at a formal or informal meeting of **ERMA** or with representatives of competitors, the conversation turns to prohibited anti-competitive subjects, **ERMA** signatories should:

- ✓ Immediately and expressly state that they cannot be party to discussions on the subject at issue due to competition law concerns and ask that the subject be changed at once;
- ✓ If their objection and request is ignored, immediately leave the meeting in a manner that makes the reason for their departure apparent to all present;
- ✓ Ensure that their departure be recorded in any formal minutes or, if there are no such minutes, record that departure in their own notes of the meeting; and
- ✓ Promptly report the matter to signatories' legal department and ensure that a note is made thereof for the file.
- ✓ The presence of a Commission representative does not release participants from liability should the exchange of sensitive information occur.

In addition, **ERMA** signatories should, if they become aware of a competition law infringement or are uncertain whether particular conduct within **ERMA** is allowed under the competition laws:

1. Immediately inform their company legal counsel and/or compliance officer, and if concerns are confirmed;
2. Report the anti-competitive conduct to the **ERMA** Steering Committee; and
3. Report the anti-competitive conduct to the competent competition authorities as may be appropriate.

**ERMA** signatories should always keep in mind that any failure to take the above actions promptly will make it difficult to later convince a court or regulator of their opposition to an infringement.