

Position on the Critical Raw Materials Act (CRMA)

Brussels, 25 November 2022

EXECUTIVE SUMMARY

The Commission published a [Call for Evidence and public consultation](#) on a proposed CRMA. The European Ventilation Industry Association (EVIA) welcomes the Commission proposal for a CRMA and appreciates the opportunity to provide feedback.

EVIA's main message is that the CRMA should not set prescriptive requirements in the legislation itself. The CRMA should be a framework legislation that sets objectives that are implemented more granularly in the appropriate Internal Market legislation. Much of that granular work is already in motion and in progress in waste, chemical, and ecodesign legislation. In essence, EVIA stresses that the CRMA should not set prescriptive requirements at product level, as these need to be sensitive to the specificities of products and thus should be addressed, if CRM requirements are considered necessary, on a case-by-case basis under ecodesign, for which there is existing precedent, and under other existing EU legislation.

- 1) Strengthen the EU's CRM value chain (mining, refining, processing, recycling) in a global context by including the notion of 'overriding public interest'**
- 2) Ensure a level playing field across the Single Market.**
 - i. Potentially address CRM requirements in waste legislation:** Waste Framework Directive (WFD), Waste Electrical and Electronic Devices (WEEE) Directive, End-of-Life Vehicles Directive (ELVD), and the Packaging and Packaging Waste Directive (PPWD)
 - ii. Potentially address CRM requirements in chemical legislation:** REACH, RoHS, and tracking of substances of concern (SoC) under the proposed Ecodesign for Sustainable Products Regulation (ESPR)
 - iii. Potentially address CRM requirements in ecodesign legislation:** material efficiency, presence of CRMs, and recyclability scoring under the current ecodesign framework and upcoming ESPR

The European Ventilation Industry Association (EVIA) welcomes the Commission proposal for a CRMA. In the [study](#) underpinning the [2020 CRM List](#), the ventilation industry is directly identified as a user of fluorspar, and more widely rare earth elements (REE) and cobalt can be found in the permanent magnet motors that have been introduced to deliver increases in energy efficiency. In the following position paper, EVIA outlines a framework for delivering for CRMs but stresses that the added value of CRM requirements must first be considered on a case-by-case basis.

We believe that a framework for CRMs should be conceived as having two parts:

- The first part could be aimed at using industrial policy tools to diversify the EU's supply of CRMs, i.e., funding schemes, measures to speed up permitting, promotion of research initiatives, supply chain monitoring and reporting, and possible emergency measures for supply crises.
- A second part could focus on leveraging existing Internal Market legislation to deliver for CRMs by using the CRMA as a framework legislation requiring CRM-related actions in the existing Internal Market legislation.

To a significant extent, this two-phased approach is the one pursued by the Commission in the proposal for a European Chips Act proposal. Although the initial focus of the European Chips Act is more on part one, there are references to requirements for chips on energy efficiency and cybersecurity, which will mean a part two is likely to feature strongly in the future.

From EVIA's perspective, as an EU association representing component and final product manufacturers, it is the second part that is more directly relevant. To deliver on CRMs across relevant Internal Market legislation, EVIA's main message is that the CRMA should not set prescriptive requirements in the legislation itself. The CRMA should be a framework legislation that sets objectives that are implemented more granularly in the appropriate Internal Market legislation. Much of that granular work is already in motion and progress in waste, chemical, and ecodesign legislation. In essence, EVIA stresses that the CRMA should not set prescriptive requirements at product level, as these need to be sensitive to the specificities of products and thus should be addressed, if CRM requirements are considered necessary, on a case-by-case basis under ecodesign, for which there is existing precedent, and under other existing EU legislation.

The Commission builds its [CRMA proposal on four pillars](#): 1) focussing on strategic applications, 2) a network of European agencies, 3) a more resilient supply chain, and 4) a strong and sustainable level playing field. EVIA's position concerns the latter two and is further explained below.

1. Strengthen the EU's CRM value chain (mining, refining, processing, recycling) in a global context by including the notion of 'overriding public interest'

The CRMA could draw inspiration from the precedent in the ongoing revision of the Renewable Energy Directive (RED III). The Commission published an [amendment proposal](#) to its initial revision proposal introducing an article on 'overriding public interest:'

Article 16(d) – Overriding public interest

By [three months from entry into force], until climate neutrality is achieved, Member States shall ensure that, in the permit-granting process, the planning, construction and operation of plants for the production of energy from renewable sources, their connection to the grid and the related grid itself and storage assets are presumed as being in the overriding public interest and serving public health and safety when balancing legal interests in the individual cases for the purposes of Articles 6(4) and 16(1)(c) of Directive 92/43/EEC, Article 4(7) of Directive 2000/60/EC and Article 9(1)(a) of Directive 2009/147/EC.'

A similar article could be included in the CRMA with a view to speeding up permitting for mining, refining, processing, and in particular of recycling facilities.

2. Ensure a level playing field across the Single Market

To be truly effective, the CRMA needs to partly be conceived as an overarching framework regulation that mandates action across a number of interlinked EU legislation in which achieving its ambitions will be delivered and implemented. The CRMs embedded in products should be considered as a strategic reserve that is as valuable as the virgin CRMs. Recycling is environmentally preferable to extraction.

i. Potentially address CRM requirements in waste legislation: Waste Framework Directive (WFD), Waste Electrical and Electronic Devices (WEEE) Directive, End-of-Life Vehicles Directive (ELVD), and the Packaging and Packaging Waste Directive (PPWD)

Rather than a limited public acceptance, 'recycling' is hindered much more by deficiencies in the EU's legal framework for waste and its implementation in the Member States. The Commission is evaluating and preparing for revisions of the [WFD](#), [WEEE Directive](#), and [PPWD](#) in the next 2-3 years. It should be an imperative that the ambitions of the CRMA to improve the recycling of products and to recover CRMs is reflected in the revisions of the WFD, WEEE Directive, and PPWD.

For example, the 2021 Commission [report on minimum quality standards for the treatment of WEEE](#) recommends that CRMs are included in the next revision of the WEEE Directive, informed by and aligned with the CENELEC standards [EN 50625 series](#) (see [WEEE Forum Q&A](#)), [EN 50614](#), and [IEC TR 62635](#). The EN 50625 series was developed following a standardisation request (sReq) pursuant to Article 8(5). Under the same article, the Commission is empowered with discretion to adopt an implementing act laying down minimum treatment standards based on the standards to promote harmonisation in the Internal Market. Unfortunately, the Commission has not made use of this empowerment, something that should be corrected in the revision of the WEEE Directive.

ii. Potentially address CRM requirements in chemical legislation: REACH, RoHS, and tracking of substances of concern (SoC) under the proposed Ecodesign for Sustainable Products Regulation (ESPR)

Barriers to recycling also exist in respect to the presence of hazardous chemicals that negatively impact recycling operations in which CRMs can be recovered. Manufacturers are already required to declare the presence of Substances of Very High Concern (SVHC) in products under Article 33 of the REACH Regulation, and this information is publicly accessible via ECHA's SoC in Products (SCIP) Database. Beyond SCIP, under the Commission's proposal for an ESPR, information requirements to enable the tracking of SoC in products are introduced, including under the definition in Article 2(28)(c) for chemicals that negatively impact recycling operations. Requiring manufacturers to declare the presence of SoC as well as SVHCs via the already existing platforms, such as I4R, SCIP Database, etc., can provide important information for recycling to improve their ability to recycle products containing CRMs, and thus the extraction of CRMs. Looking further ahead, the Digital Product Passports (DPP), also under the ESPR proposal, may prove to be a useful tool for facilitating the tracking of chemicals.

Recycling technology will need to improve and innovate as well in tandem with other sectors of the economy if they were to be able to extract the CRMs effectively. Currently, the recycling infrastructure and technology in Europe are simply outdated and not up to this task. In electrical and electronic equipment (EEE), the presence of hazardous substances is restricted under the RoHS Directive, thus it is implicitly a tool for removing barriers to the recycling of EEE containing CRMs.

Unfortunately, the Commission recently postponed the publication of a proposal to [revise the RoHS Directive](#) to Q4 2022 from its original deadline in Q2 2022.

Looking further into the future, the [JRC work on Safe and Sustainable by Design \(SSbD\) criteria](#) for chemicals and materials may prove useful for improving recycling by considering value retention at the design stage. Implementing directives on indicative occupational exposure limit values under the EU's Occupational Safety & Health (OSH) Directive may also be of relevance.

iii. Potentially address CRM requirements in ecodesign legislation: material efficiency, presence of CRMs, and recyclability scoring under the current ecodesign framework and upcoming ESPR

The Commission's proposal for an ESPR seeks to expand the scope of the EU's ecodesign framework to practically all tangible products placed on the Single Market. It would enable ecodesign requirements to be set, among others, on resource use or resource efficiency, recycled content, possibility of remanufacturing and recycling, and possibility of material recovery. Requirements on these aspects can help to drive the recovery of CRMs and should build on [EN 45555](#) and [EN 45557](#), part of the EN 4555X series of standards develop in response to a Commission sReq.

Material efficiency requirements have been integrated into revisions of the ecodesign implementing regulations for specific product groups since the adoption of the 2016-2019 Ecodesign Working Plan. Examples can be found in the revisions published in the OJEU in 2019; for example [ENER Lot 5 \(displays\)](#), [ENER Lot 12 \(commercial refrigeration\)](#), and [ENER Lot 30 \(motors\)](#). These include requirements for design for dismantling and recovery, as well as information requirements for information relevant to treatment facilities that are aligned with the WEEE Directive. GROW Lot 9 (servers and data storage products) contains an information requirement to declare the presence of two CRMs in an indicative weight range at component level; cobalt in batteries, and neodymium in Hard Disk Drives (HDD). In the future, new and revisions of ecodesign implementing regulations could more systematically include information on the presence of CRMs building on [EN 45558](#) and [IEC EN 62474](#). EVIA proposes that any information requirement for CRMs adopted in an ecodesign implementing act should be linked to the [Commission's CRM List](#), which is regularly revised. If a CRM with an information requirement is removed from the CRM List, the requirement becomes obsolete and should automatically lapse.

Systematising the above for CRMs is in progress in the shape of the ongoing [revision of the Methodology for the Ecodesign of Energy-related Products \(MEErP\)](#), which is expected to be adopted in Q4 2022, after which point it will become the default method for ecodesign preparatory and review studies for Energy-related Products (ErP) ecodesign implementing regulations. The revised MEErP is also likely to establish a methodological approach to facilitate the introduction of recyclability scoring, that would result in labelling information to assist consumers in selecting more recyclable products. Nevertheless, EVIA stresses the importance of a product-group specific approach in this respect to avoid proliferation of labelling information that can result in overloading consumers with information.

About EVIA

The European Ventilation Industry Association's (EVIA) mission is to represent the views and interests of the ventilation industry and serve as a platform between all the relevant European stakeholders involved in the ventilation sector, such as decision-makers at the EU level as well as our partners in EU Member States. Our membership is composed of more than 40 member companies and 6 national associations across Europe, realising an annual turnover of over 7 billion euros and employing more than 45,000 people in Europe.

EVIA aims to promote highly energy efficient ventilation applications across Europe, with high consideration for health and comfort aspects. Fresh and good indoor air quality is a critical element of comfort and contributes to keeping people healthy in buildings.