

56. Frankfurter Newsletter zum Recht der Europäischen Union

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Prof. Dr. Thomas Lübbig

RESourceEU: Critical, but also Material? The Legal Architecture Around the EU Critical Raw Materials Act

*Or: How Coking Coal made it onto the Critical List**

(h) cobalt

(i) coking coal

(j) copper

From the list of critical raw materials pursuant to Annex II, section 1 of the EU Critical Raw Materials Act.

1. Different Agencies – Different Narratives

There seems to be a widening gap between the communication of buzzing activities in Brussels meant to make the European Union more resilient and to move towards bolstered strategic autonomy, on the one hand, and the sober assessments presented by the **European Court of Auditors (ECA)** on core challenges to these policies on the other hand. This is the case for the European Chips Act, *the* prestige project of

European industrial policy, where a sobering report by the ECA was released last year.¹ There are also several reports on defense readiness including on military mobility within the European Union, where again, detailed and well-structured reports by the ECA make it even more apparent how complex and multifaceted the (vertical) distribution of power and competencies is between the European Union and its Member States.² In addition, there are various clusters of inter-governmental cooperation (also with jurisdictions outside the EU), then the knotty (horizontal) distribution of powers within the European Union (Commission, Council and Parliament), and finally vis-à-vis NATO. Our global allies, peers and rivals may be facing fewer issues and agility restrictions in this vein.

Now, a new Special Report has been published on the very prominent activities of the European Union in the realm of **securing the supply of critical (and strategic) raw materials**, the bedrock of which is the **EU Critical Raw Materials Act of 11 April 2024**.³

The ECA does not yet deal with a follow-up initiative of the Commission (DG GROW) which was presented last year, the **RESourceEU Action Plan** of 3 December 2025⁴ which will become discussed at the end of this newsletter.

Again, the spin of this report may not be to the liking of DG GROW, which is just preparing to release yet another paramount (proposed) Act of EU legislation in the field of industrial policy, the Industrial Accelerator Act, a cross-cutting – buy and invest into Europe – lawmaking campaign which is expected to be presented later this month (February 2026).⁵

*This is another Chapbook of Quotes building on a previous FIREU newsletter discussing EU defense readiness published in 2025. It is also the refocused write-up of two presentations held before a seminar at Europa-Universität Viadrina in 2025 and before the Potsdamer Juristische Gesellschaft in 2026.

¹ European Court of Auditors, Special Report 12/2025: The EU’s strategy for microchips – Reasonable progress in its implementation but the Chips Act is very unlikely to be sufficient to reach the overly ambitious Digital Decade target, 28 April 2025.

² European Court of Auditors, Opinion 02/2024 concerning the proposal for a Regulation establishing the European Defence Industry Program, 3 October 2024; Special Report 04/2025: EU military mobility – Full speed not reached due to design weaknesses and obstacles en route, 5 February 2025; ECA Journal 2/2025: “Is EU defence ready to secure peace?”, 16 December 2025.

³ Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024), OJ L 2024/1252 of 3 May 2024; *Robert Frau*, Der Critical Raw Materials Act als Baustein eines öffentlichen Rohstoffrechts; *Neue Zeitschrift für Verwaltungsrecht (NVwZ)* 2024, page 1874; a most comprehensive study on the roles of the State and the public economy in the sector of raw materials by *Robert Frau*, *Rohstoffe und staatliches Handeln*, is expected to be published later this year (Jus Publicum, Mohr Siebeck; Tübingen).

⁴ Commission Document COM(2025) 945 final of 3 December 2025.

⁵ POLITICO, The EU’s industrial policy goes full China, 22 January 2026; Bruegel, “Made with Europe” not “Made in Europe” should guide EU industrial policy, 10 February 2026.

Back to the complex issue of securing the supply of critical and strategic raw materials, the title of this Special Report presented by the ECA is already telling:

“Critical Raw Materials for the Energy Transition, **Not a rock-solid Policy.**”
(emphasis added)

The key findings are presented below:

- “EU struggles to free itself from dependence on imports from a small number of countries
- Domestic production and recycling are not taking off
- Securing supply by 2030 appears out of reach”.⁶

And in equally unflattering tone:

“While the Critical Raw Materials Act sets a strategic course, **its targets lack justification and underlying data is not robust.** Efforts to diversify imports have yet to produce tangible results and bottlenecks hamper progress in domestic production and recycling. While strategic projects can benefit from faster permitting and more visibility, **many projects will struggle to secure supply for the EU by 2030.**”⁷

The report is rich in detail and drills down into individual commodities and projects. Each mineral, each metal presents different challenges in terms of exploration, extraction, processing, transport and recycling. There is no sparsity of analysis and reports when it comes to the intricacies of this sector which require deep geological/technological knowledge of extraction opportunities and permit processes in often far away countries, at a time where industry in the European Union has significantly de-skilled in the science and practice of mining.

While “rare earths” – facetiously speaking - (i) may not be “earths” in literal terms because they are metals and (ii) may not always be “rare” because they could be found and extracted in various places, often, only a “handful of people” are in the know about this as is revealed in the instructive 2025 interview with *Heinz Schimmelbusch*, a senior industrialist operating in this area.⁸

The Special Report by the ECA on critical raw materials does not stop at conveying its slightly doom-laden messages but suggests quite a number of concrete recommendations as to how the Commission and the Council/Member States might

⁶ European Court of Auditors, Critical raw materials for the energy transition, Not a rock-solid policy, Special Report 04/2026 of 2 February 2026 (emphasis added); ECA press release of the same day.

⁷ Loc. Cit., page 6, para 6 (bold print added).

⁸ *Sven Astheimer*, AMG-Chef (Heinz Schimmelbusch) im Interview, „Irgendwann wird man erkennen, dass es nur mit „Erneuerbaren“ nicht geht.“, Frankfurter Allgemeine Zeitung, 22 August 2025.

improve the legislative targeting of the new Act which the Commission mostly accepted.⁹

2. Europe Trying to Catch Up, for a While Already

The European Union cannot be blamed for having missed the boat – or rather the minecart. As early as in 2008, the Commission launched its first raw materials initiative.¹⁰ Back then, it was still the Commission *of the European Communities*, and in those days, such a document neither warned about threats to European sovereignty nor called upon European resilience to be maintained or worried about (rather, the worry were things “threatening the competitiveness of European industry”).¹¹ Yet, the paper is full of insightful observations which were made very timely, such as:

“The EU is highly dependent on imports of “high-tech” metals such as cobalt, platinum, rare earths, and titanium. Though often needed only in tiny quantities, these metals are increasingly essential to the development of technologically sophisticated products in view of the growing number of their functionalities. The EU will not master the shift towards sustainable production and environmental-friendly products without such *high-tech metals*. These metals play a critical role in the development of innovative “environmental technologies” for boosting energy efficiency and reducing greenhouse gas emissions. Hydrogen-fuel based cars require platinum-based catalysts. Electric-hybrid cars need lithium batteries and rhenium super alloys are an indispensable input for modern aircraft production.”¹²

[...]

“Industrialised countries like Japan and the US have recognised their critical dependence on particular raw materials and are pursuing specific policies for safeguarding their raw material supply. The US, for example, has defined raw materials that are strategically relevant and also maintains a stockpile of raw materials that are crucial for its defence industry. Japan has also engaged in ensuring the critical access to raw materials (Annex 7). Although some EU Member States are pursuing specific policies, there has been no integrated policy response at EU level up to now to ensure that it has sufficient access to raw materials at fair and undistorted prices. It is proposed that the EU should agree on an integrated raw materials strategy.”¹³

A further initiative followed in 2011, broadening the scope to also cover commodities.¹⁴ In both papers, the policy focus was directed at awareness raising, “raw materials

⁹ European Commission, replies to the European Court of Auditors’ Special Report on critical raw materials for the energy transition, SR-2026-04.

¹⁰ Commission Document: COM(2008) 699 final of 4 November 2008.

¹¹ Ibid, pages 2,4.

¹² Ibid, page 3.

¹³ Ibid., Page 5.

¹⁴ Tackling the challenges in commodity markets and on raw materials. Commission Document COM(2011) 25 final of 2 February 2011.

diplomacy”, trade policies more generally and recycling. However, while reshoring manufacturing activities back to Europe has been a popular strategy in light of the fading enthusiasm for global trade, especially in reaction to interrupted supply chains during the Covid19 pandemic¹⁵, exploration and mining has yet to move into priority status on the agendas of industrial and environmental policymakers. Mining is currently not outright forbidden in the EU. However, it is not only unpopular but also challenging in terms of the many green and social sustainability requirements that companies are obliged to observe.

Moving in Circles: Recycling, a New Bonanza

While recycling as a policy choice would seem to be a low hanging fruit and was a widespread reaction to scarcity of material resources and shortages already in the Soviet Union, partly even by private companies,¹⁶ “additional actions to ensure that recovered materials re-enter the value chain” have only recently been undertaken in earnest with the CRMA¹⁷ of 11 April 2024 and the Commission’s most recent RESourceEU Action Plan of 3 December 2025¹⁸. In this regard, recital 51 of the CRMA reads as follows:

“Most critical raw materials are metals, which can be in principle endlessly recycled, albeit sometimes subject to deteriorating quality. This offers the potential to move to a truly circular economy in the context of the green transition while increasing the availability of critical raw materials and thereby contributing to ensure security of supply. After an initial phase of rapid growth of demand for critical raw materials for new technologies, where primary extraction and processing will still constitute the predominant source, recycling should increasingly reduce the need for primary extraction and its associated impacts. This should be done while maintaining a high level of Union recycling capacity via a strong market for secondary critical raw materials. Today, however, recycling rates of most critical raw materials are low, with waste streams such as batteries, electrical and electronic equipment and vehicles being shipped to third countries for recycling. Recycling systems and technologies are often not adapted to the specificities of those raw materials.”

¹⁵ Post Covid-19 value chains: Options for reshoring production back to Europe in a globalised economy, Study, requested by the INTA Committee of the European Parliament, Document PE 653.626 – March 2021, page 21 on “rare minerals and metals”.

¹⁶ *Tetiana Perga*, *Ukrainian Waste for the Soviet Economy: Shaping the National Narrative, Environment and History* (Liverpool University Press) 30 (4), November 2024, page 541, 542: “The existing literature on Soviet waste recycling is highly fragmented. There are only a few brief mentions of the All-Union Association for the Procurement and Recycling of Recyclable Materials and Industrial Waste ‘Soiuzutil’, established in 1932.” *Perga*, *ibid.* Page 545: “From 1923 to 1928, the collection of rags and bones was conducted by the private Russian-Austrian Trading and Industrial Joint-Stock Company ‘Rusavstorg’, and from 1923 to 1930, by the private joint-stock company Ukutilzbir.”

¹⁷ Regulation (EU) 2024/1252 of 11 April 2024, OJ L 1252/2024 of 3 May 2024.

¹⁸ Commission Document COM(2025) 945 final of 3 December 2025, section 3.2.

Fruits Ready to Pick, but where are the Orchards?

Member States have been given a target of two years to adopt and implement national programmes to promote circularity of the critical raw materials value chain and improve the recovery of critical raw materials from extractive waste.¹⁹ A particular focus of the CRMA is directed at the recyclability of permanent magnets.²⁰ Here, the Commission, in its RESourceEU Action Plan may have identified a gold mine:

“In other words, there is a flow of permanent magnets scrap and end-of-life products that leaves the EU, remains unused or – worse still – ends up in a landfill. With the appropriate feedstock and incentives, EU rare earths recyclers such as Carester and Solvay in France or Inspiree in Italy could ramp up their activities to contribute to the production of 3 800 tonnes of rare earths permanent magnets in the next few years, corresponding to about 20% of today’s demand.”²¹

This plan builds on a study sponsored by the European Commission in 2021.²² It stands to reason that this initiative could not have come more timely as observed by a Warsaw based think tank (SET):

“One of the most paradoxical phenomena in the European raw materials market is still the fact that Europe exports scrap containing rare earth elements and strategic metals, despite their chronic shortages, only to then import finished magnets or other products and semi-finished products manufactured using them from third countries.”²³

Where Europe might still be Leading

So, this seems low hanging fruit in terms of finding some consensus around Europe. With its significant experience in light-regulatory touch legislation in packaging waste recycling which in many Member States is organized by private parties under a public charter, it would seem plausible that Europe could optimize the circularity of its raw materials industry. No surprise, the *Grüne Punkt* (Green Dot), a Germany based pioneer in Dual System take-back systems of retail packaging presents itself as “one of the largest commodity traders in Europe. It markets metals, glass, plastics, and other materials, mainly obtained from post-consumer collections”.²⁴ So, there is some corporate but also lawmaking experience which could be leveraged into industrial metals and minerals recycling.

¹⁹ Articles 26 and 27 of the CRMA.

²⁰ Articles 28 and 29 of the CRMA.

²¹ Section 3.1. of the Action Plan.

²² European Raw Materials Alliance, Rare Earth Magnets and Motors: A European Call for Action, Berlin 2021, also quoted in the CRMA Impact Assessment Report of 16 March 2023, SWD(2023) 161 final, footnote 204.

²³ SET (Security, Energy, Technology, *Tomasz Zdzikot* (author), Europe Facing Raw Material Dependence: Will the “RESource EU” Package Overcome the Impotence?, 21 December 2025.

²⁴ Der Grüne Punkt, Website Presentation, A pioneer of closed-cycle economy.

Mining, Welcome Again?

A more daunting task is the re-introduction of mining as a strategic business in Europe, which for many years (if not decades) was associated with coal mining and its significant social costs (environmental and subsidy-wise), quality of labour, water management, nature preservation and biodiversity problems and at least partly low margins in a cyclical and fluctuating business. As an article by Euronews put it:

“Europe's mining sector has been on the decline for several decades now, due to a variety of factors: At the beginning of the last century, Europe accounted for about 40% of global mining output. Now, that's down to 3%.”²⁵

When Coking Coal Became a Critical Resource

The most telling sign of Europe's dependency on overseas mining activities is the fact that **coking coal** is a product item deemed to be a critical raw material under the CMRA – as reflected in Annex II Section 1 (i) thereof. It may be surprising in the light of the long European tradition of coal mining, iron production and steel production, that the inclusion of coking coal on the list of critical raw materials has been discussed for quite a while and was first added by the European Commission in 2014.²⁶

3. What is in it for the Legal Debate?

Legal Bases under the TFEU, a Union Almost Spoilt for Choice

In the last five years or so, many emergency driven pieces of EU legislation were adopted under different legal bases of the TFEU which to some extent overlapped with considerations of geopolitics and geoeconomics and which in terms of the EU Treaties also respond to the Common Foreign and Security (including Defence) policies (CFSP) under the TEU. The CFSP follows its distinct rules, notably unanimity requirements and relies on a more prominent role of the Council in comparison to the Commission and the European Parliament. Conventional legislation is excluded in this field under Article 31 (1) sentence 2 TEU. Not only is the Council *King*, but under Articles 24 (1) (2) sentence 6 TEU and 275 (1) TFEU, the role of the European Court of Justice is severely limited.

Under the TFEU, instead, the European Commission, the European Parliament and the Council are faced (and blessed) with a wide choice of legal bases when it comes to the adoption of its legal instruments, be it Directives or Regulations.²⁷ In each of these legal instruments, the legal basis, e.g. Article 114 TFEU (internal market), is

²⁵ *Indrabati Lahiri*, Here's why Europe needs to revive its mining sector, Euronews of 11 March 2024.

²⁶ *Martin Sivek/Jakub Jirásek*, Coking coal – Really a critical raw material of the European Union?, Resources Policies, Vol 83, June 2023, 103586.

²⁷ A field of legal debate also at the heart of the ECB Legal Conference 2025, European Central Bank, Building Europe's Autonomy: Law, Institutions, Cooperation, December 2025, in particular the following articles: *Paul Dermine*, Common debt and the EU budget: Between autonomy and vulnerability, pages 31, 34; *Cristina Fasone*, The autonomy of the EU spending powers: Legal constraints and challenges, pages 40, 51, 52, 56; *Emanuele Rebasti*, Autonomy as an objective of the internal market, pages 74, 79, 83/84.

always quoted in the introductory formula, before the recitals, and then, depending on how controversial the choice of the legal basis is, you will find more or less language on this in the *travaux préparatoires*, the impact assessment report (if any) or even the recitals of the Directives or Regulations themselves. All of this depends on which Union policies the legal instrument responds to, whether the Parliament is meant to be fully involved and whether the European Union lawmakers may be jammed due to unanimity requirements. This is usually only of interest to constitutional lawyers, but from time to time the Union Courts intervene, such as recently in the case of the Minimum Wage Directive.²⁸

Quite telling in particular is the wording of Article 173 TFEU²⁹, which deals with industrial policy and the competitiveness of the European Union (and its Member States). This Article talks about the “Union and the Member States”, where the Commission is mentioned, it will mostly have a coordinating function. What is more, in the legal empowerment section, which is Article 173 (3), “any harmonisation of the laws and regulations of the Member States” is expressly banned. Legislation as such is meant to come “in support of action taken in the Member States”, so in terms of chronology, it might first be for the Member States to act and then for the European Union to intervene in their support.

It is hardly surprising that this legal basis in the only Article of the Treaty dealing with industrial policy is unattractive to the European Union. It therefore occasionally makes other constitutional choices. Notably in recent years, in connection with legislation adopted in reaction to the COVID19 crisis and the invasion of Ukraine, Article 122 TFEU³⁰ has been a preferred choice. This provision, which is meant to allow the European Union to tackle emergencies through legislative acts, remains entirely within the command of the European Commission (putting forward a proposal) and the Council voting by majority under Article 238 TFEU. This is an executive regime as transpires bluntly from Article 122 (2) sentence 2 TFEU: “The President of the Council shall inform the European Parliament of the decision taken”.

Faced with these multiple legal bases, different choices were made:

The CRMA is based on Article 114 TFEU, the conventional legal basis for harmonization under the single market policies.

The EU Chips Act is based on Articles 114 TFEU and Article 173 (3) TFEU, the somewhat frustrating competence rule for the EU in the realm of industrial policy.

²⁸ ECJ, Judgment of 11 November 2025, case C-19/23, *Denmark/EP and Council*, ECLI:EU:C:2025:865.

²⁹ Adam A. Ambroziak, *The New EU Industrial Policy*, SIEPS publication 2025:2, September 2025, pages 41 – 44.

³⁰ Valentin Kreilinger, *Article 122 TFEU: The legal workaround to freeze Russian assets and possible repercussions*, SIEPS publication, 18 December 2025.

And then, the EU SAFE Act, a key piece of legislation in the field of defence, is solely based on Article 122 TFEU.

How does this all add up and does it matter?

SAFE or Emergency?

An important test case on how far Article 122 TFEU empowers the Commission and the Council to follow this shortcut is currently pending before the European Court of Justice, a somewhat unfortunate development because it targets one of the most significant European instruments meant to bring increased European defence spending and European defence industries closer together, the SAFE Regulation 2025/1106 of 27 May 2005, **Security Action for Europe (SAFE)**.³¹ This Regulation is designed to channel additional borrowing of up to 150 billion Euro leveraged through the issue of Union bonds to a majority of EU Member States. This Regulation is solely based on Article 122 TFEU and the European Parliament has openly expressed its disagreement with the legal interpretation of this provision and shown noticeable chagrin³² with such a sidelined role in the political process.³³ According to the notice published in the Official Journal, the applicant puts forward that the “conditions for relying upon Article 122 TFEU” are not satisfied because the piece of legislation “concerns instead the development of the Unions’ industrial policy in the field of defence pursuant to Article 173 TFEU”, under which the Parliament would have had to be involved in the law making.

An Act Meant to be about the Internal Market, Really?

The **CRMA** is solely based on Article 114 TFEU, the standard legal basis for harmonisation legislation in the realm of the internal market. This is far less surprising, as many EU Directives and Regulations that simply redefine the regulatory environment in a potentially Pan-European field of business rely on this Article. Yet, even here, there are some limits which transpire occasionally from the case law of the European Court of Justice. Even though mostly generous in recognising that *l'intrégration par le droit* requires a lot of legislation (harmonization and coordination) from Brussels, the case law says that “a mere finding of disparities of national rules is not sufficient to justify recourse to Article 114 TFEU” rather, the legislation must be conducive to removing “obstacles to trade” (that is between Member States) or prevent the emergence of “such obstacles [...] in the future, because the Member States [...] are about to take divergent measures with respect to [...] a class of products that [...]”

³¹ OJ L, 2025/1106 of 28 May 2025; *Mattis Leson*, Moving towards a SAFE Defense Policy in Europe, Verfassungsblog of 12 September 2025.

³² European Parliamentary Research Service, Briefing, Legal bases in Article 122 TFEU, Tackling emergencies through executive acts, PE 769.579, 11 April 2025, last page before endnotes.

³³ Pending case C-560/25, *European Parliament/Council of the European Union*, action brought on 20 Aug. 2025, OJ C 2025/5209 of 6 October 2025. In terms of the orders sought, the Parliament has applied to “maintain the effects of that Regulation until its replacement with an act adopted on the appropriate legal basis”.

“may” prevent the product or products concerned from moving freely within the European Union”.³⁴ But: Harmonization is not an end in itself.

Is this really a sound legal basis here (for the **CRMA**), in a situation where the European Union wishes to attract products, mostly from outside the European Union which it currently does not produce in sufficient quantities (or not at all) domestically?³⁵ Moreover, this may concern products which companies in the EU will either not extract anytime soon (with project lead times exceeding ten years) or not at all depending on the geology. How could there be relevant obstacles to trade between Member States (present or imminent ones) when these products are currently absent from the European Union? The explanations given in the Impact Assessment Report appear a trifle speculative, and also tenuous when it comes to improving the internal dimension of the EU market. The Impact Assessment points to likely (egoistical) efforts by Member States to address the consequences of shortages and price volatilities, “e.g. through stock piling and export restrictions”, and the more general risk of addressing a Pan-European problem at national level and therefore “incoherently”.³⁶ Apparently, the EU legislator is confident that such anticipated (internal) market disruptions satisfy the ECJ test whereby “the emergence of such obstacles must be likely and the measure in question must be designed to prevent them.”³⁷

4. Permits, a Scarce Resource in not so Permissive an Environment

Given that for many decades, in Europe, mining was rather unpopular, the CRMA needs to rebuild not only a political environment which is friendly to the domestic extraction and processing of metals and minerals but also will have to expedite public law permitting processes (re: exploration, mining, zoning, water management, nature preservation etc.). The CRMA introduces several tools:

“The Act will reduce the administrative burden, streamlining permitting procedures for critical raw materials projects in the EU while ensuring that we keep high social and environmental protection.”³⁸

To this end, investors, promoters and parties interested in CRMA related projects as far as Strategic (a narrower group than Critical) Materials are concerned can apply to the European Commission to become selected as “Strategic Projects” which are defined as:

³⁴ ECJ, Judgment of 3 December 2019, case C-482/17, *Czech Republic/European Parliament/Council*, ECLI:EU:C:2019:1035, paras 34-38; ECJ, Judgment of 11 November 2025, case C-19/23, *Denmark/EP and Council*, ECLI:EU:C:2025:865, paras 52.

³⁵ Cf.: The discussion in the article of *Emanuele Rebasti*, ECB Legal Conference 2025, see also fn. 26, pages 74, 83/84.

³⁶ European Commission, Commission Staff working document, Impact Assessment Report, document SWD (2023) 161 final of 16 March 2023, section 3.1/3.2., fn. 107.

³⁷ ECJ, Judgment of 3 December 2019, case C-482/17, *Czech Republic/European Parliament/Council*, ECLI:EU:C:2019:1035, para 35.

³⁸ DG GROW Website on the CRMA.

“mak[ing] a meaningful contribution to the security of the Union’s supply of strategic raw materials. They are or will become technically feasible within a reasonable timeframe, showing expected production volumes, and implemented sustainably with a sufficient estimated confidence level. The Commission considers strategic projects of public interest due to their importance in ensuring the security of the supply of strategic raw materials and safeguarding the functioning of the internal market.”³⁹

The Brussels “Strategic Project” Label

With this label, investors are deemed to enjoy the following benefits:

Funding

“Having obtained the status of a strategic project under the CRMA allows project promoters to request a meeting of the financing subgroup according to article 16 of the CRMA to discuss and provide advice on how the financing of the project can be completed, taking into account private and public sources of funding. This subgroup brings together relevant national promotional banks, the EIB, EBRD and private financial institutions, among others.”⁴⁰

Expedition in the Permitting Process

“In addition, selected strategic projects will benefit from support for access to finance and shorter permitting timeframes (27 months for extraction permits and 15 months for processing and recycling permits). EU countries will also have to develop national programmes for exploring geological resources.”⁴¹

Streamlining (also substantively)

Finally, and this may be the most controversial part of it, Member States are requested to streamline the permitting processes also in the balancing of interests under national (often EU induced) environmental (*largo sensu*) and zoning laws. As the CRMA explains:

“To that end, Strategic Projects should be given priority status at national level to ensure rapid administrative handling and urgent handling in all judicial and dispute resolution procedures relating to them. This Regulation should not prevent competent authorities from streamlining permitting for projects on the critical raw materials value chain that are not Strategic Projects.”⁴²

³⁹ DG GROW, Website on Strategic Projects under the CRMA.

⁴⁰ DG GROW, Frequently Asked Questions about Strategic Projects under the CRMA.

⁴¹ DG GROW, Website on the CRMA.

⁴² Recital 26 of the CRMA (emphasis added).

Fighting Regulation with Regulation

To be clear, this priority status is not only meant to expedite the procedure (which Member States⁴³ and environmental/human rights NGOs⁴⁴ may already find challenging); but under Article 10 (2) of the CRMA, there is also a certain substantive *favor unionis* because the projects labelled “Strategic” in Brussels are “considered to be of public interest or serving public health and safety, and may be considered to have an **overriding public interest** provided that all the conditions set out in those Union legislative acts are fulfilled.” (bold print added) While this rule does not curtail third party and NGO appeals as such also the judiciary needs to speed up under Article 10 (5) CRMA:

„All dispute resolution procedures, litigation, appeals and judicial remedies related to the permit-granting process and the issuance of permits for Strategic Projects in the Union before any national courts, tribunals or panels, including with regard to mediation or arbitration, where they exist in national law, shall be treated as urgent if and to the extent to which national law provides for such urgency procedures and provided that the usually applicable rights of defence of individuals or of local communities are respected. Project promoters of Strategic Projects shall participate in such urgency procedures, where applicable.”

This priority status may, however, be prone to dispute and litigation. The lengthy and complex permitting procedures, dubbed “unpredictable and fragmented” in the Impact Assessment⁴⁵, after all, were created not only by non-harmonized national mining and zoning laws, but by the European Union itself under various European Directives enumerated, int. al., in recitals 25 and 27 of the CRMA and as applicable under the environmental impact assessment process pursuant to Directive 2011/92/EU. While under Article 6 (1) (c) of the CRMA, eligibility for Strategic Project status also depends on the promoters’ ability to achieve the “minimization of environmental impacts, [and] the prevention and minimizations of socially adverse impacts through the use of socially responsible practices [...]”, there may well emerge a certain temptation for the national environmental and public law communities (including courts) to show that they are perhaps better placed to conduct this assessment than the European Commission.

⁴³ Article 9 CRMA requires Member States to establish Single Point(s) of Contact.

⁴⁴ For some of their positions more generally: *Alex Jäger/Michael Reckordt*, *Zivilgesellschaftliche Anforderungen an Strategische Projekte im CRMA*, 15 July 2024; but also: *Jan Kosmol/Oliver Weber/Regina Kohlmeyer/Carsten Alsleben/Jörg Rechenberg*, *Ensuring a secure AND sustainable supply of critical raw materials*, Umweltbundesamt, Scientific Opinion Paper, July 2023.

⁴⁵ CRMA Impact Assessment Report of 16 March 2023, SWD(2023) 161 final, pages 42, 99, 180.

A Multi-tier System of Administrative Review

It is clear that the Commission also needs to review what the applicants/promoters produce by way of evidence to show that their would-be Strategic Project will fulfill all the relevant green and social sustainability criteria under Article 7 (1) CRMA. Yet, administrative courts at national level may be wondering whether the assessment of green and social criteria by the Commission in Brussels was sufficiently broad and transparent to allow for third party/NGO intervention or even appeals⁴⁶, if in the subsequent national appeals procedure they may find reasons to question or second-guess the environmental and social compliance of the Project which concerns they would then need to weigh against the semi-mandatory priority status. The involvement of, int. al. “civil society, academia, trade unions” under Article 36 (3) CRMA is optional. An opinion, published by the EU-CRMA Board, established under Article 35 (1) of the Act, only mentions that “some Member States expressed substantiated views for certain projects.”⁴⁷ Whether or not the decision by the Commission to declare a project eligible for Strategic Project Status under the CRMA can be effectively challenged before the EU General Court under Article 263 (4) TFEU by competitors, by private citizens living in the targeted mining area or by NGOs is at least unclear.

Finally, the process (lead time) from discovery to actually extracting a kilogram or more of the precious mineral or metal from the mine is lengthy anyway, the ECA is quoting a 2023 global study whereby this process “on average” takes “15.7 years”. The only EU Member State covered in the study is Spain (15 years on average)⁴⁸. Hence, query, how much the process can really become expedited.

5. Going all in: Emulating Japan

On 3 December 2025, the European Commission has stepped up its activities in the CRMA area with the release of the *omnibus* type RESourceEU Action Plan which is meant to broaden and deepen the EU’s policies in the area.⁴⁹ The same day, a proposal for the amendment of the CRMA was put forward.⁵⁰

From Natural Gas and Hydrogen to Raw Materials

One key element of these plans is to use an EU managed e-platform, as part of a newly introduced European Critical Raw Materials Centre which would engage in

⁴⁶ The transparency of how the Commission publishes its decisions recognizing Strategic Projects would seem reduced: Cf. Decision (EU) 2025/840 of the Commission of 25 March 2025, OJ L 2025/840 of 30 April 2025, a summary publication.

⁴⁷ Opinion of the EU-CRMA Board pursuant to Article 7 (9) of the CRM Act, 11 March 2025, Ref. Ares(2025)4660817 – 11/06/2025.

⁴⁸ Brazil: 21.8, China: 15.2, US: 13 years; *Paul Manalo*, Discovery to production averages 15.7 years for 127 mines, S&P Global, 6 June 2023; ECA Special Report 04/2026, Para 74.

⁴⁹ Commission Document COM (2025) 945 final of 3 December 2025.

⁵⁰ Commission Document COM (2025) 946 final of 3 December 2025.

international raw materials procurement, building on the experience and planning of the EU in the joint platform purchasing, matchmaking as its also referred to, of natural gas and hydrogen.⁵¹ This is meant to be operative very soon this year and would a big leap forward towards public economic engagement also seen in the purchase of COVID vaccines a few years ago. With this, the EU itself would in a way compete or co-exist with raw materials trading which traditionally has been a domain for large private companies. This is what the EU has communicated in its Q&A document of 3 December 2025 about the new European Critical Raw Materials Centre:

„To support the work of the Centre, the Commission has also set up a **Raw Materials Mechanism** under the **EU Energy and Raw Materials Platform**, which will act as a matchmaking tool, enabling demand aggregation and facilitating private joint purchasing of strategic raw materials. This will help connect buyers and suppliers, streamline access for SMEs, and establish offtake agreements, feeding valuable insights and practices into the Centre. Furthermore, the Commission, together with Member States will also launch a **CRM stockpiling pilot** to create an effective approach to raw material reserves, focusing on logistics and financing challenges to enhance industrial resilience.”⁵²

This model is inspired by institutional experiences in other jurisdictions, notably Japan and also South Korea where already years ago, concerted efforts have been undertaken to secure the supply of raw materials through the State sector and public/private engagement. The key precedent is the work of the Japan Organization for Metals and Energy Security (JOGMEC), an organization the EU is already in cooperation with under an administrative agreement of 2023.⁵³ These models also featured prominently in the 2023 CMRA Impact Assessment document which reads as follows:

“In Japan, a country with a large manufacturing sector and few domestic CRM resources, a dedicated governmental structure on critical raw materials (JOGMEC) is in charge of monitoring, stockpiling (sufficient to meet 60 to 180 days’ demand) and investing. It supports exploration and technological development by Japanese companies through equity capital and liability guarantees. Its JOGMEC’s mandate was recently expanded to “functions of equity investments for domestic processing and smelting of rare metals”. In addition, the Economic Security Promotion Act aims to ensure stable supplies of critical items.

In South Korea, the State-owned Korea Resources Corporation runs a stockpile storage system for rare metals. A dedicated plan to stabilise resources supply

⁵¹ Commission News Announcement of 20 January 2026.

⁵² Commission document QUANDA/25/2886 of 3 December 2025.

⁵³ Commission News Article of 6 July 2023; Now also with the US: *Marta Pacheco*, Euronews of 5 February 2026: EU, US and Japan to cooperation on critical materials supply chains; Frankfurter Allgemeine Zeitung, Ein Rohstoff-Kartell der Willigen, 6 February 2026

in 2021 has developed in 2021 a dedicated plan to stabilise resources supply notably by increasing the stockpile of minerals to 100 days of consumption. The country also has an early warning system in place to monitor 20 key raw materials.”⁵⁴

Crowding in or Crowding out?

That is an interesting experiment to watch, also in reflection of the mixed experiences made with the centralized purchasing of vaccines (*multis mutatis mutandis*). While impressive in terms of speed and commitment, the EU with its heightened activities in the area will also have to tread somewhat carefully to avoid crowding-out effects towards the established private raw materials trade and industry communities.⁵⁵ The collective sentiment of multi-crises and emergency may not always be a good law and policy making guide.

6. What to Make of This

Admittedly, it is no great shakes to show that EU law reform in an unharmonized and very complex environment is challenging. Challenging because of the multifaceted economic sector to be regulated but also complex in how the European Union and the Member States interact. The same would seem to be true for other policy areas in the realm of geopolitics and geoeconomics. Given that the EU is reacting most of the time rather than acting, defending rather than pioneering, the question of whether its constitutional setup is fit for purpose, is warranted. When in rival jurisdictions, the Department for Industry and Trade were to call a CFO and request a meeting in two days to discuss how much the company is prepared to invest into a national emergency storage JV and possibly a new mining project, the answer unlikely is: “Apologies, but this is impossible at such short notice, and, please, what is the *Rechtsgrundlage*, anyway, for this request?” That would also not be the case here, one would wish to assume, but the EU with its multilayered and multiparty political processes is at a disadvantage when it comes to showing agility in a multi-crises environment. The CRMA is just another example.

This somewhat despondent assessment should not mean the EU should refrain from any activity simply because the Treaties’ legal architecture is so complex, but it may explain why some processes require more time - which is a bane when it comes to speed and agility but could also be a boon in terms of a wider democratic outreach and measured progress. How strategic and united the EU will be in these endeavours is also likely to be determinative of competing integration models such as the emerging

⁵⁴ European Commission, Commission Staff working document, Impact Assessment Report, document SWD (2023) 161 final of 16 March 2023, Annex 7, page 145.

⁵⁵ Bruegel, Policy Contributions, Issue n° 10/22 | June 2022, How to make the EU Energy Platform an effective emergency tool, pages 5/6.

E6-format, a kind of *Two-Speed Europe* with Germany, France, Italy, the Netherlands, Poland and Spain moving ahead of the EU27.⁵⁶

Frankfurter Institut für das Recht der Europäischen Union

fireu@europa-uni.de

<https://www.rewi.europa-uni.de/de/forschung/fireu/index.html>

⁵⁶ *Justyna Gotkowska/Lukasz Maślanka*, A Strategy for Europe from National Perspectives: Poland, DGAP (German Council on Foreign Relations) MEMO, 11 March 2025; Deutschlandfunk, Europas Wettbewerbsfähigkeit stärken, Deutschland und Frankreich rufen neues E6-Format ins Leben, 27 January 2026.