DIGITALEUROPE

19 SEPTEMBER 2023

Driving a resilient and commercially attractive raw material market in Europe: industry recommendations on the CRM Act

The Critical Raw Materials (CRM) Act could make an integrated secondary raw material market in Europe a reality. It could offer industry respite amid escalating CRM demand from primary sources. There is potential for leaps forward in areas like CRM re-use and recycling, but only if the necessary commercial incentives are in place for companies within the Single Market.

Trialogues serve as a decisive chance to define policy conditions that maximise the value of available supply chain expertise, exploit the breadth of the European market to make strides in areas like CRM re-use and recycling, and ultimately forge industrial circularity leaders at European level. To realise that, we call on the EU institutions to:

- **Delete Article 23 and enhance Article 20 with guidance on ‘’key market operator’’ designation.** This approach would remove audit duplications, streamline risk preparedness and be a first notable deliverable on President von der Leyen's efforts to cut EU reporting requirements by 25%.
- **Introduce harmonising criteria under Article 25** to safeguard the Single Market in the development of national circular measures.
- **Uphold safeguards against mandatory information exposure in the CRM data carrier if it would reveal commercially sensitive product attributes.**

DIGITALEUROPE
Rue de la Science, 14A, B-1040 Brussels
T.+32 (0) 2 609 53 10 / www.digitaleurope.org / @DIGITALEUROPE
EU Transparency Register: 64270747023-20

Company risk preparedness

We are concerned that a legally mandated auditing structure may impede proactive supply chain improvements by overburdening supply chain specialists. **We strongly support the Parliament's deletion of Article 23 and suggest enhancing Article 20 instead. This would remove redundancies, improve consistency in the identification of in-scope entities, and protect Single Market integrity.** To do so, trialogues should include the provision of guidance on EU-wide criteria to identify ''key market operators'' under Article 20. This guidance would ensure that ''large companies'' under the recommended-for-deletion Article 23 fall in the scope of Article 20.

Article 23 lacks the insights that Article 20's monitoring provisions offer. As a standalone Article, it therefore adds no value to improving CRM supply chain transparency. **Deleting Article 23 would mark an initial, concrete outcome of President von der Leyen's welcomed efforts to cut companies' EU reporting requirements by 25%.**[1] We propose the addition of the following new sub-paragraph in red to Article 20(2):

- *''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]. These guidelines shall in particular take into account the situation of operators already subject to similar monitoring under Regulation XXXX (EU Chips Act).''*

Maintaining Article 23 in the final text would lead to:

- **Heightened risks of audit repetitions**:
  - Article 23 (1) might compel a firm operating across the EU to run repetitive audits if multiple Member States categorise it as a ''large company''. The lack of EU-wide audit evaluation mechanisms could worsen this and cause inconsistent implementation across the EU. This would ultimately divert company resources from ongoing supply chain management efforts.
  - Article 23's risk preparedness is met by Article 20(2), which plans to establish data-collection frameworks for ''key market operators'', including CRM downstream users. This enhances transparency and helps anticipate disruptions, fulfilling goals that Article 20(2) can achieve more effectively than Article 23.

[1] Speech by President von der Leyen at the European Parliament Plenary on the preparation of the European Council meeting of 23-24 March 2023

- **Underestimating the inherent limits of supply chain forecasting:** Firms diligently audit internal supply chain risks and implement management and contingency plans. Yet, forecasting is inherently unpredictable and some risks cannot be anticipated. Even with utmost efforts, unprecedented shocks can challenge predictive models.

National circularity programmes

We wholeheartedly endorse the general objective of national circularity initiatives under Article 25. **For them to lead to a single EU market for secondary raw materials, it is vital these measures are backed by common criteria for their design. Without a common approach, there is a serious risk of creating a set of 27 disjointed national circularity markets in Europe. This would be detrimental to improving the economic feasibility of recycling within Europe, and not outside of it.**

We propose the following addition in red to Article 25 (2):

- *''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. The Commission shall adopt an implementing act specifying common criteria for Member States in their adoption of financial incentives. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 37 (3).''*

DIGITALEUROPE welcomes the Single Market safeguards in the original text. We also appreciate the Parliament's efforts to strengthen them under Article 25(4) and include, under Article 25 (1a), a reference to EU-wide provisions on reuse and repair within Directive 2008/98/EC. Yet, we still believe the co-legislators are yet to produce a text that effectively safeguards the Single Market.

This is also why we caution against the Council's addition of CRM-mitigation measures under Article 25(1)(-a) on resource efficiency and CRM substitution, and (e1) on producer-paid financial contributions. For market integrity and policy impact, the EU could better advance these efficiency goals in the context of the well-established, EU-wide Eco-design framework, and not through the Member-by-Member state approach in the

CRM Act. This would foster economies of scale and minimise any possible trade barrier, as per Article 25(4).[2]

Recyclability of permanent magnets

- **Data policy consistency: we applaud the Parliament's safeguards under Art. 27 (10) allowing manufacturers to omit certain information in the data carrier if deemed commercially sensitive.** This important addition would ensure regulatory alignment with the Data Act and prevent the misuse of CRM data meant for recyclability. For the very same reason, we advocate for restricting data carrier access to only those stakeholders indispensable in magnet recycling activities. Any deviation from this approach could unduly expose magnet data at a time of increased commercial and political interest in permanent magnets.
- **Magnet removability obligations: we urge for serious caution with the Council's proposed removability requirements under Art. 27 (9a).** There are various elements of concern in the Council's Art. 27 (9a) proposals, which suggest blanket requirements ignoring product group specificities.
    - Article 27(4)(c) already provides for measures to support the removability of permanent magnets that are aligned with Article 15(1) of the WEEE Directive.
    - Horizontal removability provisions can actually undermine the durability of products. Permanent magnet removability requires tailored solutions that consider product-specific safety aspects. Care must be taken to prevent close contact during removal, as the strong magnetic attraction can cause grave injuries like crushing, laceration, or amputation. There are valid reasons to limit removability to trained professionals using specialized tools.
    - The Council's proposed Article 27 (9a) does not establish a harmonised requirement nor compliance verification mechanism. This will likely lead to divergent national interpretations and unintentional Single Market barriers.
- **Implementation timeline: we back the Council's approach to introduce labelling and data carrier requirements only after the**

[2] To this extent, we invite to check the WEEE Forum's 2021 report 'Eco-modulation of fees for 'greener' products'.

entry into force of the Implementing Act under Art. 27 (2) on label formats. The labelling obligations under Article 27 may necessitate product redesign. Mandating manufacturers to adhere to these new rules just three years after the CRM Act is enforced, as the Commission and Parliament proposed, would drain substantial compliance resources from companies already grappling with a mounting number of regulatory reporting obligations. We also concur with the Council's view to adopt the Implementing Act on label formats 1.5 years post entry into force of the CRM Act, rather than 1 year after that, as the Parliament proposes. Adequate preparation time for implementation is key, including with regards to label formats. This is especially the case now that the EU institutions have dismissed valid appeals to address any potential CRM information requirements under product-specific legislation within the long-standing eco-design framework, rather than the novel CRM Act.

Recycled content of permanent magnets

- **Provision of online information: we suggest that the responsibility outlined in Art. 28(1) for making relevant information public should rest with the manufacturer of the permanent magnet** instead of the economic operator introducing magnet-incorporated products to the EU market. This shift would enhance the intended transparency goals of Art. 28.
- **Minimum shares for recycled content**: **we invite the trialogues to confirm the original language in Art. 28 (3).** The Parliament's and Council's changes increase the risk of misinformed policy decisions as they eliminate the need for thorough assessments of mandated recycled content in various industrial and consumer-facing products. Without prior sound analyses, recycled content thresholds could potentially set unattainable standards that prevent certain products from being placed on the EU market.

FOR MORE INFORMATION, PLEASE CONTACT:

Ray Pinto

Digital Transformation Policy Director

ray.pinto@digitaleurope.org / +32 472 55 84 02

Vincenzo Renda

Associate Director for Digital Industrial Transformation

vincenzo.renda@digitaleurope.org / +32 490 11 42 15

About DIGITALEUROPE

DIGITALEUROPE is the leading trade association representing digitally transforming industries in Europe. We stand for a regulatory environment that enables European businesses and citizens to prosper from digital technologies. We wish Europe to grow, attract, and sustain the world's best digital talents and technology companies. Together with our members, we shape the industry policy positions on all relevant legislative matters and contribute to the development and implementation of relevant EU policies, as well as international policies that have an impact on Europe's digital economy. Our membership represents over 45,000 businesses who operate and invest in Europe. It includes 100 corporations which are global leaders in their field of activity, as well as 41 national trade associations from across Europe.

DIGITALEUROPE Membership

Corporate Members

Accenture, Airbus, Applied Materials, Amazon, AMD, Apple, Arçelik, Arm, Assent, Autodesk, Avery Dennison, Banco Santander, Bayer, Bosch, Bose, Bristol-Myers Squibb, Brother, CaixaBank, Canon, Cisco, CyberArk, Danfoss, Dassault Systèmes, DATEV, Dell, Eaton, Epson, Ericsson, ESET, EY, Fujitsu, GlaxoSmithKline, Google, Graphcore, Hewlett Packard Enterprise, Hitachi, Honeywell, HP Inc., Huawei, ING, Intel, Johnson & Johnson, Johnson Controls International, Konica Minolta, Kry, Kyocera, Lenovo, Lexmark, LG Electronics, Mastercard, Meta, Microsoft, Mitsubishi Electric Europe, Motorola Solutions, MSD Europe, NEC, Nemetschek, NetApp, Nintendo, Nokia, Nvidia Ltd., Oki, OPPO, Oracle, Palo Alto Networks, Panasonic Europe, Philips, Pioneer, Qualcomm, Red Hat, RELX, ResMed, Ricoh, Roche, Rockwell Automation, Samsung, SAP, SAS, Schneider Electric, Sharp Electronics, Siemens, Siemens Healthineers, Skillsoft, Sky CP, Sony, Sopra Steria, Swatch Group, Technicolor, Texas Instruments, TikTok, Toshiba, TP Vision, UnitedHealth Group, Visa, Vivo, VMware, Waymo, Workday, Xerox, Xiaomi, Zoom.

National Trade Associations

Austria: IOÖ
Belgium: AGORIA
Croatia: Croatian Chamber of Economy
Cyprus: CITEA
Czech Republic: AAVIT
Denmark: DI Digital, IT BRANCHEN, Dansk Erhverv
Estonia: ITL
Finland: TIF
France: AFNUM, SECIMAVI, numeum
Germany: bitkom, ZVEI
Greece: SEPE
Hungary: IVSZ
Ireland: Technology Ireland
Italy: Anitec-Assinform
Lithuania: Infobalt
Luxembourg: APSI
Moldova: ATIC
Netherlands: NLdigital, FIAR
Norway: Abelia
Poland: KIGEIT, PIIT, ZIPSEE
Portugal: AGEFE
Romania: ANIS
Slovakia: ITAS
Slovenia: ICT Association of Slovenia at CCIS
Spain: Adigital, AMETIC
Sweden: TechSverige, Teknikföretagen
Switzerland: SWICO
Turkey: Digital Turkey Platform, ECID
Ukraine: IT Ukraine
United Kingdom: techUK