



# ASG ANALYSIS: The Critical Raw Materials Act and the Net-Zero Industry Act

## An EU Double Whammy?

### Key takeaways

- Last week, the European Commission rolled out proposals for a Critical Raw Materials Act (CRMA) and Net-Zero Industry Act (NZIA). While the former was announced by President Ursula von der Leyen last fall, both are part of the EU's hastily cobbled together response to the U.S. Inflation Reduction Act (IRA), dubbed the Green Deal Industrial Plan (see our previous [analysis](#)).
- They are essentially two sides of the same coin, aiming to boost the supply of green technology and the critical materials needed for its production, all while advancing the EU's ambitious climate goals.
- Taken together, they move the EU closer to defining an industrial policy that boosts Europe's manufacturing base for green technology. However, a myriad of shortcomings and challenges remain; the focus on state aid and permitting reforms will only go so far if it excludes new financing like generous subsidies and tax breaks a la the IRA.
- Similarly, ambitious targets to boost deployment of green tech risk amounting to little without commensurate measures to achieve them. Nor do the proposals address any of the real underlying problems facing Europe's competitiveness: high energy costs, high borrowing and labor costs, limited base for innovation, and limited raw materials deposits available in Europe.
- For industry, the proposals are welcome news but likely to still disappoint, as the commission is not earmarking new money. The politics of relaxing state aid rules are not straightforward, as member states will compete with each other but without the same ability to spend.
- Debates over a new European Sovereignty Fund that may include commonly borrowed money akin to the Covid-19-era Recovery Fund are ongoing and are unlikely to be fleshed out until the summer, but the current politics are not looking favorable.

## Critical Raw Materials Act

The CRMA is not the EU's first foray into protecting its supply of critical raw materials – both the 2008 Raw Materials Initiative and the 2020 Action Plan on Critical Raw Materials lay out frameworks for non-regulatory action. **The global race to secure and access critical raw materials needed for widespread electrification continues to accelerate, adding urgency for the EU to respond to increased demand, protectionist trade policies by other actors, and the sustainability of critical raw minerals.** The EU's heavy reliance on China, which supplies 98 percent of Europe's rare earth minerals and is currently the world's largest producer and processor of critical minerals, is increasingly seen as a threat to a secure supply chain given geopolitical tensions and unpredictable trade policies.

The CRMA identifies 34 critical raw materials and 10 strategic raw materials – including lithium, cobalt, and nickel – that are critical to strategic sectors like energy, transport, and digital technologies, as well as the production of electric vehicle batteries, wind turbines, solar panels, and other renewable energy infrastructure. Basically, everything the EU plans to prioritize in the next three decades. Strategic raw materials, defined as “crucial to technologies important to Europe's green and digital ambitions and for defense and space applications, while being subject to potential supply risks in the future,” are particularly vital to the EU's ability to meet its aggressive climate goals.

The general framework relies on, among other things, looser state aid rules allowing governments to subsidize strategic projects, voluntary benchmarks for domestic capacity and diversification, and monitoring of stockpiling of strategic critical raw materials to avoid supply chain disruptions. The permitting process for new mines and processing facilities will similarly be refreshed with a new mechanism that allows the EU to designate certain projects as “strategic,” granting a fast-track permitting process – mines within 24 months (as opposed to on average 10 years today), processing facilities within 12 – and access to special financing.

In addition to reducing dependence on imports, the CRMA aims to promote the sustainable and responsible sourcing, extraction, and processing of raw materials within the EU. Resource efficiency will be improved and waste reduced by promoting the recovery and reuse of critical raw minerals through regulations and contingent financing. The EU sees this as both a reflection of its broader climate goals as well as a useful backstep to retain a consistent supply of critical raw minerals; it plans to internally produce at least 10 percent (compared to 3 percent today) and process at least 40 percent of identified strategic materials each year by 2030, with 15 percent of annual consumption of each mineral coming from recycling, though the technology for this is still far from proven.

However, the EU recognizes that it will not be able to satisfy its demand for critical raw minerals through domestic production alone; **the European Commission intends to strike new trade partnerships to incentivize critical raw materials collaboration with mineral-rich third countries in need of financing or stable trade.** The commission also intends to identify projects in third countries in regions like Africa and Latin America via the [Global Gateway initiative](#), drawing on EU and member state funds as well as private investors.

The EU will also set a benchmark to not be dependent on one single third country, such as China, for more than 65 percent of imports for any strategic raw material by 2030, an ambitious albeit non-binding goal that might ultimately prove more aspirational. New long-term partnerships, as part of a “critical raw materials club,” will bring together like-minded countries such as the U.S.,

Canada, and Australia that can deliver supply in the next five years or so, when Europe's demand pressure is highest, while still maintaining rigorous environmental, social, and governance (ESG) standards. The EU is very publicly communicating its need for China-weary allies to work together to strengthen Western supply chains and ensure supply security for the coming decades. The EU and the U.S. appear ready to coordinate on critical minerals following a recent meeting by President von der Leyen with President Joe Biden in the White House.

**We generally expect the CRMA to move quickly through the legislative process and be concluded before the current commission's term expires in 2024**, a tight timeline even for a high-priority file. Even so, criticism is expected from some corners. Some members of the European Parliament have already said it does not focus enough on sustainable mining or the circular economy. Pushback is also expected from environmental groups, while upcoming elections could amplify any opposition. The CRMA includes high ESG standards for mine operators and processors, but auditing and compliance measures may be difficult to implement and expedited permits could face lawsuits from environmental groups.

Similarly, some EU member states will also be more supportive than others. Within the EU, a few member states with mineral deposits will benefit from increased mining and processing, while France and Germany will likely receive the lion's share of the subsidies to turn them into renewables. Countries with neither receive little.

In addition to these domestic factors is also the fact that the CRMA is inherently protectionist. Even the IRA carves out exemptions for countries that have a free trade agreement with the U.S., something the CRMA lacks. This raises questions for resource-rich countries with whom the EU seeks to engage on critical minerals cooperation, but whose access to the European market might become more constrained.

## Net-Zero Industry Act

The Net-Zero Industry Act (NZIA), meanwhile, creates a structure of initiatives and looser regulations that will allow other parts of the Green Deal Industrial Plan to subsidize green industry, reform electricity markets, and build critical mineral supply chains.

NZIA aims to create a predictable regulatory environment to reach a goal of 40 percent domestic production of what it calls "strategic net-zero technologies," namely renewable electricity technology, carbon capture and storage, and hydrogen infrastructure. Counter to earlier drafts, the 40 percent is a "benchmark" to "approach or reach," rather than a hard domestic production requirement, raising the question how realistic these targets really are. As a compromise to those seeking more protectionist measures, the NZIA includes a vague allusion that any final product where a single source supplies more than 65 percent of the demand will be considered "insufficiently diversified" for public procurement purposes; clarifying details are not included in the text.

The proposal includes various measures to reach the topline goal, including creating hard time limits for permitting procedures, new initiatives to promote carbon capture and storage (CCS), streamlining public procurement laws, creating single permitting and approval authorities for net-zero projects in each member state, and a slew of initiatives for workforce training. The NZIA also creates a designation of "Net-Zero Strategic Projects" for manufacturing, energy production, CCS, and hydrogen infrastructure projects of "particular importance" (excepting most [nuclear](#) technology despite French insistence), with lower thresholds for those located in under-developed

areas of the EU. Projects given the designation may receive member state subsidies and will be considered to have “overriding public interest” for permitting, allowing them to bypass many environmental and social impact reviews.

NZIA similarly takes key lessons from the U.S. IRA; it aims to create a clear competitive advantage over the U.S. by streamlining the permitting process for green industry, something that U.S. lawmakers struggle to do due to barriers at the state and local levels. In a sense, **the commission is acknowledging that it is unlikely to be able to compete with the size and scope of the U.S.’ uncapped tax breaks or lower energy costs, but it can compete by creating regulatory predictability through the permitting time limits and the “one-stop shop” regulatory agencies.**

The law does fail to address some of the bigger barriers to green technology manufacturing in Europe, though. While the EU is keen not to blatantly violate World Trade Organization rules like the U.S. IRA does, it is not entirely unproblematic from an [international trade law perspective](#). The relatively protectionist approach ignores the role of the EU’s neighborhood in green supply chains, beyond a brief mention of an initiative to promote collaboration with countries to remove non-trade barriers. Even when mentioning the adjacent reforms to the EU’s state-aid rules, it only notes that subsidies should be designed to avoid production from moving within the European Economic Area but not from third countries including those in North Africa, the Western Balkans, Turkey, and Ukraine. Without a broader complimentary trade element, it is possible the Green Deal Industrial Plan is doing too little, too late to reduce consumer costs for renewables, instead relying on subsidies that may not have enough of an impact.

The NZIA will likely receive strong endorsement from EU leaders at the next European Council meeting in late March. The whole process is likely to be accelerated – both because there is a need to be seen as taking action vis-à-vis the U.S. and China, and because of the upcoming European elections in May 2024. **A shorter legislative process means less time to influence outcomes, so businesses should proactively engage stakeholders now with their views and concerns.**

## The EU’s evolving green industrial policy

While the direction of greater EU industrial policy on clean energy is clear, member states are still heavily debating the scope and scale of these ambitions. On one side of the spectrum are countries like France that want to see a more robust EU intervention in defense of strategic sovereignty. On the other side are mainly northern member states that are wary of a slippery slide towards protectionism and want to see more focus on improving underlying competitiveness rather than engaging in subsidy races or hollowing out the EU’s Single Market.

**Now that the EU’s main proposals are out of the door, coordination with the U.S. on critical raw materials and clean energy more broadly is slated to become a key focus.** The upcoming gathering of the Trade and Technology Council (TTC) in northern Sweden in late May will mark an important milestone as to whether the EU and the U.S. can overcome their differences and establish mutually beneficial areas of collaboration on green tech in earnest. This is certainly the intention of Presidents von der Leyen and Biden following their recent meeting in Washington, but it remains to be seen how this will trickle down into TTC working-level collaboration.

## About ASG

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