

European Commission Register of interest representatives**Identification N°: Name:****74946923461-59 European Metal Trade & Recycling Federation
and****67573563462-74 European Ferrous Recovery & Recycling Federation****Response to Public Consultation on the preparation of a new
Communication on Raw Materials**

- Explanatory European Commission text is in Times New Roman 10 Font
- European Commission questions are highlighted in Times New Roman 10 Font
- **EFR and EUROMETREC responses are in green Arial 12 Font**

September 19th, 2010**Objective**

The Commission intends to adopt a Communication on the subject above by end of this year. It will highlight the recent economic developments on the global raw material markets, show the progress made in the implementation of the Raw Materials Initiative (adopted in 2008), but also highlight remaining challenges and draw conclusions in terms of the way forward. The goal of this consultation is to gain an understanding of stakeholders' views on both the implementation of the Raw Materials Initiative (RMI) as well as gather opinions and suggestions on the potential avenues the Commission should explore in order to further progress and strengthen the Initiative, including actions at the level of EU, Member State and/or other stakeholders to address the key issues in relation to non-energy raw materials. For the purpose of this consultation "raw materials" cover all industrial raw materials including materials such as minerals, ores, aggregates, and also wood, hide and skins and other industrial raw materials with the exception of energy and food related raw materials.

State of play

In November 2008 the Commission adopted the Communication (2008) 699 "The raw materials initiative - meeting our critical needs for growth and jobs in Europe" which proposed an EU integrated strategy as a response to the different challenges related to access to non-energy raw materials. As such it tied together various EU policies, both external (e.g. external relations, trade, development) and internal (e.g. environment, competitiveness, innovation), and promoted further cooperation between the Member States where appropriate. The proposed strategy is based on 3 pillars:

1. ensure a level playing field in access to resources in third countries
2. foster sustainable supply of raw materials from European sources, and
3. reduce consumption of primary raw materials by increasing resource efficiency and promoting recycling.

In May 2009, the Competitiveness Council endorsed the major objectives set out by the RMI and invited the Commission, Member States and stakeholders to act swiftly in the implementation of various lines of action outlined by the RMI. It also welcomed the Commission's intention to report back on the implementation of the RMI by the end of 2010. The launch of the RMI coincided with the full onset of the financial and economic crisis. The evolution of the international raw material markets has confirmed the structural nature of the issues at stake and thus reinforced the need to further pursue the objectives of the RMI. Meanwhile the RMI has gathered extra momentum with adoption of the Europe 2020 Strategy that includes as one flagship "An industrial policy for the globalisation era" and that foresees the setting up of a framework for a modern industrial policy that will "address all elements of the increasingly international value chain from access to raw materials to after-sales service". Other related flagships are "Innovation Partnership" and "Resource Efficiency". Work is ongoing to implement the different lines of action outlined by the RMI. On top of a

series of actions undertaken in the framework of the RMI, three major deliverables have recently been released:

- Report on defining “critical raw materials at EU level1;
- Report on “exchange of best practices in area of land use planning and permitting”2;
- Trade activity report 2009 on raw materials3.

Another one is the Guideline document on "Non-Energy Extractive Industry and Natura 2000" aimed to provide clarification. The Guideline document is foreseen to be published by end of July and will be also available via the web site of Environment Directorate General. Finally, regarding the external angle of the strategy, a first milestone was achieved with the publication of DG Trade's 2009 activity report on raw materials.

1 http://ec.europa.eu/enterprise/policies/raw-materials/critical/index_en.htm

2 http://ec.europa.eu/enterprise/policies/raw-materials/sustainable-supply/index_en.htm

3 http://trade.ec.europa.eu/doclib/docs/2010/june/tradoc_146207.pdf

QUESTIONS

POLICY AREA: DEFINING CRITICAL RAW MATERIALS

Major issues:

An expert group, chaired by Enterprise and Industry DG, recently released a report⁴ the presented a methodology to measure the criticality of raw materials at EU level. A raw material is labelled “critical” when the risk of supply shortage and their impacts on the economy are higher compared with most of the other raw materials. The report provides an analysis of 41 different minerals and metals, and concluded on a list of 14 critical raw materials. It also contained two sets of recommendations: recommendations for follow-up and further support, and policy-oriented recommendations to secure access to and material efficiency of raw materials.

Questions:

1. Do you have any comments on the methodological approach, including the scope, to determine criticality at EU level? If so, please specify.

EFR and EUROMETREC welcome and support this European Commission initiative, though would have appreciated to be invited into the working groups – an invitation to future meeting of the raw material supply group - or sub-group thereof - is requested from these stakeholders based on their recycling expertise in particular of scrap collection, sorting, processing and trading.

Criticality issues for raw materials should be re-examined at reasonable intervals for example every five years on a regular basis. The door should be open for other raw materials to be classified as critical, and any of these current critical 14 to be re-classified as non-critical based also on future environmental, social and economic factors. The effect of EU legislation must also be factored into the criticality analysis in respect, inter alia, of access to raw materials. A pragmatic model should also identify those destructive and dissipative uses of raw materials where recovery is uneconomic comparing the costs of primary production from mining to refined product with the cost of secondary production from waste collection to refined product.

Critical raw material analysis should be organised dependent on whether the materials in question: (1) are available as primary materials in the EU; or (2)

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arise as waste and scrap within the EU; or (3) are imported into the EU as either primary raw materials or as waste or scrap.

The EU should continue with its 3 pillar approach:

2. Do you see any additional raw material that should be considered as critical? If so, please explain.

Not at this time.

The door should be open for other raw materials to be classified as critical, and any of these current critical 14 to be re-classified as non-critical based also on future environmental, social and economic factors.

Critical raw materials should also be discussed in context of emerging technologies.

Policies good for critical raw materials may be considered for non-critical raw materials also in case of added benefit,

3. Do you have any comments regarding the recommendations of the report? If so, please specify.

Improved collection: Statistical data gathering needs to be improved as always.

Improved interpretation: The question of potential substitution of critical raw materials in the future means conducting an equal analysis of the substitutes and identification of where substitution is not practical. One may suppose that the current material selection for specific uses took substitutes into account under current market conditions.

Improved dissemination: The concept of critical raw materials must be communicated to all those who make material choices, in particular to product designers, besides throughout the material chain.

R&D on optimising sorting and extraction of critical raw materials from complex scrap arising such as flat screens and circuit boards is needed. The policy instruments currently in use promoting separate collection (recast Waste Framework Directive) and those setting reuse, recycling and recovery targets (e.g. Priority Waste Stream Directives : WEEE and ELV) can be seen to be too blunt (imprecise) to address the 14 critical raw materials.

Trade disputes with third countries concerning exports or imports should be correlated for both primary and secondary raw materials and need improved dispute settlement initiatives and EU resolve to secure a fair result whether at WTO or in other fora. EU Trade negotiators must clearly address third countries whose policies distort the international raw materials markets. EU policies must be coherent with each other in general, but specifically in terms of this communication, on raw materials.

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4. Are you aware of any initiatives in your country that aim to assess the criticality of raw materials? If so, please describe briefly.

For individual countries to comment

5. The functioning of raw materials markets has not been dealt with. Do you think that further analysis of their functioning should be carried out? What actions should be proposed to increase their transparency?

The EU manufactures and exports goods containing critical raw materials, such as aeroplanes, trains, vehicles, mechanical or electrical machinery, and domestic and office equipment. Such exports are critical to Member State economies.

Little is known statistically about the material content of exported goods. Furthermore there has been little debate on recovering such new traded goods at their end-of-life back to EU recycling facilities.

In contrast there has been considerable rhetoric against losing critical raw materials in the export to third countries of second-hand goods. Little is known statistically about the material content of exported second-hand goods.

Likewise the desire for freely traded primary raw materials conflicts with the oft advocated restrictions on trade in processed scrap metals. Such inconsistencies can be better addressed in debate by using the definitions provided for in the recast Waste Framework Directive 2008/98/EC to differentiate waste i.e. end-of-life goods from traded goods.

The OECD collation and publication of third country export restrictions on primary and secondary raw Materials improves transparency of such distortions. Such work should continue and gain prominence. [Korinek, J. and J. Kim (2010), "Export Restrictions on Strategic Raw Materials and Their Impact on Trade", *OECD Trade Policy Working Papers*, No. 95, OECD Publishing. doi: 10.1787/5kmh8pk441g8-en]

6. Do you think that the EU should propose a system of stockpiling for the critical raw materials? If so, please indicate whether you consider it more appropriate to do this at Community or alternatively at Member States level.

No, stockpiling would bring in its own market distortions.

4 http://ec.europa.eu/enterprise/policies/raw-materials/critical/index_en.htm

POLICY AREA: TRADE

Major issues:

One pillar of the Raw Materials Initiative consists in developing a European external strategy in order to guarantee the sustainable supply of raw materials from global markets at undistorted conditions. In this, trade policy plays an important role.

DG Trade has recently completed its 2009 activity report⁵ on raw materials,

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which summarizes the progresses accomplished along the three axes of the trade raw materials strategy:

- ④ Include, as appropriate, the relevant trade disciplines on sustainable supply of raw materials in bilateral and multilateral trade agreements.
- ④ Identify illegitimate trade distortive measures taken by third countries and tackle them using all available instruments, including through bilateral consultations, the Market Access Partnership process or, if necessary, the WTO dispute settlement; while delimitating more clearly permissible exceptions for e.g. development purposes.
- ④ Reach out to third countries to show that the question of sustainable raw materials supply is an issue relevant to all countries, developing or developed, resource-rich and resource-poor alike as the uncontrolled, unregulated multiplication of trade restrictions can lead to a generalized beggar-thy-neighbour policy detrimental to most countries; while recognising the importance of respecting internationally agreed rules on the subject.

Questions:

7. Do you think that the importance of trade is adequately reflected in the work carried out so far in the Raw Materials Initiative?

EFR and EUROMETREC recognise trade as an important pillar of the Raw Materials Initiative.

It is unfortunate that illegal shipment of electronic waste and goods and vehicles near the end of life, a question of enforcement by Member States of a recently improved Regulation, Regulation (EC) No. 1013/ 2006 on shipments of waste, has been given far too much emphasis in the raw materials debate. EU funds are already directed at addressing such illegal shipments through a number of activities, besides pressure on Member State implementation and enforcement of existing legislation is an ever present need. In contrast the Communication should focus more on EU manufacturers need for sustainable raw materials supply.

Whilst the EU sets the highest EHS performance for its industry, standards in third countries have not reached such a level. The outcome is that EU industries and consumers may be reliant on imported materials and finished goods from facilities in third countries that harm the environment and the health and safety of their citizens.

In practice the EU should quickly address trade distortions if possible as soon as they are proposed, or when discovered.

Whilst Trade Defence Instruments are a necessity for safeguarding the EU industry in specific cases, their use should be compatible with EU export rules.

8. Do you have any comment regarding the main findings of DG Trade activity report? What activities should be prioritised? Are there, in your opinion, additional activities not mentioned in the report which should be pursued in this strategy?

EFR and EUROMETREC recognise trade as an important pillar of the Raw Materials Initiative.

The EU must obtain effective rules for addressing third country export restrictions preferably at WTO.

Trade rules must be properly implemented and enforced.

The underlying reasons for trade distortions should be addressed, for example by promoting the Zero rate or the Reverse Charge System for VAT on scrap.

Coherence between trade, taxation and environmental regulation is desirable.

9. Please identify trade distortive measures (i.e. export restrictions) concerning raw materials that in your view should be tackled.

EFR and EUROMETREC recognise trade as an important pillar of the Raw Materials Initiative.

Trade should be free and fair, so unfair purchasing practices and distortions should be addressed with the same vigour as unfair selling practices and their associated distortions. Mechanisms need to be in place to address these in bilateral and multilateral fora.

The Commission Regulation 1418/2008 as amended collects together third country import rules for wastes and scrap, however such import rules are not necessarily requested by those third countries towards other trading partners. Distortions in the global market therefore arise. The UN-EP Basel Convention has been the forum for the European Commission to keep third countries informed of the Regulations, and through its Annex IX questionnaire, the EU may consider promoting like rules to ensure a level playing field.

The EU should promptly request trading partners to remove unfair licensing systems and trade restrictive rules such as those that limit border crossing points. E.g. Russian scrap export bans and or duties [Korinek, J. and J. Kim (2010), "Export Restrictions on Strategic Raw Materials and Their Impact on Trade", *OECD Trade Policy Working Papers*, No. 95, OECD Publishing. doi: 10.1787/5kmh8pk441g8-en]

Taxes, quotas and bans on primary and secondary raw material imports and or exports should be rapidly removed to ensure free and fair trade.

5 http://trade.ec.europa.eu/doclib/docs/2010/june/tradoc_146207.pdf

10. Are you aware of any initiatives in your country that have one of the above goals in mind such as, for example, developing a raw materials diplomacy, or supporting companies to invest in third countries in the raw materials sector? If so, please describe briefly.

For individual countries to comment

POLICY AREA: DEVELOPMENT

Major issues:

The 2008 RMI Communication highlighted that development policies play a relevant role in at three 'levels':

☉ 'Strengthening States'

☉ Promote a sound investment climate that helps increase sustainable supplies of raw materials

☉ Promote sustainable management of raw materials

In 2010, within the context of the EU-African Union partnership, the European Commission and the African Union Commission recently agreed to develop a bilateral co-operation in the field of raw materials and to work together, taking fully into account the Africa Mining Vision of February 2009 and the EU Raw Materials Initiative of December 2008, in particular on issues such as governance, infrastructure and investment and geological knowledge and skills.

Questions:

11. What specific actions would you consider most relevant needed in the following areas:

- Good governance;
- Infrastructure / investments;
- Geological knowledge / skills.

Many examples of best practice may be shared between Governments.

Where countries or regions have only scrap collection and or sorting facilities, but no scrap processing or metal works, their National governments and or regional organisations should be advised on how best to facilitate exports to scrap processors and or metal works such as those in the EU-27. Such good governance should be reiterated at the International level at the UN-EP Basel Convention.

12. Regarding transparency, what measures do you believe the EU should take to foster revenue transparency in the mining industry in raw material resource rich countries? What are your views regarding existing initiatives currently being taken in this area, namely by the Extractive Industries Transparency Initiative (EITI6)?

No comment

13. Concerning the recent agreement between the European Commission and the African Union Commission, in your view, what concrete objectives, targets and deliverables should be included in such a partnership?

Projects that improve Governance, Good Governance, and that increase institutional capacity, capacity building, are to be encouraged. Anti-corruption activities are also welcomed.

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Activities that facilitate investment in recycling, e.g. in collection, sorting, processing, or metal refining where economically viable are to be welcomed.

In order to support EU based machinery and equipment manufacturers, EU policies that support the export of raw materials handling machinery and equipment from the EU are to be encouraged.

14. Do you consider that wood should be addressed in the framework of development policy? If yes, please specify what are the main issues to be analysed.

No comment

15. Are you aware of any initiatives in your country that contribute to promoting exploration and exploitation of mines in developing countries? Should such initiatives be better coordinated or promoted at the EU level?

For individual countries to comment

6 <http://eiti.org/>

POLICY AREA: IMPROVEMENT OF THE REGULATORY FRAMEWORK CONDITIONS INSIDE THE EU

Major issues:

☉ The Commission has proposed in the Raw Materials Initiative adopted in 2008 to provide clarity on how to reconcile non-energy extraction activities in or near Natura 2000 areas with environmental protection. In consultation with stakeholders a guidance document has been finalised and will be available on the web site of DG Environment⁷ before summer break.

☉ As regards ways to improve the regulatory framework within the EU by promoting the exchange of best practices in the area of land use planning and administrative conditions for exploration and extraction, a report has been delivered by the relevant ad hoc Working Group⁸.

☉ This report covers the following topics:

- Minerals Policy
- Land use planning policy for minerals
- Authorisation and permitting procedures
- Achieving Technical, Environmental and Social Excellence
- Improving the EU's geological knowledge base
- Better networking between the national Geological Surveys
- Need to integrate terrestrial sub-surface information into the GMES

Land Service

Questions:

16. Do you agree that these topics correspond to the major challenges in this policy area? If not, please specify.

No comment

17. Do you think of any other avenues which should be followed by the Commission? If yes, please specify.

No comment

18. Do you agree with the recommendations made in the report on "Exchanging Best Practice on Land Use Planning, Permitting and Geological Knowledge Sharing" or do you have any specific ones to be added. Please explain.

No comment

19. Do you consider it useful to establish an EU geological service based on a network of Member State geological services?

No comment

7 <http://ec.europa.eu/environment/nature/natura2000/>

8 http://ec.europa.eu/enterprise/policies/raw-materials/sustainable-supply/index_en.htm

20. Do you consider that EU regulatory framework conditions for wood and/or recovered paper need to be further analysed? If yes, please specify.

No

JRC IPTS is carrying out an analysis of end-of-waste with respect to recovered paper. The OECD has carried out a study in the frame of Sustainable Materials Management

**POLICY AREA: PROMOTING SKILLS AND RESEARCH,
DEVELOPMENT AND INNOVATION**

Major issues:

☉ Promote **skills** not only in the mining sector but also in other raw materials sectors is a matter of concern. The Commission is currently supporting this challenge via programmes such as ERASMUS MUNDUS with the specific Minerals and Environment Programme (EMMEP).

☉ Focussed **research** on innovative exploration and extraction technologies, recycling, materials substitution and resource efficiency. The Commission has recognised the European Technology Platform on Sustainable Mining (ETP-SMR) to catalyse excellent research and development collaborative projects between the industry and research organisations. In addition, via the 7th framework programme for research, development and innovation the next call for proposals in the area are expected to be public in July 9.

Questions:

Skills:

21. What type of actions would you propose to provide better cooperation between companies, universities and public authorities in order to promote skills and in the extractive or other raw materials sectors? Please specify.

Research, Development and Innovation:

Promote the possibilities across the industrial sectors and institutions and promote EU funding opportunities.

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Producer Responsibility Organisations may be encouraged to foster better cooperation in order to optimise their systems.

22. Are you aware of any research, development and innovation programme(s) at national, regional or local level? Please specify.

There are continuous efforts to better sort and process end-of-life goods and scrap.

Also for individual companies and or countries to comment

23. Where do you see the major gap / the urgent need for the raw materials sector related research, development and innovation at EU level. Please provide details.

There is a general lack of knowledge across the scrap sector of the whereabouts of the designated 14 critical raw materials in end-of-life goods or in collected, sorted and processed scrap metal.

More information is needed to optimise the systems of collection, sorting and processing of end-of-life goods and scraps and subsequent hydro or pyro metallurgical refining to recover critical raw materials.

Research is needed on implementing automation and robotics in recycling from collection to processing, incorporating sensors and sorting techniques with tailored IT systems.

24. What is your idea of a major research and innovation action that would have the highest positive impact on the security of raw materials supply for the EU industries? Please specify.

Research and innovation is needed into the economically viable recovery of the designated 14 critical raw materials from collected, sorted and processed scrap metal.

Research and Innovation Programs need to be widely publicised across the EU recycling sectors and duplication of programs avoided.

Basic studies on the economies of each of the critical raw materials use, reuse, recovery or disposal are needed.

Research into contents of landfills should be considered, and losses from residues from incinerators investigated where metals are not recovered as part of the process or subsequently.

25. Are you aware of innovative exploration and extraction technologies, where project partners on a European level are needed to develop and implement the new technologies and which are the innovative technologies which need to be developed further. Please provide details.

No comment

26. Are there any other aspects related to skills, R&D and innovation for other raw materials, such as wood, that need to be further promoted? Please, specify.

No comment

9 <http://cordis.europa.eu/fp7/dc/index.cfm>

POLICY AREA: RESOURCE EFFICIENCY & RECYCLING

Major issues:

The 2008 RMI Communication identified that the increased use of secondary raw materials contributes to security of supply and energy efficiency. However, today many end-of-life products do not enter into sound recycling channels, resulting in an irremediable loss of valuable secondary raw materials. This mainly concerns exports of end-of-life vehicles and electronic equipment, which leave Europe as reusable products but end up being dismantled abroad. To counter these trends, the need to reinforce the Waste Shipment Regulation and related legislation was identified. Furthermore, prices of some recovered materials have reached record levels due to the high demand from third countries.

The Waste Shipment Regulation also contains requirements on exporters of waste to third countries to ensure that this waste will be treated in an environmentally-sound manner. However, compliance with this principle is not always respected.

Finally, stakeholders have identified the need for an improvement in statistics on secondary raw materials. This includes actions to be taken to measure the extent of illegal trade in products containing these secondary materials.

Questions:

27. In your view, and beyond measures already being taken (e.g. the recast of the WEEE Directive), what practical measures can be taken by the EU and by Member States to prevent the illegal shipment of obsolete end-of-life vehicles and electronic equipment?

The key practical measure is for the European Commission to pursue with all vigour Member States that have neither fully implemented nor enforced the respective Waste Framework Directive and the Waste Shipment Regulations.

It's most important to legally distinguish re-usables from recyclables. A method to identify second-hand goods in the customs codes harmonised system is needed.

The work of "ISO TC/PC 245: Cross-border Trade of Second-hand Goods" should be followed carefully to ensure the Standard does not conflict with legislation on waste and associated guidelines.

The Waste Shipment Regulation's Correspondents' Guidance document concerning end-of-life vehicles under development should be incorporated when finalised into the ELV Directive at the next opportunity.

The EU may take action at the international level to link third country company performance to the UN-EP Basel Convention Guidelines, the UN-EP

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Stockholm Convention BAT/BEP Guidelines and where applicable the OECD Recommendation on Environmentally Sound Management.

There are a number of activities on a number of levels to address illegal exports underway or planned with EU monies. Synergies could be found between activities by IMPEL, Pol-PRIMETT, on Itinerant crime gangs, and on Tax fraud. To be most cost effective such initiatives need to be led by intelligence. Moving to an integrated EU wide electronic system for waste and scrap movements would optimise searches for illegal shipments whilst also improving the internal market and harmonising the implementation of existing rules for the Permitting, Registration or Authorisation of economic operators to the applicable control system and the even application of existing legislation.

The large number of Competent Authorities across the EU, results in their differences in interpretation of the Waste Shipment Regulation. Those differences hinder the application of the Regulation particularly where the legal text is ambiguous or silent. Identified differences in interpretation should be put on the Correspondents work programme so European interpretations are found and promulgated in a timely manner.

28. In what ways should statistics on trade in, and recycling of, products containing secondary raw materials be improved?

Besides collection of data from Customs, EUROSTAT the statistical analysis provided by the International Study Groups in Lisbon (ICSG, INSG, ILZSG) should be well supported.

The knowledge of critical raw materials must be improved throughout the recycling sector from scrap collectors, sorters, processors through to the metalworks. . Where recoverable quantities of critical raw materials are present in traded end-of-life goods and scrap these should be itemised on invoices.

It is critical that Customs Codes for the harmonised system are designated solely for the wastes listed in Annexes III and IV of the Waste Shipment Regulation, Regulation (EC) No 1013/2006. Such codes will allow more accurate statistical analysis. Current Customs Codes are often "shared" between waste and products – waste and scrap - for example...

7112 Precious metal; 7204 Ferrous, Iron or steel; 7404 00 Copper; 7503 00 Nickel; 7602 00 Aluminium; 7802 00 00 Lead; 7902 00 00 Zinc; 8002 00 00 Tin; 8101 97 00 Tungsten (wolfram); 8102 97 00 Molybdenum; 8103 30 00 Tantalum; 8104 20 00 Magnesium; 8105 30 00 Cobalt; 8106 00 10 Bismuth; 8107 30 00 Cadmium; 8108 30 00 Titanium; 8109 30 00 Zirconium; 8110 20 00 Antimony; 8111 00 19 Manganese; 8112 13 00 Beryllium; 8112 22 00 Chromium; 8112 52 00 Thallium; 8112 92 21 Hafnium, Niobium (columbium); rhenium; gallium; indium; vanadium; germanium; 8113 00 40 Cermets; and 8548 10 Waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, spent primary batteries and spent electric accumulators:

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Note: includes all Customs codes for Waste and scrap, using the shorter code of 4 digits where related 6 or 8 digit codes are all of waste and scrap. The codes for radioactive chemical elements not included above: 2844 10 10 and 2844 30 55.

29. Have you identified major problems with recovered paper? What are the main issues that need to be further analysed?

No comment, see also response to Q.29