

VAN BAEL & BELLIS



The EU Critical Raw Materials Act

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On 16 March 2023, the European Commission ("Commission") proposed a set of actions in order to ensure the European Union's secure and sustainable access to critical raw materials, which is essential for the European Union to succeed in its green and digital transitions.

The Commission published two documents: a [Proposal for a Regulation establishing a framework for ensuring a secure and sustainable supply of critical raw materials](#) ("Proposed Regulation") as well as a [Communication on a secure and sustainable supply of critical raw materials in support of the twin transition](#) ("Communication").

The Proposed Regulation envisages a framework for selecting and implementing strategic raw materials projects in the Member States and develops a mechanism for the coordinated monitoring of critical raw materials supply chains and adopting measures for mitigating supply risks. Key objectives of the Proposed Regulations are achieving the circularity of critical raw materials markets and lowering the environmental footprint of critical raw materials.

The Communication identifies more broadly the various measures envisaged by the Commission to ensure the secure and sustainable supply of critical raw materials, including by diversifying sources of supply through international mutually advantageous partnerships.

This Client Alert sets out the key elements of the Proposed Regulation that are of interest to companies along the supply chain of the critical and strategic raw materials.

WHAT IS THE PURPOSE OF THE NEW RULES FOR CRITICAL AND STRATEGIC RAW MATERIALS?

The Proposed Regulation aims to address supply risks in critical raw materials by (i) building the European Union's capacity to supply critical raw materials through extraction, processing and recycling; (ii) diversifying external supplies of those materials; (iii) monitoring and mitigating existing and future supply risks; and (iv) ensuring the free movement of critical raw materials in the single market.

WHAT IS THE SCOPE OF THE PROPOSED REGULATION?

The Proposed Regulation covers strategic and critical raw materials.

Strategic raw materials, as listed in Section 1 of Annex I of the Proposed Regulation, are: bismuth, boron – metallurgy grade, cobalt, copper, gallium, germanium, lithium – battery grade, magnesium metal, manganese – battery grade, natural graphite – battery grade, nickel – battery grade, platinum group metals, rare earths elements for magnets, silicon metal, titanium metal and tungsten.

Critical raw materials are listed Section 1 of Annex II of the Proposed Regulation. In addition to the strategic raw materials listed in Annex I, critical raw materials include raw materials of high importance for the EU economy and for which there is a high risk of supply disruption, namely: antimony, arsenic, bauxite, baryte, beryllium, coking coal, feldspar, fluorspar, hafnium, helium, heavy and light rare earth elements, niobium, phosphate rock, phosphorus, scandium, strontium, tantalum and vanadium.

It is envisaged that both lists may be updated.

DOMESTIC CAPACITY BENCHMARKS

The Proposed Regulation introduces several benchmarks for ensuring that, by 2030, EU capacity in respect of each strategic raw material increases:

- **domestic extraction capacity:** to the extent that the EU reserves are available, the European Union should be able to extract the ores, minerals or concentrates needed to produce at least 10% of the EU annual consumption of strategic raw materials;
- **domestic processing capacity:** the European Union should be able to produce at least 40% of the EU annual consumption of strategic raw materials;
- **domestic recycling capacity:** EU recycling capacity should be able to produce at least 15% of the EU annual consumption of strategic raw materials.

DIVERSIFYING EU IMPORTS OF STRATEGIC RAW MATERIALS

By 2030, the reliance on imports from individual third countries for the EU annual consumption of each strategic raw material at any relevant stage of processing should not exceed 65%.

STRATEGIC RAW MATERIALS PROJECTS

The Proposed Regulation sets out criteria for recognising projects that contribute to the security of the European Union's supply of strategic raw materials as **Strategic Projects**. Strategic Projects will be eligible for **streamlined permit-granting processes in the Member States** and **coordinated support by the Commission and the Member States in securing financing**.

- **Selection of Strategic Projects at the EU level**

Applications for the recognition of strategic raw materials projects as Strategic Projects will be submitted directly to the Commission. The Commission, with the assistance of a newly established European Critical Raw Materials Boards ("Board"), composed of high-level representatives of the Member States and the Commission, will be responsible for evaluating those applications. Member States may object to the recognition of projects concerning their territory as Strategic Projects. When a proposed project concerns the territory of a third country, the Commission must not approve the application before receiving the explicit approval of the third country.

- **Permit granting processes for Strategic Projects at the Member State level**

The Member States remain responsible for national permit-granting processes which ensure that raw materials projects are safe, secure and comply with environmental, social and safety requirements. However, to ensure and speed up the implementation of Strategic Projects, the Proposed Regulation requires the Member States to designate one national competent authority ("NCA") responsible for facilitating and coordinating the permit-granting processes (**one-stop shop**). For Strategic Projects, the permit granting process must be treated as urgent and not exceed 1-2 years.

- **Financing and implementing Strategic Projects**

The Commission and the Member States must provide and coordinate support to undertakings developing Strategic Projects to **accelerate and crowd-in private investments**. Moreover, the Commission is required to set up a system for facilitating the conclusion of agreements between project promoters and third-party undertakings containing commitments or options for those undertakings to procure a share of the raw materials produced by Strategic Projects over a certain period of time ("**off-take agreements**"). The envisaged system will allow project promoters and third-party undertakings ("prospective off-takers") to make offers and bids, respectively, for concluding off-take agreements and will bring projects promoters and potential off-takers in contact for specific Strategic Projects.

SUPPLY RISK MONITORING AND MITIGATION FRAMEWORK

- **Risk monitoring**

To assess the vulnerability of the European Union's supply chain to disruptions, the Commission, with the support of Member States must:

- monitor supply risks related to **critical raw materials**;
- ensure that a stress test is performed for each **strategic raw material's** supply chain at least every three years.

The authorities of **the Member States are subject to a yearly reporting obligation**. Among others, Member States' must report on **the state of their strategic stocks of strategic raw materials**.

Key market operators along the critical raw materials value chain established in the territory of the Member States will be required to participate in regular and proportionate surveys conducted by the Member States, as a means of monitoring their activities. The Member States will provide information to the Commission on a yearly basis on the results of those surveys and will, without delay, notify the Commission of major events that may hinder the regular operations of the activities of key market operators.

- **Risk mitigation**

In case of a clear indication of a supply disruption risk, the Commission must alert the Member States, the Board and the EU governance bodies of crisis vigilance or crisis management mechanisms covering relevant critical or strategic raw materials.

Two years after the entry into force of the Proposed Regulation and every two years thereafter, the Commission, in consultation with the Board, must adopt **a benchmark indicating a safe level of EU stocks of strategic raw materials**. The benchmark must:

- be expressed as the amount needed to cover the amount of required average daily net imports in case of a supply disruption, calculated on the basis of the amount of imports during the previous calendar year;
- take into account stocks held by private operators (if available); and
- be proportionate to the supply risk and economic importance associated with the relevant strategic raw material.

The Commission may, in consultation with the Board, issue opinions asking the Member States to **increase the levels of their national strategic stocks** and to amend or coordinate the rules or procedures for the release, allocation and distribution of strategic stocks.

Finally, the Commission must set up a **joint purchasing system** to (i) aggregate the demand of Member State authorities for strategic stocks and of interested undertakings consuming (processed and unprocessed) strategic raw materials in the European Union, and (ii) seek offers from suppliers to match that aggregated demand.

COMPANY RISK PREPAREDNESS

To ensure company risk preparedness, the Proposed Regulation requires **large companies that manufacture strategic technologies using strategic raw materials**¹ in the Member States to audit their supply chain every two years, including:

- mapping where the strategic raw materials they use are extracted, processed or recycled; and
- a stress test of their supply chain of strategic raw materials, including its vulnerability to supply disruptions.

¹Strategic technologies using strategic raw materials include, but are not limited to, batteries for energy storage and e-mobility, equipment related to hydrogen production and utilisation, equipment related to renewable energy generation, traction motors, heat pumps, data transmission and storage, mobile electronic devices, equipment related to additive manufacturing, robotics, drones, rocket launchers, satellites and advanced chips.

CIRCULARITY REQUIREMENTS

Member States must adopt and implement national programmes on circularity, in particular with regard to waste streams with high critical raw materials recovery potential.

Operators that are already required to submit waste management plans under the [EU Directive on waste from extractive industries](#), must assess the potential to recover critical raw materials from extractive waste sites.

The Proposed Regulation also imposes a labelling requirement with respect to the following products:

- magnetic resonance imaging devices;
- wind energy generators;
- industrial robots;
- motor vehicles;
- light means of transport;
- cooling generators;
- heat pumps;
- electric motors, including where they are integrated in other products;
- automatic washing machines;
- tumble driers;
- microwaves;
- vacuum cleaners; and
- dishwashers.

The label to be affixed to those products must indicate whether the product incorporates one or more **permanent magnets** and, if yes, whether these contain neodymium-iron-boron, samarium-cobalt, aluminium-nickel-cobalt or ferrite. The labelling requirement will become effective 3 years after the entry into force of the Proposed Regulation.

Moreover, the Proposed Regulation imposes a **disclosure requirement on anyone placing on the EU market a product subject to the labelling requirement**, if that product incorporates permanent magnets containing neodymium-iron-boron, samarium-cobalt, aluminium-nickel-cobalt or ferrite in total weight exceeding 0.2 kg. The disclosure requirement will become applicable 3 years after the entry into force of the Proposed Regulation or 2 years after the entry into force of the aforementioned delegated act, whichever is later.

ENVIRONMENTAL FOOTPRINT REQUIREMENTS

The Proposed Regulation further sets out rules for the Commission's recognition of **certification schemes** related to the sustainability of critical raw materials that have been developed by governments or organisations.

The Proposed Regulation also empowers the Commission to adopt delegated acts to establish rules for the calculation and verification of the environmental footprint of different raw materials. Where the Commission has adopted such rules for certain critical raw materials, **anyone placing on the EU market the relevant critical raw materials must make available an environmental footprint declaration**.

STRATEGIC PARTNERSHIPS WITH THIRD COUNTRIES

The European Union has already concluded several Strategic Partnerships covering raw materials with third countries in order to implement the [2020 Action Plan on Critical Raw Materials](#) (see, [EU-Canada strategic partnership](#)). Under the Proposed Regulation, the criteria to be taken into account for prioritising the conclusion of Strategic Partnership with third countries, include their potential contribution to the security of supply (considering the third country's potential reserves, extraction, processing and recycling capacities related to critical raw materials); whether the third country's regulatory framework ensures the monitoring, prevention and minimisation of environmental, human rights (including labour rights) and good governance impacts etc.

NEXT STEPS

The Proposed Regulation, which is subject to the ordinary legislative procedure, must be approved by the European Parliament and the Council of the European Union. Both institutions will discuss the Proposed Regulation in the coming months and can propose further amendments.

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