EU CRITICAL RAW MATERIALS REGULATION 2024/1252 AND SOME PROBLEMS OF POLISH LAW

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1. Introduction

Raw materials of mining origin are essential for many traditional and modern technologies, including those related to renewable energy, the digital transition, defence and other strategic sectors. Unfortunately, mineral deposits are unevenly distributed. As a consequence, at least part of the demand for extracted raw materials must be met through imports from other countries, which may entail economic, political and transport-related risks. Demand for these raw materials is also likely to grow. Access to certain raw materials, and above all to mineral deposits, has likewise become an instrument of political competition.

2. EU Critical Raw Materials Regulation 2024/1252

Awareness of these problems gave rise to the so-called EU Raw Materials Initiative. Its result was the adoption of Regulation (EU) 2024/1252 of the European Parliament and the Council of 11 April 2024 establishing a framework for the secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020 (Text with EEA relevance).[1] The comprehensive and detailed provisions of the regulation do not allow for a discussion of the details. Further comments are therefore purely indicative.

Its objective is to improve the functioning of the internal market by establishing a framework to ensure that the Union has access to a secure, resilient and sustainable supply of critical raw materials, including by fostering sustainability, efficiency and closed-loop circulation throughout the value chain (Art. 1(1)). In other words, it is primarily about reducing the risks associated with the supply of critical raw materials to the EU market[2]. This refers to all risks – political, economic, transportation-related, and others.

These objectives are to be pursued, inter alia, through the exploration, identification and extraction of critical raw materials, as well as through their recovery from waste. This also applies to carriers of those raw materials.

[1] OJ L 1252.3.5.2024 with amendments.

[2] HOLLIS, J., CAPUCINE, A., BERTRAND, G., CABIDOCHE, G., de OLIVEIRA, D., DOBNIKAR, D., TERAN, K. and TULSTRUP, J., EuroGeoSurveys Mineral Resources Expert Group. The Geological Survey Organisations in delivering Critical Raw Materials autonomy through a Geological Service for Europe. Przegląd Geologiczny, vol. 73, no. 3, 2025, pp. 215–228.

Raw materials (Art. 3–4):

– strategic raw materials are listed in Annex I, Section 1;
– critical raw materials are listed in Annex II, Section 1.

The Commission:

– is empowered to adopt delegated acts amending both annexes in order to update the lists of strategic and critical raw materials;
– shall review and, if necessary, update the lists of strategic and critical raw materials by 24 May 2027 and every three years thereafter.

The criteria for such updates are set out in the Regulation (Arts. 3–4).

At present:

– Strategic raw materials currently include, inter alia, copper, gallium, germanium, lithium (battery grade), graphite (battery grade), rare earth elements and tungsten.
– Critical raw materials currently include, inter alia, baryte, coking coal, copper, feldspar, gallium, germanium, helium, lithium and rare earth elements (both heavy and light).

According to Art. 10 of Geological and Mining Act[3] all deposits of the above-mentioned minerals are covered by "mining property" that belongs to the State Treasury. It does not refer to the strategic and critical materials or their carriers existing in wastes, *inter alia* in mining wastes.

By 24 May 2025, each Member State had to draw up a national programme for general exploration targeted at critical raw materials and carrier minerals of critical raw materials. Those programmes shall:

- be reviewed at least every five years and updated if necessary;
- include measures to increase the information available on the Union's occurrences of critical raw materials. As appropriate, they shall include the following measures:
- mineral mapping at a suitable scale;
- geochemical campaigns, including campaigns aimed at establishing the chemical composition of soils, sediments or rocks;
- geoscientific surveys, such as geophysical surveys;
- processing of the data gathered through general exploration, including through the development of predictive maps;
- reprocessing existing geoscientific survey data in order to identify previously unidentified mineral occurrences containing critical raw materials and carrier minerals of critical raw materials.

[3] Act of 9 June 2011, Dz.U.2024, item 1290 with amendments (GMA).

The concept of a "strategic project", as determined by the European Commission, is of key importance. Its aim is to contribute to the security of supply of strategic raw materials in the Union. The Regulation stipulates that strategic projects implemented in the Union shall be granted the status of projects of the highest possible national importance, if such status exists in national law, and shall be treated accordingly in the permit-granting procedure. This means that decision-making enabling the implementation of such projects should be facilitated, in particular by shortening the time limits for issuing permits.

3. Situation in Poland

There have been media reports that in May 2025 Poland has submitted programme for the exploration of strategic raw materials to the European Commission[4]. It has not been published in any way. Work on improving it is ongoing.

It is predicted that KPPSK will be approved by way of a resolution of the Council of Ministers and treated as a "governmental programme". However, such a resolution may be regarded only as an internal source of law, binding solely on entities subordinated to the Council of Ministers. It does not have binding force for other entities, especially those conducting business activities in the field of geology, and it cannot serve as the legal basis for decisions addressed to them (Article 93 of the Polish Constitution). One of the foundations of the Polish constitutional system is the principle of the freedom of economic activity, including activities subject to licensing. Recognition of such a programme as a governmental programme means that the tasks specified therein will be financed from the State budget. To date, there is no information that KPPSK has been approved by the Council of Ministers.

The principle of the freedom of economic activity, *inter alia*, means that any legal entity may undertake economic activity, including geological research and mining of minerals, of course after obtaining the relevant permits (license). It can be assumed that the state will order and finance geological research on these raw materials. However, there is no obstacle to an interested investor covering the cost of such activities themselves. Geological and Mining Act[5] stipulates that whoever covers the cost of geological exploration, has the right to use the geological information obtained as a result of it. Having the right to geological information greatly facilitates obtaining a license for mineral extraction.

Numerous obstacles making these objectives difficult to achieve must be mentioned. Only some of them has been indentified[6]. First of all, it is widely known that geological surveys are costly and their results are uncertain. Most

[4] Krajowy Program Poszukiwań Surowców Krytycznych. (KPPSK).

[5] Act of 9 June 2011, Dz. U. 2024, item 1290 with amendments (GMA).

[6] GALOS, K. and SZAMAŁEK, K. Main factors influencing the implementation of the EU Critical Raw Materials Act in Poland. Przegląd Geologiczny, vol. 73, no. 3, 2025, pp. 208–214.

often, these surveys are undertaken when existing geological knowledge leads to the conclusion that there is a high probability of mineral deposit. It is also no secret that geological activity often meets opposition from local communities. As a result, the achievement of the programme's goals may be difficult. Legal requirements also create an obstacle to conducting all geological surveys, including critical and strategic raw materials. Their deposits are covered by mining property belonging to the State Treasury. Their exploration and identification requires a prospecting license granted by the minister competent for the environment.

Obtaining such a licence requires a competitive procedure (Arts. 28i–28l of the GMA) lasting several months and, in practice, at least one year. Moreover, a party to such a procedure may create numerous obstacles, resulting in delays in the grant of the licence. One example is the long-standing dispute over the right to explore copper deposits in Lower Silesia.

A prospecting license is not subject to environmental impact assessment requirements, but such an assessment may be required before approval of a plan for a mining plant conducting geological operations[7]. This applies to:

- the exploration or identification of mineral deposits in marine areas;
- operations carried out using the underground method;
- operations carried out using the drilling method; the details depend on the location and depth of drilling.

This solution is more restrictive than that required by Directive 2011/92/EU. At the same time, it means that obtaining a licence does not guarantee that the project will be implemented. It may turn out that, despite obtaining a licence, the outcome of the environmental impact assessment will lead to the refusal to approve the operation plan. It is widely known that obtaining an environmental decision usually takes many years.

There are also many other legal obstacles that make it impossible to obtain permits efficiently in order to start mineral extraction, including the extraction of critical and strategic raw materials. Examples include an overcomplicated spatial-planning system and the sluggishness of public authorities, including those responsible for geology and mining.

Among other problems, Regulation 2024/1252 provides for increased recovery of critical and strategic raw materials from waste, including mining waste. In Poland, this activity is regulated by the Waste Act 2012. It provides that the extraction of waste from landfills requires a permit. However, depending on the circumstances, waste-recovery processes require, or may require, an environmental impact assessment and

[7] The risks associated with certain geological surveys mean that Polish law applies the provisions on mining operations (Article 86 of the GMA) to such activities.

therefore an environmental decision. This solution should again be regarded as more restrictive than that provided for in Directive 2011/92/EU.

The Regulation is directly binding on all Member States, but achieving its objectives requires the development and implementation of an adequate legislative framework, first of all in relation to:

- geology and mining;
- waste recovery.

Current legal arrangements are clearly inadequate. Although the exploration and extraction of minerals, including critical raw materials, and waste recovery are regulated by law, the existing framework does not enable the objectives of Regulation 2024/1252 to be achieved. The procedures laid down by law are complicated, lengthy and do not encourage the activities regulated by them. It is necessary to create incentives for investors. It is also no secret that the management of mining waste does not always comply with legal requirements. Thermally active coal-waste dumps are one example. Operators required to draw up extractive waste management plans must provide the competent authority with a preliminary economic assessment concerning the potential recovery of critical raw materials from:

- the extractive waste stored in the facility; and
- the extractive waste being generated or, where considered more effective, from the extracted volume before it becomes waste.

This obligation must be fulfilled by 26 May 2026 (Art. 26 of Regulation 2024/1252).

Recently, a draft act on ensuring access to raw materials for the domestic economy, including critical raw materials[8] has been published. Its main objective is to identify the bodies responsible for implementing the tasks specified in the regulation and to create some (only some) mechanisms to facilitate their achievement. Most of these tasks are to be performed by the minister responsible for the environment operating with the help of the Chief Geologist of the Country.

One of the key concepts of the Regulation is the "critical raw materials project". It means any planned facility, or any planned significant extension or repurposing of an existing facility, that is active in the extraction, processing or recycling of critical raw materials. The European Commission decides whether a project is to be regarded as strategic.

If a project involving critical raw materials is deemed strategic, the draft law stipulates that it will be treated as a public-purpose investment within the meaning of the Act of 21 August 1997 on Real Estate Management. This will facilitate the

[8] https://legislacja.gov.pl/projekt/12401805/katalog/13154217#13154217 (access on 24 October 2025).

acquisition of real estate necessary for its implementation and may also facilitate certain administrative decisions.

Unfortunately, it fails to recognize many obstacles that may hinder the efficient management of critical and strategic raw materials. For example, it was not noted that some obstacles could be removed without amending the act of Parliament; it is sufficient for the Polish list of projects requiring or potentially requiring an environmental impact assessment[9] not to exceed the requirements of European law.

The draft law also defines the objectives of the State's raw materials policy; it is to be approved by a resolution of the Council of Ministers. In particular, it should specify:

1) an assessment of the situation regarding the management of mineral deposits and raw materials;
2) priority areas for state action in the field of geology and raw materials;
3) a forecast for individual raw materials, covering a period of not less than 10 years;
4) a list of raw materials that are key to the national economy.

The Regulation stipulates the need to accelerate procedures for obtaining decisions authorising the implementation of any, and not only strategic, projects involving critical raw materials. This applies, among other things, to a "comprehensive decision". It means a decision, or a set of decisions, taken by Member State authorities that determines whether a project promoter is authorised to implement a critical raw materials project, without prejudice to any decision taken in the context of appeal proceedings.

Current legal situation does not allow for the efficient pursuit of activities related to the exploration, prospecting, and extraction of all mineral deposits. Practice shows that proceedings for obtaining a license for the exploration, prospecting, and extraction of minerals can take many years. The shortcomings of the current legal regulations are widely known, but for unknown reasons, public authorities are not taking steps to remedy them. At the same time, work is underway to amend the Geological and Mining Act[10]. However, knowing the mechanisms of law-making, it is doubtful whether the anticipated changes will allow for the quick and effective creation of solutions enabling the implementation of the objectives of the regulation 2024/1252.

Over two years ago, the concept of a "strategic deposit" was introduced into the Geological and Mining Act. Recognising a deposit as such was intended to ensure its protection in local development plans. However, the shortcomings of this

[9] This list is specified by a regulation of the Council of Ministers.

[10] See P. M. WOJTULEK, S. MAZUREK, Europejski *Critical Raw Materials Act* – jakie zmiany dla prawa geologicznego i górniczego w Polsce może przynieść projektowane rozporządzenie w sprawie surowców krytycznych? Przegląd Geologiczny vol. 72, nr 1, 2024, p. 5–12.

regulation have meant that no mineral deposit has yet been granted that status. This leads to a paradoxical conclusion: a mineral deposit containing a strategic raw material within the meaning of Regulation 2024/1252 is not necessarily a "strategic deposit" within the meaning of the Geological and Mining Law.

There are many indications that achieving the objectives of the Regulation will, above all, require the creation of new legal rules, significant financial outlays and, most importantly, time.

Literature

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Abstract

Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for the secure and sustainable supply of critical raw materials requires EU Member States to undertake geological surveys aimed at identifying deposits of minerals classified as critical and strategic raw materials. Member States must develop programmes for such surveys and submit them to the European Commission, while also adopting measures to accelerate the procedures for obtaining permits for the exploration, prospecting and extraction of such minerals. This also concerns environmental impact assessment procedures. Critical and strategic raw materials may also be found in waste, including mining waste. It is therefore necessary to identify their occurrence and to adopt measures

enabling their efficient recovery. Although the Regulation is directly binding on Member States and does not require transposition into national law, achieving these objectives requires substantial changes to Polish law. At present, Polish law contains many shortcomings that discourage potential investors. Obtaining the decisions necessary to undertake the relevant activities requires lengthy procedures, the outcome of which is difficult to predict.

Key words

Strategic and critical raw materials; geological exploration; waste recovery; simplification of procedures; Poland.