



Position on the Critical Raw Materials Act

Executive summary

EPEE welcomes the proposal from the Commission of a Critical Raw Materials Act and the focus on strengthening the critical raw materials supply. As the voice of the Refrigeration, Air Conditioning and Heat Pumps industry (RACHP), EPEE supports the goal of increasing the circularity of critical and strategic raw materials.

Critical raw materials are used in many applications of the RACHP sector, such as metals (bismuth, copper) in components and rare earth elements (Nd, Dy) in permanent magnets, for instance. As such, the manufacture of energy equipment heavily depends on the supply of those materials, for which the right compromise has to be found between sustainable sourcing of materials and free trade principles.

- 1. Definition consistency**
- 2. National measures on circularity**
- 3. Avoiding a doubling regulation: Recyclability and recycled content of permanent magnets**
- 4. Information obligations for monitoring**
- 5. Company risk preparedness**
- 6. Avoiding regulatory overlap: The environmental footprint declaration**

1. Definition consistency

The definition of “heat pumps” proposed here is not consistent with existing definitions in previous legislation. To ensure coherence, a similar definition as the one proposed by the draft Energy Performance of Buildings Directive is preferable.

EPEE therefore recommends the following amendment:

Amendment 1 – Definitions

Proposal for a regulation

Article 2 – paragraphs 45



<i>Text proposed by the Commission</i>	<i>EPEE Amendment</i>
<p>'heat pump' means the part of a heating system that generates a temperature difference allowing heat supply to the space or process to be heated, using an electric vapour compression cycle;</p>	<p>'heat pump' means a machine, a device or an installation that transfers heat from a source such as the air, water or the ground, to sinks such as buildings or industrial applications, for the purpose of providing heating, cooling or domestic hot water;</p>

2. National measures on circularity

The critical raw materials (CRMs) embedded in products should be considered as a strategic reserve that is as valuable as virgin CRMs. Recycling is most of the time environmentally preferable to extraction as it saves energy and resources.

In this respect, EPEE 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 counterproductive 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 and 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. EPEE 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, Article 25(7), under which the Commission is empowered 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 mean to guide the Member States in considering the scope of measures, should not list EEE products already provided for under WEEE.

EPEE therefore recommends the following amendments:

Amendment 2 – National measures on circularity

Proposal for a regulation

Article 25 – paragraphs 2 & 7

Text proposed by the Commission

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.

(...)

In drawing up this list, the Commission shall take account of: [...]

- (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).

EPEE 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 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 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. In drawing up this list, the Commission shall take account of: [...]

- (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).

3. Avoiding a doubling regulation: recyclability and recycled content of permanent magnets

EPEE believes as with other positions that a double regulation should be avoided. The Ecodesign framework is to us a better one to deal with requirements on recyclability and recycled contents. Product-specific Ecodesign implementing regulations are a more suitable level for these requirements mentioned in the CRMA.



EPEE 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. But the Ecodesign framework is better suited especially for requirements of a highly technical nature, i.e. for electric motors in ENER LOT 30 or for the ‘fans driven by/incorporating motors’ manufactured by EPEE members in ENER LOT 11. Indeed, this is recognized in Article 27(9) and Article 28(4) via *lex specialis* safeguards in deference to Ecodesign whereby if the ENER LOT 30, and other product-specific LOTS, i.e. ENER LOT 11, introduce measures on permanent magnets then these will supersede those established in the CRMA. This is already the case for ENER LOT 11, the current revision of which will introduce information requirements on 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 Article 27 and Article 28 will be obsolete in relatively short order.

EPEE maintains that ENER LOT 30 and other product-specific LOTS, i.e. ENER LOT 11, are the most appropriate place to regulate the sustainability of permanent magnet motors including those incorporated in products.

4. 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. Further, the Member States would be required to notify the Commission without delays of major events that may disrupt the operations of “key market operators. “Key market operators” is 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.*

EPEE understands that Article 20 focuses on the ‘supply side’. However, as “downstream companies consuming significant amounts of critical raw materials” are 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 EPEE to determine whether the EU-based manufacturing facilities of its members producing, for instance, 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 an un-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.

EPEE therefore recommends the following amendments:

Amendment 3 – Information obligations for monitoring

Proposal for a regulation

Article 20 – paragraphs 2 & 3

Text proposed by the Commission	EPEE Amendment
<p>2. Member States shall identify key market operators along the critical raw materials value chain established in their territory and shall:</p> <ul style="list-style-type: none"> (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. <p>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.</p>	<p>2. Member States shall identify key market operators along the critical raw materials value chain established in their territory and shall:</p> <ul style="list-style-type: none"> (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. <p>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].</p> <p>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 guaranteeing that any publication of the resulting data by the Commission, national authorities, national statistical offices and Eurostat be aggregated.</p>



5. 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. EPEE 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” is as a clear definition is provided, see below:

- *‘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”. Indeed, Article 23(1) subparagraph 2 lists the technologies that shall be considered by the Member States as “strategic technologies” 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”. Whilst EPEE understands that the heat pumps manufactured by its members in EU-based manufacturing facilities would be in scope of the requirements, the exact scope 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, and 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. However, this reporting should be done in an efficient manner taking into account the existing obligations on companies to disclose climate related risks (under Regulations EU 2019/2088 and 2020/852), including strategic and critical raw materials, and **does not overburden those companies with administrative hurdles.**

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 EPEE 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 it would be difficult to classify as ‘net zero strategic’. Alignment, facilitated by Commission guidance, between the two “strategic technology” concepts 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.



EPEE therefore recommends the following amendment:

Amendment 4 – Company risk preparedness

Proposal for a regulation

Article 2 – paragraphs 1, (30)

<p>1. Text proposed by the Commission ‘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;</p>	<p>EPEE amendment: ‘large company’ means any company that had more than 1500 employees on average and had a net worldwide turnover of more than EUR 2000 million in the last financial year for which annual financial statements have been prepared;</p>
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Article 23 – paragraphs 1

<p>2. Text proposed by the Commission 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.</p>	<p>1. EPEE Amendme 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.</p> <p>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 consider alignment with the strategic net zero technologies listed in [Annex to the Net Zero Industry Act (NZIA)].</p>
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6. Avoiding regulatory overlap: The environmental footprint declaration

Under Article 30, the Commission is empowered to adopt Delegated Acts establishing rules for the “calculation and verification of the environmental footprint of different critical raw materials” with the goal to facilitate the supply of critical raw materials with lower environmental footprint. However, there is a risk of



unnecessary overlap as there are already methodologies related to the environmental footprint of products containing critical raw materials. Under the Ecodesign for Sustainable Products Regulation (ESPR), products are subject to a Life Cycle Assessment¹ to quantify their environmental impacts, that also covers the supply of raw materials, albeit non necessarily critical ones.

A careful assessment needs to be conducted by the Commission before preparing Delegated Acts to determine the most efficient course of action: either including criteria applicable to critical raw materials under the existing Product Environmental Footprint method (ESPR), or establishing new criteria specific to critical raw materials in the new Act that will not overburden the industry.

About EPEE:

EPEE represents the Refrigeration, Air-Conditioning and Heat Pump industry in Europe. Founded in the year 2000, EPEE's membership is composed of over 50 member companies as well as national and international associations from three continents (Europe, North America, Asia). With manufacturing sites and research and development facilities across the EU, which innovate for the global market, EPEE member companies realize a turnover of over 30 billion Euros, employ more than 200,000 people in Europe and also create indirect employment through a vast network of small and medium-sized enterprises such as contractors who install, service and maintain equipment. Please see our website (<https://www.epeeglobal.org/>) for further information.

¹ Product Environmental Footprint, under Recommendation (EU) 2021/2279.