



## CRM Day

## Critical Raw Materials and REACH

Hosted by Prof. Carlos Zorrinho MEP

22 September 2015, European Parliament, Brussels

## Post CRM Day Report - the impact of REACH on Borates

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## Brussels CRM Day

### Critical Raw Materials Alliance - A Single Voice For the Critical Raw Materials Sector

## Summary

On 22 September 2015 the CRM Alliance came together in Brussels to participate at a luncheon event sponsored by CRM Alliance member Etimine S.A. from Luxembourg. Etimine SA was established in 1984 and is a subsidiary of Eti Maden IGM, a Turkish State owned company. It is the biggest borate producer in the world and also has the largest share of the world boron market. The luncheon event focused on a highly sensitive issue for several critical raw materials – EU environmental legislation (REACH) with a particular focus on borates. Since the EU is highly dependent on the import of borates into the EU from third countries such as Turkey and the United States, the discussion generally centered on the impact REACH has on trade.



Concerning REACH, the CRM Alliance advocates having the socio-economic assessment done at the beginning of the REACH process, not at the end. For critical materials this would mean that at an early stage it could already be concluded that authorization, restriction or Candidate Listing cannot be realistic options, given their socio-economic importance. Other risk management options could then play a more important role, such as Occupational Exposure Limits for workers.

## Borates

Boron, the semi metallic element with atomic number 5, does not occur in nature as a free element. Borates have hundreds of industrial uses in different sectors such as glass, ceramics & frits, detergents & soaps, agriculture, metallurgy, wood preservations, construction materials, and many more. Boron is an essential micronutrient for normal, productive plant growth and is one of seven essential micronutrients for plants according to the EU Fertiliser Regulation (2003/2003/EC). Furthermore, the use of borates in nuclear power plants is essential for safety reasons.

## Members

Currently, the CRM Alliance consists of 19 members representing 15 Critical Raw Materials and more than 350 companies globally: Beryllium Science & Technology Association; Etimine (borates); The Cobalt Development Institute; World Coal Association (coking coal); Eurofluor (fluorspar); Tertiary Minerals (Fluorspar); German Engineering Federation (gallium arsenide); EcoPhos (graphite rock); Indium Corporation; International Magnesium Association; Minor Metals Trade Association; Imerys Graphite and Carbon (natural graphite); Beta Technology (niobium); International Precious Metals Institute (PGMs); Great Western Minerals Group (REEs); Tasman Metals (REEs); EuroAlliages (silicon metal); and Commerce Resources Corporation (REEs and former CRM tantalum).

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CRM Alliance Board f.l.t.r. Mark Saxon – Vice-President; Ted Knudson – Treasurer; Martin Tauber – President; Inès Vanlierde – Board member; Maurits Bruggink – Secretary General



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## CRM Luncheon event

### Presentation Prof. Carlos Zorrinho – European Parliament



**Prof. Carlos Zorrinho – European Parliament**

The CRM luncheon event was hosted by Member of the European Parliament **Prof. Carlos Zorrinho** and sponsored by CRM Alliance member Etimine S.A. Speakers representing the European Parliament, European Commission and affected industry presented their views to the audience. A lively Q & A session followed. The first speaker was Prof. Carlos Zorrinho; a Portuguese politician and university professor who joined the European Parliament after the May 2014 European Parliament elections. Prof. Zorrinho is, amongst others, Head of the Portuguese Delegation, Vice-chair of the Delegation for relations with the Federative Republic of Brazil, Member of the ITRE Committee, substitute member for the ENVI Committee and member for the Delegation for relations with Mercosur. From 2009 to 2011, he served as Secretary of State for Energy and Innovation, within the Ministry of Economy, Innovation and

Development. In order for industry and politicians to cooperate more, Prof. Zorrinho initiated the establishment of an MEP Interest Group on Critical Raw Materials.

Prof. Zorrinho underlined the importance of trade agreements being negotiated currently between the EU and the United States, MERCOSUR, Canada and Japan and the attention that should be given to critical materials within those trade agreements. Especially because critical materials were identified by the European Commission precisely because of their high economic importance and their increased supply risk. Although a global and systemic view is needed, the EU first needs to consider its own views. Trade agreements with important natural resource countries should therefore pay special consideration to ensure a stable supply of those raw materials into the EU. When looked at the case of borates, it becomes clear that borates and REACH are not natural friends. The challenge therefore is to find a way to make them compatible. With increased competitiveness, the EU is tasked to secure jobs, create value and not have a too burdensome bureaucracy in place, while at the same time have more human centered regulations.

### Presentation Bjorn Hansen – European Commission

Second speaker was **Bjorn Hansen** – Head of Unit at DG Environment and in charge of REACH. He could even be called one of the founding fathers of REACH. Although Mr. Hansen was of the opinion that REACH has so far proven to be a success, he was very interested to hear the opinion of industry concerning its REACH experiences and how industry and regulators might find solutions to current problems. He explained that while his REACH colleagues at DG GROW work on ensuring access to critical materials from the industry side, his task within REACH is to protect human health and the environment. The final goal of REACH is to ensure an equal playing field, promote innovation and promote European industrial competitiveness. Although those tasks seem to be far apart, they also have commonalities.



**Bjorn Hansen – DG Environment**

Firstly, REACH establishes a level playing field through its requirements and through transparency. Not just for economic importers of substances but also between substances. REACH tries to include safety aspects into the

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actual marketing of the products; internalize not just the cost but also the know-how of the safety of the products being sold.



Secondly, REACH establishes an obligation to use substances safely. This intentionally includes the pressure to substitute certain substances. Mr. Hansen believed this objective to have a positive effect on CRMs. By using a substance sensibly, it means that a hazardous substance is not used if there is a less hazardous substance available. Since many CRMs are hazardous, REACH puts pressure on actors using those substances to look for substitutes and rewards those actors that use substitutes where possible. Moreover, it increases the efficiency of the use of all chemicals such as critical materials as REACH helps to reduce the wasting of CRMs and therefore makes them more available for those applications critical for the EU economy.

Concerning the recent European Court of Justice ruling on “once an article always an article”, Mr. Hansen explained that this ruling effectively creates an equal playing field between importers of articles and EU manufacturers while before the latter saw themselves as having a competitive disadvantage towards their competing importers. In his opinion this ruling could not be challenged at WTO level.

Given the very definition of a CRM as being particularly important for the EU, Mr. Hansen stated that there is a specific role in REACH for CRMs. REACH is based on a sequence of decisions, starting with risks, ending with RMOAs. If the socio-economic importance can be demonstrated, it can influence decision-making which means there is room within its current frame. However, he was also aware of the fact that authorization is complicated and very complex while it was supposed to be much simpler. In practice this means that substances such as the borates which are used in many applications, the process is not only very complex, but also very costly. A solution for this issue is yet to be found.

Successes of REACH are also clearly visible, Mr. Hansen stated. When taking borates as an example, according to their chemical safety report the borates industry is using borates safely. Many already registered substances have qualitatively high registration dossiers which has resulted in a significantly increased risk management. Listing substances as Substances of Very High Concern provides an extra check to see if the risk is properly controlled by industry and whether the continued use makes sense from a socio-economic perspective. To bring industry and regulators more together, special meetings take place between the European Chemicals Agency, the European Commission and industry associations. Specific industry concerns should be raised to the various industry associations. Studies reported that the registration process was mainly very expensive due to a lack of transparency. Therefore, the substance exchange forum was set-up to make sure that data holders transparently declare the costs of the data they hold. In Mr. Hansen's view, once companies understand why they have to pay 10.000 EUR to register a substance, they generally pay.



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#### Presentation Bayram Ankarali – Etimine S.A. (CRM Alliance)



**Bayram Ankarali – Etimine S.A.**

Third and last speaker of the day was **Bayram Ankarali** – General Manager of Etimine S.A., who provided the audience with a clear overview of the pressing situation the borates industry finds itself in currently. He mentioned that one of the most important issues triggered by REACH is prioritization and authorisation. ECHA has drafted a recommendation for inclusion of boric acid (EC 233-139-2), disodium tetraborates (EC 215-540-4) and diboron trioxide (EC 215-125-8) in the 6<sup>th</sup> prioritisation list for inclusion in Annex XIV.

Mr. Ankarali explained that in reality, recent Chinese and Turkish worker studies have clearly demonstrated that borates are safe for consumers and workers. Additional regulatory control through authorization is disproportional and not effective, since there would be no impact to the health of EU citizens because the risk reduction capacity is negligible. Moreover, authorization would not be a practical Risk Management Option. Although the authorities claim to engage with industry, a Risk Management Option Analysis was never done for borates which seems to be an unfair treatment compared to other substances.

Besides, the majority of borate uses are either outside the scope of authorization or are irreplaceable. To industry, known uses within the scope of authorization are proven safe as reported in the Chemical Safety Reports. Since borates have been identified by the European Commission as a critical raw material, Mr. Ankarali urged the European Commission to consider alternative measures to authorization, such as workplace measures and ensured worker exposure monitoring.



If this is not done, a consequence like is seen in various other industries already, would be the relocation of the manufacturing of some borates products to outside the EU to then be imported back into the EU. The cost and efforts for the European industry (in particular for the many SMEs that use borates) would be very high. In most areas, substitution is not a realistic option. In fact, in a number of cases borates could be used to substitute other substances. Mr. Ankarali used the example of the irreplaceability of borates is the recent Annex XV proposal of France to restrict the use of inorganic ammonium salts in the production of cellulose insulation materials. This instance has recently identified that replacement of borate substances has not led to a satisfactory outcome for worker or consumer safety.



**Dr. Paul Rübzig – European Parliament**

**Dr. Paul Rübzig** – Member of the European Parliament's center-right party and member of the MEP Interest Group on Critical Raw Materials, mentioned that especially given the current situation the EU finds itself in, when looked at global competition, 'if we suffer from unemployment with many new migrants looking for new jobs, we need to look to stay competitive'. 'How do we keep our employment in the important area of critical raw materials?' One of the major issues, he mentioned, is how to bring back industry since industry is leaving the EU. The EU has gone from

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15% to 14% of reindustrialization while the target is 20% by 2020. REACH is pushing hazardous substances of the market, whether or not necessary. Therefore the European Commission has to initiate legislation to better protect critical raw materials. It is then up to the co-legislators to make it official legislation. Dr. Ruebig underlined the importance the MEP Interest Group on CRMs plays in this regard, since it is important that some MEPs look more closely into the different issues at stake, such as sustainable environment, resources, jobs and growth.

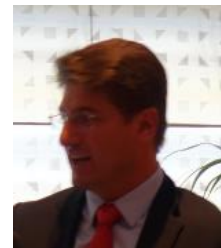
#### Question and Answer Session



**Terence Civic –**  
Materion  
Corporation

**Terence Civic** – Health, Safety and Regulatory Affairs Director at Materion Corporation, mentioned that the ECJ ruling on “once an article always an article” places an extreme burden on f.e. borates or beryllium. Not only importers and manufacturers have to address who uses those substances that make it on the Candidate List. Now it also places a burden on upstream suppliers that may not even be subject to REACH. Mr. Civic wondered if importers are now having to go to third countries, if this would be a WTO violation.

**Hakan Kanli** – Operations, Quality & Regulatory Affairs Manager at Etimine, emphasized that industry is not trying to escape authorisation because it does not like to be burdened, but that it is in fact the other way around. The borates industry is very willing to engage with policy-makers to find a good solution for both parties, but so far the authorities have refused to look at independent studies conducted by the borates industry. Moreover, exposure scenarios contain very detailed information outlining the risks and what precautions should be taken, yet, some borates – critical for various applications - are recommended to be placed on the Candidate List while no risk management measures have been assessed. Therefore, the borates industry is at odds why authorities are not engaging more with the borates industry to protect this critical material.



**Hakan Kanli – Etimine**  
S.A.



**Maria Cox – Minor**  
Metals Trade  
Association

**Maria Cox** – General Manager of the Minor Metals Trade Association expressed her concerns about the preparation for the REACH 2018 registration deadline that most of her members are involved in. Many of her members are SMEs and are dealing with many minor metals at the same time. They are finding the problem that for the substances they want to register they are asked to pay 10.000 EUR each time. If they register all of those substances, most of which are CRMs, they will go out of business. She wondered what the European Commission intended to do about that issue.

**Chris Dagger** – Chairman Europe of the International Magnesium Association, questioned the validity of the data used in the reports by the UK and the NL finding that only 1-2% of the administrative burden is imposed by EU environmental legislation, as mentioned by Mr. Hansen. He also wondered how a specific REACH consortium should price the cost to newcomers of having done the research to be REACH compliant.



**Chris Dagger – International Magnesium**  
Association

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**Sean O'Sullivan -  
Glencore**

**Sean O'Sullivan** – Regulatory Affairs Manager at Glencore, was of the opinion that whilst REACH as a framework is certainly recognized to be solid and sound in what it wants to achieve, nonetheless there is an assumption of guilt before innocence. He underlined the problems industry is experiencing with Candidate Listing. He mentioned that in reality, candidate listing is a stigmatization of an issue. Once a substance is put on this Candidate List, downstream users will stop using those substances, regardless of whether they can be replaced or not. According to Mr. O'Sullivan this is a non-intended consequence of REACH and the authorization process. Policy-makers should be aware that industry wants to play a sensible and responsible role in this process, but if the European Commission and other regulatory authorities are not willing to engage meaningfully with industry and accept

independent reports than industry has some very serious questions which have to be addressed. According to Mr. O'Sullivan, it would have been easier if authorization was not driven by the ethos of substitution.

**Ines Vanlierde** - Secretary General of EuroAlliages, stated that nearly 5 years after the first REACH registration deadline there is nothing in practice that has been put into place at customs whether imports are REACH compliant or not. This means that importers who have made the effort and paid the costs to be compliant, are now disadvantaged. She wondered where the level playing field is as well as the sanctions for not complying. "Where is the control at the border to ensure that everybody is obeying to the rules?"



**Ines Vanlierde -  
EuroAlliages**

## Closing remarks

The CRM Alliance would like to thank all participants for their interest in the subject and their active contributions made during the meetings. We hope to see you again in 2016!!



F.l.t.r. Bayram Ankarali (Etimine); Heleen Vollers (CRM Alliance); Paul Rübzig (European Parliament); Carlos Zorrinho (European Parliament); Bjorn Hansen (European Commission); Martin Tauber (International Magnesium Association)

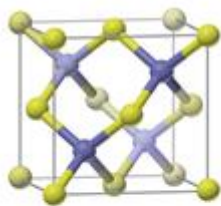
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