

Critical Raw Materials Act and upcoming regulation for companies

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On December 12, 2023, an agreement was reached in the European Parliament on a draft of the EU Critical Raw Materials Act (CRMA), paving the way for its timely adoption. This raises the threat of further regulatory obligations for companies that produce with critical raw materials.

Background

A large number of technologies in key EU sectors such as renewable energy, information technology and the defence industry are dependent on certain raw materials. The demand for those raw materials is already high today and is set to increase significantly in the future. Recently, the COVID-19 pandemic and the Russian war against Ukraine have highlighted the considerable vulnerability of many EU companies to disruptions to their supply chains for raw materials. Risks result particularly from a dependence on imports into the EU, which in most cases come from a small number of suppliers in a few third countries. With the CRMA, the EU wants to ensure a secure and sustainable supply of necessary raw materials for European companies.

Critical and strategic raw materials according to the CRMA

The CRMA draft defines 34 raw materials of high economic importance whose supply chains are exposed to a considerable risk as so-called critical raw materials (see recital 1, Art. 4 and Annex 2 of the CRMA draft). Within those critical raw materials, the CRMA draft forms the sub-category of strategic raw materials. These are raw materials of high strategic importance and with a potentially significant gap between global supply and projected demand, for which an increase in production is also relatively difficult (see recital 6, Art. 3 and Annex 1 of the draft CRMA). The raw materials categorised as critical and partly also as strategic (*cursive*) are:

Antimony, Arsenic, *Bauxite/Alumina/Aluminium*, Barite, Beryllium, *Bismuth*, *Boron*, Cobalt, Coking Coal, Copper, Feldspar, Fluorspar, *Gallium*, *Germanium*, *Graphite*, Hafnium, Helium, *Heavy and Light Rare Earth Elements*, *Lithium*, *Magnesium*, *Manganese*, *Nickel*, Niobium, Phosphate rock, Phosphorus, *Platinum group metals*, Scandium, *Silicon metal*, Strontium, Tantalum, *Titanium metal*, *Tungsten* and Vanadium.

Scope of the CRMA

The CRMA creates additional tasks for the EU Commission and obliges the EU Member States to take various measures to improve and diversify the supply of critical and strategic raw materials. This also includes strengthening circularity including recycling and supporting research and innovation in the areas of resource efficiency and the development of substitute materials.

In addition, EU member states shall identify companies operative on their territory with more than 500 employees and worldwide turnover of more than 150 million EUR that require strategic raw materials in sensitive areas. This especially concerns companies from various areas of the energy transition, the defence sector, information technology and aerospace (for the specific manufacturing items covered, see Art. 24 of the draft CRMA).

Emerging audit obligations for the company's own supply chains

Under the CRMA draft, the companies concerned need to fulfil various compliance requirements. They must carry out a risk analysis of dependencies on strategic raw materials in their supply chain at least every three years, including a mapping of where the strategic raw materials are extracted, processed and recycled. Furthermore, existing risks to the stability of their supply chain must be assessed. If vulnerabilities are identified in this context, companies should then take efforts to mitigate the risks. In addition, EU member states can issue further regulations such as reporting obligations to the board of directors. As larger companies must request a lot of the information required for their risk analysis from their suppliers, SMEs will also indirectly have to comply with certain CRMA reporting obligations and collect this information for their supply chains.

The European Commission's first draft went even further with regard to the audit obligations of the companies concerned and extended these, for example, to the availability of alternative sources of supply and substitute raw materials as well as a variety of crisis scenarios. Under the current draft of the CRMA, this assessment is only part of an ongoing risk monitoring and stress testing between the EU Member States and the European Commission (see Art. 20 of the draft CRMA). However, as the EU member states will require this information from companies operating on their territory, it seems likely that at least some of these monitoring obligations will be passed on as part of the implementation of the CRMA.

Key takeaways

It remains to be seen how the individual EU Member States and Germany in particular will implement the CRMA. For companies that either require the aforementioned strategic raw materials or are active in one of the areas addressed by the CRMA, it is advisable to plan their sources of supply in advance. Ideally, this will not only allow companies to

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adapt their own supply chains to future legal frameworks resulting from the CRMA as early as possible, but also to anticipate certain price developments in the area of critical and strategic raw materials.

BLOMSTEIN will follow further developments regarding the adoption of the CRMA and, particularly, its implementation in Germany. [Roland Stein](#), [Florian Wolf](#), [Leonard von Rummel](#) and [Moritz Schuchert](#) will be pleased to answer any questions you may have about the potential impact on your company or industry.