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EU Critical Raw Materials Act Enters into Force

The EU Critical Raw Materials Act (the “CRMA”) came into force on May 23, 2024¹ after the new regulation was signed on April 11, 2024.² Together with the Net-Zero Industry Act, the European Commission published the first proposal for the CRMA on March 16, 2023 (the “CRMA Proposal”) in order to develop “secure and sustainable access”³ to critical raw materials for the EU. The CRMA is in part a response to the tax and funding incentives for securing critical mineral supplies included in the U.S. Inflation Reduction Act. For more information on the CRMA Proposal, see our [publication](#), dated March 27, 2023.

The contents of the CRMA are identical in substance to the CRMA Proposal. However, each article benefits from certain adjustments (the “CRMA Amendments”) compared to the CRMA Proposal.

The CRMA identifies and seeks to protect European supply chains of critical and strategic raw materials, including by regulating the procedure, funding, disclosure and financing of “Strategic Projects.” Strategic Projects are projects involving the extraction, processing, refining and recycling of strategic raw materials that are entitled to considerable procedural privileges if they meet certain qualitative criteria under the CRMA.

KEY ASPECTS OF THE CRMA

Industry participants globally, including sponsors, borrowers, investors and commercial banks will be interested in the following key aspects of the CRMA, including some of the changes compared to the CRMA Proposal:

- **The list of strategic raw materials will be reviewed more frequently.** The CRMA Proposal introduced strategic raw materials as a new subcategory within the European Commission’s list of critical raw materials, originally published in 2011.⁴ The current list of strategic raw materials is contained in Section 1 of Annex I of the CRMA. The list will next be reviewed by the European Commission by May 24, 2027, and thereafter every three years instead of the four-year cycle originally outlined in the CRMA Proposal. Further, the CRMA now also foresees the possibility for the European Critical Raw Materials Board to request the European Commission to review and

update the list at any time in addition to the regular reviews for the purpose of monitoring and stress testing.⁵ This signals the recognition that as technologies develop, the accompanying procedural framework should be updated to reflect the raw materials that remain relevant.

- **Increased time limits for the fast track permit process for Strategic Projects.** Once recognised as such by the European Commission, Strategic Projects benefit from a fast-tracked permit process. The maximum time limits for the permit process in the CRMA have increased from the periods in the CRMA Proposal, perhaps as a sign that the permitting process still is one of the most significant obstacles for projects. Strategic Projects involving extraction will now have a permit process that must not exceed 27 months (rather than 24 months under the CRMA Proposal),⁶ and the permit process for Strategic Projects involving processing or recycling must not exceed 15 months (rather than 12 months).⁷
- **Narrowed scope for risk assessments to be undertaken by Large Companies.** As previously discussed in our prior [publication](#), the CRMA Proposal placed an obligation on Large Companies to undertake risk assessments of their strategic raw materials supply chains in relation to certain strategic technologies. The CRMA has since narrowed the scope of this obligation to only capture companies with more than 500 employees and, according to their latest financial statements, net global turnovers greater than EUR 150 million (“Large Companies”)⁸ that use strategic raw materials meeting certain criteria. In contrast to the non-exhaustive list in the CRMA Proposal, the CRMA contains an exhaustive list of relevant strategic technologies that will be captured.⁹ The Large Companies are required, at least every three years (rather than every two years, as originally proposed in the CRMA Proposal), to audit their strategic raw materials supply chains and produce reports including: (i) maps of where their used strategic raw materials are extracted, processed or recycled; (ii) an analysis of factors that may affect such supply chains; and (iii) an assessment of their vulnerabilities to supply disruptions.¹⁰

TRENDS IN THE CRITICAL RAW MATERIAL SPACE

- **Increasing pressure to reduce supply-side dependencies leads to more national funding programs.** The entry into force of the CRMA is a key development for the EU to play a bigger role in the production of global critical raw materials, in a bid to minimise the risks associated with supply dependencies, in particular in the processing and refinement of minerals, which is currently dominated by China.¹¹

Within the EU, France, Germany and Italy each announced public funds with a combined total amount of public investment worth nearly EUR 2.5 billion. Each fund will be focused on projects involving over 30 critical raw materials and strategic raw materials identified under the CRMA.¹²

France first announced its fund, run by InfraVia, on May 10, 2023, which would combine both private and public capital. It was announced that the French state would contribute €500 million, and the rest would be contributed by the private sector.¹³

Meanwhile, Germany announced a separate state-owned fund on June 26, 2023. Germany will invest €1 billion into the fund, which will be set up for four years and managed by KfW Development Bank. The structure to manage the investments remains to be set up.¹⁴

The Italian cabinet approved the bill creating Italy’s “Made in Italy” fund on May 31, 2023 with the aim to promote domestic production of critical raw materials. The Italian Government has pledged to contribute €1 billion to the fund by 2025, and hopes to attract significant additional capital from external sources.

The three countries agreed in a Joint Communiqué published on June 26, 2023 to intensify their efforts at cooperation in relation to the extraction, processing and recycling of critical raw materials as a means of bolstering their individual domestic supply chains.¹⁵ It is expected that other European countries will announce similar plans and efforts given the CRMA coming into force.

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- **Greater focus on sustainable production.** Further legislation concerning critical raw materials (such as the CRMA) may be accompanied by increased pressure for greater sustainability in supply practices.

Companies have already shown supply-side innovation in the extraction process as a means of reducing the carbon cost of extracting critical raw materials and greater innovation is expected. Based on growing consumer and regulatory pressure for greener and more sustainable practices, this trend is expected to continue. Emergence of smaller start-up companies developing and utilizing new technology may also lead to improvements in the efficiency of site identification and extraction.¹⁶

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ENDNOTES

- 1 See Philip Blenkinsop. 'EU to call for mineral projects, eyes joint purchases.' *Reuters* (May 15, 2024), <https://www.reuters.com/markets/commodities/eu-call-mineral-projects-eyes-joint-purchases-2024-05-15/>.
 - 2 See *Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020*, EUROPEAN PARLIAMENT (May 23, 2024) [hereinafter *CRMA*], https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401252.
 - 3 See *Proposal for a Regulation of the European Parliament and of the Council establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) 168/2013, (EU) 2018/858, 2018/1724 and (EU) 2019/1020*, EUROPEAN COMMISSION (March 16, 2023), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0160>.
 - 4 See *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions tackling the challenges in commodity markets and on raw materials*, EUROPEAN COMMISSION (February 2, 2011), [https://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com\(2011\)0025/com_com\(2011\)0025_en.pdf](https://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2011)0025/com_com(2011)0025_en.pdf).
 - 5 *CRMA*, *supra* note 2, Art. 3(3).
 - 6 *Id.* Art. 11(1)(a).
 - 7 *Id.* Art. 11(1)(b).
 - 8 *Id.* Art. 2(29).
 - 9 *Id.* Art. 24 (1).
- The relevant strategic technologies include those which “manufacture batteries for energy storage and e-mobility, equipment related to hydrogen production and utilisation, equipment related to renewable energy generation, aircrafts, traction motors, heat pumps, equipment related to data transmission and storage, mobile electronic devices, equipment related to additive manufacturing, equipment related to robotics, drones, rocket launchers, satellites or advanced chips.”
- 10 *Id.* Art. 24 (2).
 - 11 See *Executive Summary: In the transition to clean energy, critical minerals bring new challenges to energy security*, IEA (May 15, 2024), <https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions/executive-summary>.
 - 12 See *Germany, France, and Italy outline €2.5bn critical minerals funds*, INNOVATION NEWS NETWORK (May 17, 2024), <https://www.innovationnewsnetwork.com/germany-france-and-italy-outline-2-5bn-critical-minerals-funds/47611/>.
 - 13 See *France presents 'first step' €2bn fund for critical metals*, EURACTIV (May 11, 2023), <https://www.euractiv.com/section/energy-environment/news/france-presents-first-step-e2bn-fund-for-critical-metals/>.
 - 14 See *Germany Eyes Critical Materials Fund of as Much as \$1.1 Billion*, BLOOMBERG (June 26, 2023), <https://www.bloomberg.com/news/articles/2023-06-26/germany-eyes-critical-materials-fund-of-as-much-as-1-1-billion>.
 - 15 See *Italy moves to boost procurement, reuse of critical raw materials*, BLOOMBERG (June 26, 2023), https://www.bmwk.de/Redaktion/DE/Downloads/J-L/20230626-joint-communique-ger-it-fr-critical-raw-materials.pdf?__blob=publicationFile&v=4.

ENDNOTES (CONTINUED)

- ¹⁶ For example, KoBold Metals, having raised around \$500 million from investors, has designed technology that utilises Artificial Intelligence (“AI”) to detect ore deposits at greater depths. Jack Farchy, *AI Assists in Discovery of Lithium for Electric Vehicle Batteries*, BLOOMBERG (Dec. 14, 2023), <https://www.bloomberg.com/news/articles/2023-12-14/ai-enhanced-mining-exploration-firm-announces-lithium-finds>, and Pénélope Le Menestrel, *Innovation Offers Much-Needed Solutions for the Critical Minerals Challenge*, Breakthrough Energy (Apr. 25, 2024), <https://breakthroughenergy.org/news/critical-minerals-innovation/>.
- Meanwhile, Lilac Solutions, who has since raised \$315 million in total capital, has developed a new technology designed to extract lithium from brines without the need for evaporation ponds. Dave Snyder, *With \$145M in Fresh Capital, We’re Building the Foundation of a U.S. Lithium Supply Chain*, LILAC SOLUTIONS (Dec. 2, 2023), <https://lilacsolutions.com/2024/02/with-145m-in-fresh-capital-were-building-the-foundation-of-a-u-s-lithium-supply-chain/>.

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