



1 **Mining Policy: Environmental protection should not be subordinated to resource**
2 **extraction in the EU**

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5 **1. Proposal**

6 The European Green Party opposes proposals to strengthen the interests of extractive
7 industries at the expense of protecting the environment.

- 8 - We oppose weakening the Birds and Habitats Directives, and
9 - We oppose introducing an EU-level designation of “areas of public interest” for mineral
10 extraction.

11 The European Green Party calls instead for intensified efforts to achieve a resource-efficient
12 society.

13 The Green Group in the European Parliament and Green Parties in the Member States affected
14 are encouraged to monitor these issues in the development of the European Innovation
15 Partnership (EIP) on Raw Materials and related processes.

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17 **2. Introduction**

18 In the wake of a boom in resource prices during the first decade of the new century, the EU
19 embarked on a raw materials policy. The Raw Materials Initiative adopted by the Commission
20 in early 2008 was based on three pillars, described as: a fair and sustainable supply of raw
21 materials from global markets; a sustainable supply of raw materials within the EU; and
22 resource efficiency and supply of “secondary raw materials” through recycling.

23 The Raw Materials Initiative led to the Raw Materials Strategy which, in turn, developed into the
24 EIP on Raw Materials. Justification for the development of a raw materials policy was based
25 on concern at that time about the European manufacturing industry’s access to resources,
26 especially metals and minerals. The background was, *inter alia*, increasing competition from
27 Asian interests for resources from traditional European suppliers such as Africa, as well as
28 concerns over access to some key resources following Chinese restrictions on production and
29 export.

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31 **3. A new complication – protection of foreign investors**

32 Unless national permitting procedures are streamlined and clarified, the potential entering into
33 force of broad investor protection instruments, such as those included in the Comprehensive
34 Trade Agreement (CETA) and have been included in the Transatlantic Trade and Investment
35 Partnership (TTIP) negotiations, may strengthen the hand of foreign-based mining companies
36 in the EU. Given the ratification problems such mechanisms cause when included in politically
37 desired trade agreements, the provision of this kind of protection in treaties indicates a higher
38 level of investor protection than is currently accessible.

39 By their nature, mines are unique and place-dependent, and therefore often require complex
40 analyses of the environmental impacts in each particular instance. Furthermore, there are
41 usually other competing interests for the use of the land. National permitting procedures can
42 be complicated and provide opportunities for complaints of lack of “fair and equitable
43 treatment”, official representations raising “legitimate expectations” for permits which may not
44 be granted in the end, etc. The complaint filed by the Canadian company Gabriel Resources
45 against the government of Romania over attempts to obtain a permit to open a gold mine in



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46 that country illustrate the kind of problems that could arise. This risk is further increased by
47 the difficulties some Member States have had in implementing relevant EU environmental
48 protection regulations, such as the Birds, Habitats and Water Directives.

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50 **4. Replacing existing directives**

51 In a highly globalised sector such as metals and industrial minerals, the link between where
52 ore is extracted and where metals are used in the manufacturing process is becoming weaker.

53 This has not prevented some mining interests from finding common ground with those
54 involved with the manufacturing industry's concern over access to raw materials. In particular,
55 the relatively clear and strong protection offered by the Birds and Habitats Directives is seen
56 as an unreasonable hurdle for the extractive industry. Thus, one of the five operational groups
57 under the EIP for Raw Materials has recommended that legislators consider "modifying the
58 NATURA into a Sustainability Directive covering environmental, economic and social
59 considerations". This would strengthen social and economic considerations, such as the
60 creation of jobs in the extractive industries, at the expense of environmental protection. **The
61 European Green Party rejects the proposal to replace existing nature protection legislation
62 with a broad sustainability directive, which would probably weaken the protection for nature
63 currently provided by the Birds and Habitats Directives.**

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65 **5. Creating another complication**

66 In its Strategic Implementation Plan for the EIP, its High Level Steering Group, comprising three
67 Commissioners, a number of ministers and other officials from the Member States, as well as
68 representatives from industry and research institutions, proposed an EU designation of
69 "Mineral Deposits of Public Importance".

70 This resembles the system in the Swedish Environmental Code, where there is special set of
71 rules for land or water areas that contain deposits of substances or materials of national
72 interest. But the Environmental Code also designates similar protection for a number of land
73 and water uses: on account of their natural or cultural value; for outdoor recreation, reindeer
74 husbandry, commercial fishing; areas that are particularly suitable as sites for facilities for
75 industrial production, energy production, energy distribution, communications, water supply or
76 waste treatment; and areas important for defence purposes. This has created a complex
77 situation whereby courts, public agencies and even the government has faced major
78 challenges in finding a balance between these interests. It creates opportunities both for
79 undue influence, for charges of arbitrariness, and for unpredictable legal rulings. It is also a
80 step away from the legal clarity that investor protection provisions require in international
81 treaties by implication.

82 Similarly, the designation of "mineral deposits of public importance" at EU level would not only
83 create a lack of clarity as to possible trade-offs with areas designated as Natura 2000 areas,
84 but also increase complications in relation to national and local land-use planning.

85 The EU should not change the balance between extraction interests and environmental
86 interests by strengthening the former. **The European Green Party rejects proposals to
87 introduce a special EU designation of areas of "mineral deposits of public importance".**

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91 **6. Monitoring future developments**

92 This proposal is currently being further developed in the form of a project supported by the
93 Horizon 2020 programme for research and innovation. This, and the above-mentioned working
94 group proposal for a new directive on sustainable development, are being formulated and
95 prepared in processes which, while often formally open to all stakeholders, in practice are
96 dominated by parties with a strong financial interest in the outcome. Participation by the
97 environmental movement in these processes has been minimal. **It is important that the Green**
98 **Group in the European Parliament and, where possible, Green Parties in potentially affected**
99 **Member States monitor these processes.**

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101 **7. A different direction**

102 The EIP's Raw Materials Scoreboard quotes a calculation by the Sustainable Europe Research
103 Institute that the demand for raw materials may double between 2010 and 2030. The same
104 institute suggests, however, that in order to keep human impact on the environment within the
105 planetary boundaries of a safe operating space for humanity, global extraction of non-
106 renewable, non-energy raw materials (metals and minerals) may have to be reduced by 65% by
107 2050. **This is why the EU must intensify its efforts to reduce resource use and achieve a**
108 **resource-efficient society.**

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