

Energy Transition

INSIGHTS

March 27, 2023

New EU Proposal to Prioritize Strategic Projects Securing the Supply of Critical Raw Materials

As part of its Green Deal Industrial Plan, the European Commission published a legislative proposal on March 16, 2023 to “ensure the EU’s access to a secure, diversified, affordable and sustainable supply of critical raw materials”.¹ Announced in parallel with the proposed Net-Zero Industry Act, the Critical Raw Materials Act (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. The CRMA proposal is in part a response to the tax and funding incentives for securing critical mineral supplies included in the US Inflation Reduction Act.

The CRMA would set the following targets for the EU’s annual consumption of strategic raw materials: (i) at least 10% to be extracted from the EU’s own extraction capacity; (ii) at least 40% to be processed from the EU’s own processing capacity; and (iii) at least 15% to be recycled from the EU’s own recycling capacity. In addition, the CRMA would set a target of having no more than 65% of the EU’s imports of strategic raw materials at any stage of processing from any single third country. Some critics argue that the CRMA’s emphasis on setting objectives rather than imposing requirements will impede its ability to make a tangible difference to Europe’s green energy transition.

Some aspects of the CRMA, such as coordinating and advising on Strategic Projects, would be overseen by the newly-established European Critical Raw Materials Board (the “ECRMB”) – a governmental body composed of representatives from each Member State.

Key takeaways from the proposed CRMA

Miners, producers, manufacturers, processors, exporters, developers and offtakers of critical raw materials should note the following:

- **Not all critical raw materials are strategic raw materials.** Separate lists for strategic raw materials and critical raw materials are provided at Annexes I and II of the CRMA, respectively, and may be periodically updated by the Commission. Strategic raw materials benefit from the support granted to Strategic Projects whereas critical raw materials are subject to the monitoring and supply chains requirements in the CRMA. Whilst all strategic raw materials are critical, certain critical raw materials (i.e. lithium, manganese and natural graphite metals) must be “battery grade” in order to be strategic.
- **Strategic Projects will be fast-tracked through the permitting procedure.** Member States must establish a national authority to act as the “sole point of contact” for assessing Strategic Project permits. Such permits must be administered “in the most rapid way possible”. Time limits on the permitting process ensure that permits are granted swiftly – within 24 months for Strategic Projects involving extractions or within 12 months for those involving processing or recycling.² Member States will also be bound by a duty to “take measures” to contribute to the “timely and effective implementation” of Strategic Projects.³
- **New obligations on EU Member States could unlock access to private investment and other new funding sources for Strategic Projects.** EU governments will be required to “undertake activities” to encourage private investment in Strategic Projects, which may include

financial or administrative support, assistance with reporting compliance or measures to bolster “public acceptance”. In addition, project developers may request advice from the ECRMB on how to secure finance from private sources, the European Investment Bank, the European Bank for Reconstruction and Development, Member States, or EU-level funding programmes.⁴

- **Projects will need to demonstrate their sustainable credentials in order to qualify as Strategic Projects.** Businesses that apply for recognition of Strategic Project status must demonstrate that their projects would: (i) make a “meaningful contribution” to the security of the EU’s supply of strategic raw materials; (ii) be “technically feasible” within a “reasonable timeframe”; (iii) be “implemented sustainably”; and (iv) have cross-border benefits.⁵ Applicants would need to submit a timetable, business plan, estimates for job creation, public acceptance plans and any other relevant information to the ECRMB as evidence. Projects are likely to be required to have their sustainability credentials approved by one of the recognized certification schemes established under the CRMA.
- **Projects located in third countries can also qualify as Strategic Projects.** Raw materials projects located outside of the EU will be able to become Strategic Projects and have access to ECRMB advisory support. To qualify, they must also show that (i) the project would be mutually beneficial to the EU and the relevant third country; (ii) international agreements between the EU and the relevant third country will not distort trade or investment resulting from the project; (iii) the project aligns with the EU’s foreign policy objectives; and (iv) explicit prior approval has been obtained by the relevant third country.
- **Large companies operating in the EU may be required to undertake supply chain audits.** Any “large company”⁶ that manufactures strategic technologies using strategic raw materials within the EU could, if identified as such by any Member State, be required to map and stress test their supply chains of strategic raw materials every two years.⁷ Strategic technologies include, but are not limited to, batteries for energy storage, hydrogen equipment, renewable energy generation equipment, traction motors, heat pumps, data transition and storage, and advanced chips.
- **EU market suppliers of critical raw materials will be required to declare their environmental footprint.** Anyone who “places on the market”⁸ any critical raw materials will be required to make an ‘environmental footprint declaration’ available on their website.⁹ Critical raw materials will be categorized into particular environmental performance classes. Granular criteria for calculating environmental footprint will be laid out separately under delegated acts by the Commission. Information on the declaration will include: contact details, location of extraction, processing, refinery, recycling and extent of environmental footprint.

* * *

¹ 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.

² Articles 8-10, CRMA.

³ Articles 7-9, CRMA.

⁴ Article 14-15, CRMA.

⁵ Article 5, CRMA.

⁶ Defined as any company that had more than 500 employees on average and a net worldwide turnover of more than EUR 150 million in the last financial year for which annual financial statements have been prepared.

⁷ Article 23, CRMA.

⁸ ‘making available on the market’ means any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge.

⁹ Article 30, CRMA.

Questions regarding the matters discussed in this publication may be directed to [Max Birke](#), [Craig Jones](#), [Jon Hannah](#) or [Sam Saunders](#), or to any Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. Additional S&C resources about energy transition matters may be found [here](#).

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice.