

The future EU Critical Raw Materials Act

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In the 2022 State of the Union the President of the European Commission, President von der Leyen, stressed the economic importance and high supply risk of critical raw materials (CRMs), such as lithium, magnesium, rare earths, and others. In this context, she announced the implementation of the CRM Act, of which [the feedback and public consultation period is currently ongoing until 25 November 2022](#). The topic of CRMs and the EU's dependency on non-member states for supply is not novel but gained traction in light of the invasion of Ukraine by Russia and the EU's reliance on Russian gas and oil. At the same time, China is by far the biggest supplier of CRMs to the EU, and China had used its supply of CRMs as a geopolitical response. In possible future conflicts with China, it can be assumed that China will again use CRM supply geopolitically. The CRM Act is the latest example of the EU's intention to push towards a digital and sustainable future, the "Twin Transition", as well as strengthen EU resilience and security. It exemplifies the EU institutions' unanimous effort to reduce strategic dependencies to ensure the "Twin Transition" of the EU economy.

The Legislative Process

To secure a sustainable supply of CRMs, the Commission started working on a strategy in 2008 and presented an action plan in the 2020 [Communication on CRMs](#). Due to the reasons mentioned above, the EU institutions have recently felt the acute need to speed up the legislative process: The EU Parliament called for an [EU strategy for CRMs](#) in its November 2021 resolution, followed by the European Council's [Versailles Declaration](#) in March 2022 concerning Russia's war against Ukraine. In May 2022, the [REPowerEU](#) communication and the [Joint Communication on the Defence Investment Gaps Analysis and Way Forward](#) stressed that fast actions, including legislations, are indispensable for EU resilience and security of supply of CRMs.

Under these circumstances, President von der Leyen announced the CRM Act as the probable centerpiece of a legislative package that will consist of regulatory and non-regulatory actions. The Commission's adoption is planned for the first quarter of 2023.

The likely approach by the EU Commission

Although a draft of the proposed regulation is still pending, the above-mentioned initiatives, the still pending but more advanced [European Chips Act](#), the [European Battery Alliance](#), and the [Framework for Batteries](#), to which the Commission refers at various occasions, can help painting a picture of the proposal. Generally, we can expect the CRM-Act to be based on three pillars:

- **The first pillar** will create a coordination mechanism between the Member States and the Commission. It aims to strengthen collaboration with and across Member States for **monitoring and crisis response** as well as to create an evaluation grid on **which materials are assessed as critical**.
- **The second pillar** aims to diversify and increase sourcing from non-member states and to remove distortions to international trade. To achieve this interim goal on the way to ensure the supply of the EU with CRMs, the Commission plans to secure the supply chains through means of trade with like-minded democracies such as Canada, Chile, Mexico, New Zealand, Australia, and India. The **diversified supply through international trade** concerns both mining and refining of CRMs.
- **The third pillar** seeks to **reduce the dependency** on other countries by **increasing domestic sourcing** all along the value chain, including mining, but more importantly **refining** as well as **circular use of resources** and sustainable products. While domestic mining is limited due to scarce natural resources, the focus will be on refining and recycling framed by a support of **research and innovation**. Domestic refining is set to play a big part in the CRM-Act to reduce the present dependency on only one or a few third countries in areas where there is a multitude of suppliers of a specific CRM. For example, in case of lithium, only around 9% in total is mined in China, but around 60% is refined there, leaving the EU largely dependent on China.

How will the Critical Raw Material Act impact companies?

While the first pillar provides the basis on which the second and third pillars can operate, the second and especially the third pillar will have a greater impact on companies.

The second pillar emphasizes on the diversification of supply chains in favor of pushing for a more protectionist approach could be welcomed as a step back from the Commission's recent protectionist measures. However, unlike in the case of semiconductors, the EU can't simply ramp up production as CRMs have to be mined; thus, the supply is reliant upon geological preconditions. Depending on the CRM protectionist measures would prove to be counterproductive. As the Commission tries to diversify trade relations with non-member states supplying CRMs, statements, such as the [joint statement of France and Germany](#) on this matter, show that ESG standards are supposed to be taken into consideration. It remains to be seen, if this obligates buyers and users of CRMs to perform a more sincere due diligence process.

The third pillar will likely have the most significant impact on companies as it revolves around the EU and their Member States heavily investing into projects along the entire CRM value chain, with a probable focus, given the geological preconditions, on refining and the secondary CRM market (circular use of resources). The Commission will most

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likely use instruments such as the creation of a sovereign public/private investment fund, combining equity, loans, and guarantees, to incentivize and provide necessary investments in corresponding projects. The investment needs could also entail the relaxation of some state aid rules through the Important Projects of Common European Interests (IPCEI), to increase investment in the mining sector – something that has already been proposed in the Chips Act.

BLOMSTEIN urges the affected companies to take advantage on the opportunity to participate at the current [Feedback and Consulting Period](#).

BLOMSTEIN will continue to monitor developments regarding the upcoming CRM-Act as well as related initiatives. If you have any questions about the potential impact on your company or industry sector do not hesitate to contact [Florian Wolf](#), [Roland Stein](#) or [Anna Huttenlauch](#).