Position on the Critical Raw Materials Act (CRMA)

Brussels, 5 June 2023

EXECUTIVE SUMMARY

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 progress in chemical, ecodesign, and waste legislation.

In essence, EVIA stresses that the CRMA should not set prescriptive requirements at product level. 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. There already is an existing precedent for that under ecodesign and other existing EU legislation. Largely, this concern has been reflected in the Commission's proposal. However, the Commission's proposed approach to certain specific aspects is of concern in this respect. As such, EVIA would welcome amendments to various provisions by the co-decisionmakers and indeed provides amendment recommendations in the following position paper.

1(a) Sustainability and Circular Economy: national measures on circularity

Including amendment proposal 1 on national measures on circularity

1(b) Sustainability and Circular Economy: recyclability & recycled content of permanent magnets

2(a) Monitoring and risk mitigation: information obligations for monitoring

Including amendment proposal 2 on information obligations for monitoring

2(b) Monitoring and risk mitigation: company risk preparedness

Including amendment proposal 3 on company risk preparedness

In the study underpinning the 2020 Critical Raw Materials 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. EVIA needs additional time to evaluate the impact of the addition of six new CRMs – arsenic, copper, feldspar, helium, manganese, and nickel – from a ventilation perspective. Nevertheless, EVIA is able to provides the amendment recommendations in the following position paper drawing on the association's submission to the Commission's public consultation during the development of its proposal.

1(a) Sustainability and Circular Economy: national measures on circularity

The CRMs embedded in products should be considered as a strategic reserve that is as valuable as the virgin CRMs. Recycling is environmentally preferrable to extraction. In its submission to the public consultation during the Commission's preparation of the proposal, EVIA pointed to the need of the future

revisions and implementation of EU waste legislation, including the WFD, the WEEE Directive, and the PPWD, to improve the recycling of products and the recovery of CRMs embedded in products.

In this respect, EVIA notes that under Article 25 of the CRMA proposal, the Member States would be required to adopt and implement national measures aimed improving the circularity of CRMs at End-of-Life (EoL) in respect to waste policy. Envisioned measures would cover those to increase collection rates of waste, increase the re-use of products and components with higher amounts of CRMs, increasing the use of secondary CRM (specifically by requiring recycled content in public procurement award criteria, and research and investment in recycling technologies to increase recovery rates.

Article 25 is of concern, as it essentially calls for fragmentation of the Internal Market via diverging national approaches, which appears anomalous in a proposal for a Regulation, whilst the proposal does include an Internal Market safeguard provision in Article 25(4). However, the utility of this provision is likely to be low with the precedent set by the Packaging & Packaging Waste Directive (PPWD) implementation, a good indicator of the potential for fragmentation. The co-decisionmakers should consider amendments to limit the possibility for fragmentation including requiring the Member States to make use of relevant Sustainable Finance Taxonomy Regulation (SFTR) Technical Screening Criteria (TSC).

Article 25(2) also includes a safeguard aimed at preventing double regulation, with it stipulated that the national measures should not apply to products already covered by EU waste legislation, i.e., WEEE Directive. EVIA supports this safeguard as prudent from a legislative consistency perspective. It would exclude electronic and electronic equipment (EEE) in scope of the WEEE Directive. Alternatively, the Commission is empowered under Article 25(7) to adopt an Implementing Act detailing a list of products, components, and waste streams that shall be considered as having high CRM recovery potential as a means to guide the Member States in considering the scope of measures. This should not list EEE products, as they are already provided for under the WEEE.

EVIA therefore recommends the following amendments:

Amendment 1 – National measures on circularity

Proposal for a regulation
Article 25(2)(7) – National measures on circularity

Text proposed by the Commission	***EVIA Amendment***
2) The programmes referred to in paragraph 1 shall cover in particular products and waste which are not subject to any specific requirement on collection, treatment, recycling or re-use under Union legislation. For other products and waste, the measures shall be implemented in coherence with existing Union legislation. With respect to points (a) and (b) of paragraph 1, the programmes referred to in that paragraph may include, without prejudice to Articles 107 and 108 of the TFEU, the	2) The programmes referred to in paragraph 1 shall cover in particular products and waste which are not subject to any specific requirement on collection, treatment, recycling or re-use under Union legislation. For other products and waste, the measures shall be implemented in coherence with existing Union legislation. With respect to points (a) and (b) of paragraph 1, the programmes referred to in that paragraph may include, without prejudice to Articles 107 and 108 of the TFEU, the

introduction of financial incentives, such as discounts, monetary rewards or deposit refund systems, to encourage the re-use of products with high critical raw materials recovery potential and the collection of waste from such products.	introduction of financial incentives, such as discounts, monetary rewards or deposit refund systems, to encourage the re-use of products with high critical raw materials recovery potential and the collection of waste from such products. ***When considering the introduction of financial incentives, the Member States shall, when available, make use of the technical screening criteria pursuant to [Annex II of Commission Delegated Regulation (EU) …/… supplementing Regulation (EU) 2020/852] and product-specific implementing regulations adopted pursuant to Directive 2009/125/EC [Ecodesign Regulation].***
(…)	(…)
7) The Commission shall adopt implementing acts specifying a list of products, components and waste streams that shall at least be considered as having a high critical raw materials recovery potential within the meaning of paragraph 1 (a) and (b). In drawing up this list, the Commission shall take account of: a) the total amount of critical raw materials recoverable from those products, components and waste streams; b) the extent to which those products, components and waste streams are covered by Union legislation; c) regulatory gaps; d) particular challenges affecting their collection and waste treatment; e) existing systems of collection and waste treatment applying to them. The implementing acts referred to in the first subparagraph shall be adopted in accordance with the examination procedure referred to in Article 37(3).	7) The Commission shall adopt implementing acts specifying a list of products, components and waste streams that shall at least be considered as having a high critical raw materials recovery potential within the meaning of paragraph 1 (a) and (b). In drawing up this list, the Commission shall take account of: a) the total amount of critical raw materials recoverable from those products, components and waste streams; b) the extent to which those products, components and waste streams are covered by Union legislation; c) regulatory gaps; d) particular challenges affecting their collection and waste treatment; e) existing systems of collection and waste treatment applying to them ***in accordance with subparagraph 1 of paragraph 2***. The implementing acts referred to in the first subparagraph shall be adopted in accordance with the examination procedure referred to in Article 37(3).

1(b) Sustainability and Circular Economy: recyclability & recycled content of permanent magnets

EVIA notes that the CRMA proposal seeks to introduce recyclability (Article 27) and recycled content (Article 28) information requirements for permanent magnet motors, including where they are integrated in other products. Such requirements should more appropriately be dealt with under the ecodesign framework in product-specific ecodesign implementing regulations, which is a legislative level that is

better suited to the introduction of requirements of a highly technical nature, i.e., for electric motors in ENER Lot 30 or for the 'fans driven by/incorporating motors' in ENER Lot 11. This is also recognised in Article 27(9) and Article 28(4) via *lex specialis* safeguards in deference to ecodesign: if the product-specific regulations (e.g., ENER Lots 11 or 30) introduce measures on permanent magnets then these will supersede those established in the CRMA. This is already the case for ENER Lot 11, of which the current revision will introduce information requirements in CRM content.

It is also important to note that the review clause in ENER Lot 30 includes consideration of the appropriateness of "*adding other types of motors to the scope, including permanent magnet motors*" and "*setting additional resource efficiency requirements … including identification and reuse of rare earth permanent magnet motors*." As such, the revision of ENER Lot 30 is fully intended to address the circularity of permanent magnet motors, thus making it very likely that Articles 27 and 28 will be obsolete in relatively short order. For example, ENER Lot 30's review would very likely lead to the application of the Commission's empowerment starting in 2031 to adopt a Delegated Act requiring minimum shares of recycled content redundant for permanent magnets in motors. As such, is a strong possibility that the Commission will duplicate efforts via the CRMA that have already started in ENER Lot 30 and other product-specific ecodesign implementing regulations, the responsibilities for which are split between DG GROW and DG ENER, respectively.

EVIA maintains that the product-specific ecodesign Lots are the most appropriate place to regulate the sustainability of permanent magnet motors, including those incorporated in products. For ENER Lot 30, it should be highlighted that the review deadline, by which the Commission should present its assessment and if appropriate a draft revision proposal, expires on 14 November 2023. However, the review has yet to begin and as such the Commission should be encouraged to expedite its planning. The Commission is also invited to finalise the current revision of ENER Lot 11, which has been delayed since 2015.

More detail illustrating how CRMs are being addressed under ecodesign in support of EVIA's position can be found below.

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 Internal 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, dismantling, and recovery, as well as information requirements 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 would propose that

any information requirement for CRMs adopted in an ecodesign implementing act should be linked to the Annex I.1 and Annex II.2, of the CRMA, which list SRMs and CRMs. If a CRM/SRM with an information requirement is removed from the Annexes, the requirement becomes obsolete and should automatically lapse, whereas the appropriateness of any newly added CRMs/SRMs should be considered at the next revision of each product-specific ecodesign implementing regulation.

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 later in 2023 (after several delays in 2022 and earlier in 2023), after which it will become the default method for ecodesign preparatory and review studies for Energy-related Products (ErP) ecodesign implementing regulations, including ENER Lot 30 and the other product-lots incorporating permanent magnets.

2(a) Monitoring and risk mitigation: information obligations for monitoring

Under Article 20, the Member States will be required to identify "*key market operators*" established in their territories and to monitor these operators via regular and proportionate surveys, the results of which must be reported to the Commission, Eurostat, and national statistics authorities. Furthermore, the Member States would be required to notify the Commission without delays of major events that may disrupt the operations of key market operators, which are defined as follows:
"*key market operators' means producers involved in the extraction, processing or recycling of critical raw materials, traders and distributors of critical raw materials, and downstream companies consuming significant amounts of critical raw materials."*

EVIA understands that Article 20 focuses on the 'supply side.' However, as "*downstream companies consuming significant amounts of critical raw materials*" are in included in the definition, it seems that manufacturers consuming (demanding) significant amounts of CRMs in production located in the EU would be subject to the monitoring surveys. Given that criteria are not provided in the proposal for determining which economic operators are considered to be 'downstream companies consuming significant amounts of critical raw materials,' the Member States would have a large amount of discretion to decide which 'downstream companies' they consider to be in scope of the definition.

It is also unclear whether a "*downstream*" user of CRMs covers both manufacturers of components integrating CRMs, i.e., with stocks of CRMs not processed into an article, and a manufacturing assembling component into a final product, would be in scope, or whether it is only the former. As such, it is not possible for EVIA to determine whether the EU-based manufacturing facilities of its members producing ventilation units and component fans would be in scope of the requirements.

The possibility for the Member States to interpret the definition differently could lead to a lack of a level playing field in terms of application with manufacturing facilities in one Member State out of scope of the requirement, whilst those of another fall in scope. To limit the possibility for an un-level playing field, it would be advisable for the Commission to issue guidance to support the Member States in interpreting the scope of the 'key market operators' definition and therefore to support consistent implementation of the Article 20 provisions.

EVIA therefore recommends the following amendments:

Amendment 2 – Information obligations for monitoring

Proposal for a regulation
Article 20(2-3) – Information obligations for monitoring

Text proposed by the Commission	*EVIA Amendment*
2) Member States shall identify key market operators along the critical raw materials value chain established in their territory and shall: a) monitor their activities through regular and proportionate surveys with a view to gathering information required for the monitoring tasks referred to in Article 19; b) as part of the report referred to in Article 43, provide information on the results of those surveys; c) without delay notify the Commission of major events that may hinder the regular operations of the activities of key market operators.	2) Member States shall identify key market operators along the critical raw materials value chain established in their territory and shall: d) monitor their activities through regular and proportionate surveys with a view to gathering information required for the monitoring tasks referred to in Article 19; e) as part of the report referred to in Article 43, provide information on the results of those surveys; f) without delay notify the Commission of major events that may hinder the regular operations of the activities of key market operators. **To support the Member States in identifying key market operators the Commission shall adopt guidelines on the scope of point 28 of Article 2 by [12 months from entry-into-force of this Regulation].**
3) Member States shall transmit the data collected pursuant to paragraphs 2(a) and (b) of this Article to national statistical authorities and to Eurostat for the purposes of compiling statistics in accordance with Regulation (EC) No 223/2009 of the European Parliament and of the Council. Member States shall designate the national authority responsible for transmitting the data to national statistical offices and Eurostat.	3) Member States shall transmit the data collected pursuant to paragraphs 2(a) and (b) of this Article to national statistical authorities and to Eurostat for the purposes of compiling statistics in accordance with Regulation (EC) No 223/2009 of the European Parliament and of the Council. Member States shall designate the national authority responsible for transmitting the data to national statistical offices and Eurostat. **The collected data must be processed securely and in compliance with Union law and that any publication of the resulting data by the Commission, national authorities, national statistical offices and Eurostat is aggregated.**

2(b) Monitoring and risk mitigation: company risk preparedness

Under Article 23, the Member States are required to identify the "*large companies*" that manufacture strategic technologies using Strategic Raw Materials (SRMs) on their territory. EVIA understands that the company risk preparedness measures are aimed at the 'demand side.' Member States will not have discretion in determining what a 'large company,' as a clear definition is provided:
"'large company' means any company that had more than 500 employees on average and had a net worldwide turnover of more than EUR 150 million in the last financial year for which annual financial statements have been prepared."

However, the Member States will have significant discretion in determining the "*strategic technologies*." Article 23(1)(2) lists the technologies that shall be considered by the Member States but it is not a closed list. As such, the Member States would be able to expand the scope of the Article 23 provisions beyond the technologies explicitly listed, non-exhaustively including heat pumps, robotics, satellites, and advanced chips. Again, it is therefore not possible for EVIA to conclude with certainty whether the EU-based manufacturing facilities of its members producing ventilation units and component fans would be in scope of the requirements, as it would be left to the discretion of the Member States to determine what they consider to be "*strategic technologies*."

When identified by a Member State, 'large companies' will be required to perform an audit of their supply chains every two years, including a mapping of where the SRM that they use are extracted, processed, or recycled. In addition, they will have to perform a stress test of their SRM supply chains in respect to their vulnerability under different scenarios. These companies will then be required to present a report containing the results to their board of directors.

The possibility for the Member States to interpret the definition of 'strategic technologies' differently could again lead to an un-level playing field in terms of application with manufacturing facilities in one Member State out of scope of the Article 23 requirements, whilst those of another fall in scope. To limit the possibility for an un-level playing field due to unequal administrative burdens, it would be advisable for the Commission to issue guidance with criteria to support the Member States in interpreting the scope of 'strategic technologies' intended to be covered by Article 23 and therefore to support consistent implementation of its provisions. In this respect EVIA would note that the concept of "*strategic [net zero] technologies*" is more strictly delimited in the Annex to the Commission's proposal for a Net Zero Industry Act (NZIA) in that it is a closed list. However, the list in the NZIA Annex is also open to interpretation as to what specific technologies fall into which category of "*strategic net zero technologies*" and that the 'strategic technologies' explicitly listed in Article 23 includes some technologies that would be difficult to classify as 'net zero strategic.'

Alignment, facilitated by Commission guidance, between the two 'strategic technology' concepts in the CRMA and NZIA would be prudent, at least from the perspective of ensuring that 'strategic net zero technologies' under the NZIA are considered as 'strategic technologies' under Article 23 of the CRMA.
EVIA therefore recommends the following amendment:

Amendment 3 – Company risk preparedness

Proposal for a regulation
Article 23(1) – Company risk preparedness

Text proposed by the Commission	*EVIA Amendment*
1) Member States shall identify the large companies that manufacture strategic technologies using strategic raw materials on their territory. The strategic technologies referred to in the first subparagraph shall include, but are not limited to, batteries for energy storage and e-mobility, equipment related to hydrogen production and utilisation, equipment related to renewable energy generation, traction motors, heat pumps, data transmission and storage, mobile electronic devices, equipment related to additive manufacturing, robotics, drones, rocket launchers, satellites and advanced chips.	1) Member States shall identify the large companies that manufacture strategic technologies using strategic raw materials on their territory. The strategic technologies referred to in the first subparagraph shall include, but are not limited to, batteries for energy storage and e-mobility, equipment related to hydrogen production and utilisation, equipment related to renewable energy generation, traction motors, heat pumps, data transmission and storage, mobile electronic devices, equipment related to additive manufacturing, robotics, drones, rocket launchers, satellites and advanced chips. **To support the Member States in identifying strategic technologies the Commission shall adopt guidelines by [12 months from entry-into-force of this Regulation]. The guidelines shall at consider alignment with the the strategic net zero technologies listed in [Annex to the Net Zero Industry Act (NZIA)].**

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.