

NO TO THE EU'S TRADE AND INVESTMENT AGREEMENT WITH CHILE

The EU's trade and investment agreement with Chile is about to be voted on by the Committee on International Trade and the plenary of the European Parliament. The agreement was adopted by the Council in December 2023 and is now to be approved by the European Parliament. The framework agreement and investment protection must then be ratified by the member states.

The Austrian Federal Chamber of Labour (AK) and the Austrian Trade Union Federation (ÖGB) resolutely oppose the EU's trade and investment agreement with Chile.

At the end of 2020, the European Commission initiated the re-orientation of EU trade policy in order to align foreign trade activities with the EU's climate targets in accordance with the European Green Deal. This is supposed to contribute to solving the climate crisis and improving labour, social and environmental standards. However, the agreement with Chile, which consists of a framework agreement and an interim trade agreement, has significant weaknesses that jeopardise the aforementioned objectives and are problematic from the point of view of workers and trade unions.

WEAK, TOOTHLESS SUSTAINABILITY CHAPTER

The trade agreement includes a sustainability chapter that is supposed to safeguard and improve basic labour, environmental and climate standards. It targets the compliance, implementation and application of international obligations such as the core labour standards of the International Labour Organization (ILO) and the Paris Climate Agreement.

However, this chapter is not subject to the general dispute settlement procedure of the agreement and its enforcement mechanism but employs a type of moderation system. As a last resort, a panel of experts can write a report with recommendations. **Unlike in the EU Commission's new approach to sustainability chapters, violations cannot be sanctioned and thus, the desired standards cannot be enforced.**

Even though an additional protocol holds the promise of reviewing the sustainability approach and the option of incorporating sanctions, there is no effective leverage to establish a corresponding enforcement mechanism once the agreement has entered into force and trade concessions have been granted. The sustainability chapter is therefore toothless and ineffective.

EXPLOITATIVE LABOUR CONDITIONS IN THE AGRICULTURAL EXPORT INDUSTRY

The Chilean population needs support in enforcing better working and living conditions. For years, Chile has been criticised for precarious and harmful working conditions as well as negative effects on the environment in various export sectors.

In the agricultural export industry, especially seasonal workers, who are hired by large agricultural companies during the harvest season, face exploitative working conditions: Wages that are far too low to provide a livelihood, excessive working hours and a lack of social security are major challenges. Moreover, child labour, land theft and the associated conflicts with the indigenous population are documented.¹

In addition, pesticides that are banned in the EU but exported by European companies are used in Chilean agriculture on a large scale. This results in serious health issues due to poisoning and rising cancer rates, not only among agricultural workers but also among the local population. The negative effects of harmful pesticides can also be seen in the disproportionately high share of children with deformities.

Despite these well-known grievances², the agreement does not prohibit the export of pesticides to Chile, which are banned in the EU. **With the increase in imports of fruit and vegetables from Chile as a result of the agreement, more food contaminated with pesticides will end up on our plates.**

The trade agreement with Chile does not state that documented grievances must be remedied before trade concessions are granted, nor is there an enforcement mechanism for violations of the standards in the agreement. The sustainability provisions of the EU-Chile agreement, for example, will not support workers in enforcing their rights and improving their working conditions.

WORSENING OF SOCIAL AND ENVIRONMENTAL PROBLEMS IN MINING

As a country with abundant natural resources, Chile is an important trading partner for the EU. Chile is one of the world's largest copper exporters, produces increasing quantities of lithium and actively promotes the production of hydrogen/ammonia for export. However, mining is one of the industries with the most dangerous and exploitative working conditions, with a high number of economic-related human rights violations recorded worldwide.³

Moreover, wages in Chile are low and employment protection is generally poor, resulting in many accidents, such as contact with toxic chemicals or mining disasters.⁴ In Chilean lithium mining there are increasing reports of trade unions being obstructed in their work. Furthermore, child labour is being reported in the mining of raw materials in Chile.

In addition, the extraction of raw materials damages nature and has negative effects on the local population. Mining is water-intensive, often requires toxic chemicals and can therefore jeopardise the water supply for local residents. Constant **social conflicts in mining** between the state, companies, residents, farmers and indigenous communities in Chile **show that there is still insufficient protection in matters of forced resettlement, access to water, health issues and child labour.**

For example, the conflict over copper mining in the Putaendo valley has been festering for years. The exclusion of the public from the planning process and feared effects such as water shortages, air pollution and landslides led to resistance among the population, to which the government responded with a high military presence.

THE EU'S ONE-SIDED INTERESTS IN RAW MATERIALS JEOPARDISE SUSTAINABLE ECONOMIC ACTIVITY

The agreement does not properly take problems of the mining industry into account but solely focusses on guaranteeing the highest possible supply of raw materials for the European Union. **The enormous European demand will lead to a further expansion of mining in Chile and thus exacerbate many of its problems.** References to necessary sustainability standards, sustainability cooperation and environmental impact assessments are only vaguely formulated in the agreement and do not bring any legally enforceable improvements. The non-binding provisions and declarations of intent on sustainability are therefore far from sufficient to improve living and working conditions.

In addition, the European Commission often emphasises that it wants to establish new types of partnerships with resource-rich countries that enable them to strengthen local value creation. Unfortunately, the EU-Chile agreement is diametrically opposed to this welcome goal. A ban on export restrictions and the far-reaching prohibition of preferential prices for domestic processing prevent Chile from developing its own industries and thus economic development beyond the role of a pure raw material supplier. The ban on export monopolies also makes it impossible for Chile to hedge against fluctuating international commodity prices through stockpiling or coordinated sales.

LOW CRISIS RESILIENCE AND CHANCES FOR INDUSTRIAL POLICY DEVELOPMENT

Issues relating to the green industrial policy transition and international cooperation in critical areas of technology are becoming increasingly important. **Therefore, the space for industrial policy and targeted public promotion of technology transfers must not be unnecessarily restricted.** This applies not only to the requirements for systematic economic development and value creation strategies in the central area of decarbonisation.

The lessons learnt from the COVID-19 crisis matter strongly as well: To ensure security of supply, critical healthcare technologies must be shared quickly and regional production capacities for medicines, vaccines and diagnostics must be expanded. In view of these challenges for a crisis-resilient economy, the bans on so-called "performance requirements" for foreign investments in the EU-Chile agreement are particularly problematic. These relate, for example, to the prohibition of conditions on technology transfer or the promotion of local value creation.

LOOPHOLES IN THE PROTECTION OF CRITICAL INFRASTRUCTURE AND PUBLIC SERVICES

The agreement fails to fully exempt critical infrastructure and public services. Instead of excluding these unequivocally from the agreement, there are noticeable gaps even in the protection of essential areas such as wastewater disposal and water supply. This applies, for example, to the lack of exemptions from investment protection (see below). This could affect conflicts over the withdrawal of service concessions in the water sector, if previously privatised supply services are returned to public ownership (so-called remunicipalisation) and are then threatened with legal action. In Chile, the radicality of former privatisation policies is now highly controversial.

In addition, European corporations pursue offensive interests in public services (e.g. water supply). Therefore, a complete exemption of public services from the scope of the agreement is an essential contribution to safeguard public policy space for the security of supply.⁵

Furthermore, it remains questionable how regionalisation and socio-ecological control of public procurement can be fostered by the expansion of obligatory international liberalisation commitments. Instead, the socio-ecological transformation of our societies requires greater public policy space to promote regional value creation, climate justice and social cohesion.

NO CORPORATE PRIVILEGES THROUGH INVESTMENT PROTECTION

The advanced framework agreement contains provisions on investment protection, including dispute settlement. Austria and 15 other EU member states have already concluded bilateral investment agreements with Chile. All EU member states are now to be covered by the agreement. Chile has already been affected by claims from international investors on several occasions. In 2021, for example, a French consortium that operates Santiago Airport sued the Republic of Chile before a court of arbitration for damages due to losses in air traffic in the wake of the COVID-19 pandemic. The case is still pending.

The protection of foreign investments involves privileges for foreign corporations, which have been criticised for years and which the Chamber of Labour (AK) and the Austrian Trade Union Federation (ÖGB) firmly reject. **They give companies the possibility to sue states before private arbitration tribunals** if, for example, climate protection laws or labour rights are improved and their (expected) profits are reduced as a result.

Many of these investor-state disputes are at the expense of the general public, as states often must pay large amounts of compensation to corporations – money that is then lacking elsewhere.

OBSTRUCTION OF THE SOCIO-ECOLOGICAL TRANSFORMATION

As a result of the conclusion of the agreement, an increase in corporate lawsuits to the disadvantage of people and the environment is to be expected. The interaction between the trade agreement and investment protection could lead to a so-called "regulatory chill", particularly in Chile. It is to be feared that necessary legislative initiatives, for example in the areas of environmental protection, labour law or indigenous rights, will not be pushed forward if they run counter the interests of EU investors.

This could, among others, have an impact on the production of green hydrogen. As Chile has been pursuing its own hydrogen strategy since 2020, international investment has increased exorbitantly in recent years, particularly in the field of renewable energies (wind power, solar energy) and hydrogen production.

The trade agreement is now intended to promote and facilitate hydrogen trade between the EU and Chile, which will further increase the number of relevant projects. However, the huge amount of land utilized for wind farms, desalination plants, production facilities and transport infrastructure threaten to displace small farmers and indigenous communities. Changing water temperatures and toxic wastewater are destroying sensitive marine ecosystems and numerous endangered bird species could go extinct.

All of this will make it necessary for Chile to quickly adopt further legal regulations for the specific challenges and risks of hydrogen production. Among other things, Chilean experts are calling for a joint analysis of the cumulative social, economic and environmental consequences of all planned hydrogen projects instead of purely individual assessments.⁶ However, investment protection once again threatens to hinder the necessary regulation of the sector and thus stands in the way of socially and ecologically sustainable production.

Against this backdrop, corporate privileges and ISDS must be pushed back and instead of extended further. **For this reason, we are in favour of ending existing bilateral investment agreements and against the EU-Chile**

agreement as presented. Although the latter contains the "reformed" investment protection developed by the EU in recent years (MIC), it does not change the fundamental imbalance in the privileged treatment of foreign investors. That remains in place, while basic needs of employees and the local - often indigenous - population are disregarded and environmental protection is not considered.

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ENDNOTES

- 1 See e.g. Lucimara Beserra et. al (2023): [Work and health condition of women rural workers: an integrative review.](#)
- 2 See e.g. Patrizio Tonelli (2021): The bitter taste of Chilean fruit sold in Europe.
- 3 See e.g. Menno Kamming (2014): [Company Responses to Human Rights Reports. An Empirical Analysis.](#)
- 4 See e.g. Annabel Cossins-Smith (2023): [Chile to investigate deadly mining accidents at Anglo American and Minera ACF.](#) oder Arratia-Solar, A., & Paredes, D. (2023). [Commodity price and fatalities in mining-Evidence from copper regions in Chile.](#)
- 5 See the study and corresponding model clause by Prof. Krajewski (2016): [Model clauses for the exclusion of public services new.pdf \(arbeiterkammer.at\)](#)
- 6 See e.g. appeal by academics and civil society on 23 August 2023: [Panel Ciudadano sobre Hidrógeno en Magallanes solicita aplazar instalación de la industria de Hidrógeno Verde.](#)