

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

1. Proposal

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

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

The European Green Party calls instead for intensified efforts to achieve a resource-efficient society. The Green Group in the European Parliament and Green Parties in the Member States affected are encouraged to monitor these issues in the development of the European Innovation Partnership (EIP) on Raw Materials and related processes.

2. Introduction

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

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

3. A new complication – protection of foreign investors

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

By their nature, mines are unique and place-dependent, and therefore often require complex analyses of the environmental impacts in each particular instance. Furthermore, there are usually other competing interests for the use of the land. National permitting procedures are rarely protective enough for the environment, but are however subject to complaints of lack of “fair and equitable treatment”, official representations raising “legitimate expectations” for permits which may not be granted in the end, etc. The complaint filed by the Canadian company Gabriel Resources against the government of Romania over attempts to obtain a permit to open a gold mine in that country illustrate the kind of problems that could arise. This

Adopted Resolution

risk is further increased by the difficulties some Member States have in developing their national regulations or implementing relevant EU environmental protection regulations, such as the Birds, Habitats and Water Directives.

4. Replacing existing directives

In a highly globalised sector such as metals and industrial minerals, the link between where ore is extracted and where metals are used in the manufacturing process is becoming weaker. This has not prevented some mining interests from finding common ground with those involved with the manufacturing industry's concern over access to raw materials. In particular, the relatively clear and strong protection offered by the Birds and Habitats Directives is seen as an unreasonable hurdle for the extractive industry. Thus, one of the five operational groups under the EIP for Raw Materials has recommended that legislators consider "modifying the NATURA into a Sustainability Directive covering environmental, economic and social considerations". This would strengthen social and economic considerations, such as the creation of jobs in the extractive industries, at the expense of environmental protection. **The European Green Party rejects the proposal to replace existing nature protection legislation with a broad sustainability directive, which would probably weaken the protection for nature currently provided by the Birds and Habitats Directives.**

5. Creating another complication

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

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

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

It is not in the interest of the EU to accentuate the unbalance that still exists between extraction interests and environmental interests by strengthening the former. **The European Green Party rejects proposals to introduce a special EU designation of areas of "mineral deposits of public importance".**

6. Monitoring future developments

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

7. We recognise that our current sourcing of raw materials – especially fossil fuels and metals – from beyond the EU's borders comes down to the outsourcing of environmental degradation and social problems. This adds to the urgency of transiting to a renewable energy system and a circular economy. In the meantime, the EU and its Member States should do more to prevent multinational companies from being involved in environmental crimes, human rights abuses, corruption and tax evasion in countries that supply raw materials. The obligation of 'due diligence' must be extended to all imported raw materials and to all companies in their value chain. The European Commission and the Council should follow the call of the European Parliament to support a binding UN treaty on business and human rights.

8. A different direction

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