



April 2011
AK Position Paper

Communication of the Commission on the
EU Raw Materials Strategy “Tackling the
challenges in commodity markets and on
raw materials”

About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Herbert Tumpel
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community- and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Werner Muhm
Director

Executive Summary

Unfortunately, the Commission has not included any recommendations on reducing the consumption of resources within the EU in its Communication.

The AK welcomes the inclusion of the topic concerning the financialisation of the raw material markets into the EU Raw Materials Strategy and the considerations in respect of transparency, tightening the reporting obligation as well as introducing position limits. In order to achieve more transparency in this sector, the AK demands a ban on so-called OTC transactions (Over The Counter) and supports the mandatory trade through stock exchanges. However, it is essential to create a legislative framework in order to reduce market abuse and insider trading. In order to limit uncertainties and thereby the attraction to engage in damaging speculations on the oil market the European Commission should work towards improving the accessibility of information concerning actually existing oil reserves and deposits worldwide.

Concerning EU foreign trade policy, the AK rejects the constant pressure with regard to market access, in particular in respect of developing countries.

The EU should support developing countries in diversifying their production, in reducing their dependencies on raw materials, in increasing local value creation and in protecting finite natural resources. Against this background, the EU should relinquish the demand for abolishing export restrictions of the developing countries. EU investors in the raw materials and oil industry as well as in the mining sector have - also concerning their respective value chain - to be obliged to effectively adhere to social and environmental standards.

Unfortunately, the Commission has not included any recommendations on reducing the consumption of resources within the EU in its Communication. So far, the consumption of resources within the EU is not even measured.

The AK position in detail

The AK expressly welcomes that the European Commission has now included the financial markets in its considerations on developing a sustainable raw materials strategy

With the present Communication of 2nd February 2011, the Commission essentially pursues its original 2008 strategy based on three pillars (access to raw material markets, reduction of raw materials in the EU and recycling within the EU) and supplements it by the dimension of financialisation of the raw material markets. In doing so, it broadens the scope of non-energetic raw materials ("high-tech" metals such as cobalt, platinum and titan as well as rare earths, minerals, scrap, building materials, wood, chemicals, hides and skins, rubber) by adding energy (oil, gas and electricity) and agricultural commodities and analyses the developments on the financial and physical markets. Apart from that, a list of 14 critical raw materials for the EU has been identified. Critical raw materials are those, which display a particularly high risk of supply shortage in the next 10 years and which are particularly important for the value chain.

Correlation between raw materials and financial markets

The AK expressly welcomes that the European Commission has now included the **financial markets** in its considerations on developing a sustainable raw materials strategy.

The regulation measures specified under Item 2.2 of the Communication - strengthening transparency, **tightening reporting obligations** and improved **cooperation** between European and international **regulators** - are regarded

as the first steps into the right direction by the AK. The intention to increase the level of transparency with regard to quantities produced but also in respect of trading with raw materials, including derivatives trading in raw materials by introducing various measures is expressly welcome. The **introduction of position limits** that have been put forward for discussion is another measure, which must be urgently implemented. In any case, the regulatory measures envisaged by the Commission should be implemented in Europe as quickly as possible to bring about a decrease of the unhealthy high trading volume, which can hardly or not at all be derived from fundamental data. However, these proposals will not be sufficient.

From the point of view of the AK, the following measures should also be included:

1. **Introduction of market regulations** for the financial market, which for years has been based on the principle of self-regulation and freedom of contract, in particular

- Introduction of **product control** and **standardisation** in advance,
- Introduction of **adequate margins** and **securities** as condition for the participation in the stock exchange,
- **Restriction to admission to trade on raw materials stock exchanges** (access only for physical traders); that means the **exclusion of financial insti-**

After all, the rising oil prices represent a massive risk to the economic development to which governments have to react in time

tutions from trading. Physical traders have to obtain their liquidity in advance (by respective guarantees of their principal banks).

2. Regulators have to be equipped with **direct rights of intervention and disposal** to enable them to intervene immediately if there is any suspicion of insider trading or market manipulation, including the imposing of trading bans. In addition, **criminal law provisions against insider dealing** have to be legally standardised; voluntary self-regulation (code of conduct by the stock exchange) is by no means sufficient.

3. The condition for this is the **mandatory trade through stock exchanges**, i.e. a ban or at least a pushing back of OTC trading by appropriate legal control.

4. **Legal reporting requirement** in respect of all commodity transactions (electricity, gas, oil and other raw materials).

5. **Regulatory supervision** of the futures and spot market, including **cross-border transactions**.

These measures are urgently required and also justified in the sense of the overall wellbeing of the economies in order to restore the stability of both financial and raw material markets. It must be avoided that because of financial speculations, European but also the consumers and producers in developing countries are exposed to extremely volatile, not foreseeable fluctuations of raw material prices.

Energy (oil, electricity and gas)

The Commission should also address the problem of the so-called "oil peak" and point out that we have to reduce our dependency on fossil fuels. Although from the point of view of many experts, the currently rising oil prices have been primarily caused by speculations; however, political uncertainties (revolts in the Arab world) and uncertainties with regard to the actually existing oil reserves additionally fuel these speculations in the oil market. Although global oil consumption is on the rise again following the slumps in 2008/2009 and oil production is stagnating at a high level, the development of fundamental data does by no means justify the current rise in oil prices. The data situation with regard to the oil reserves and assumed deposits is highly controversial and doubted by many experts. The Commission should decidedly address the problem of the related inadequate information situation and the discussion on "oil peaks" associated with it as well the fuelling of speculations on the oil market. After all, the rising oil prices represent a massive risk to the economic development to which governments have to react in time.

Trade, investment and development policy

The 2008 Raw Materials Initiative establishes a huge **import dependency** of the EU on strategically important raw materials. As the main problem to access these materials, the Commission identified an increase of export restric-

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tions, which would distort the international raw material trade. China, Russia, the Ukraine, Argentina, South Africa and India were listed as the emerging countries with the most restrictions. Described as particularly worrying is the situation in Africa (Zambia, Congo, South Africa, Zimbabwe, Gabon, Equatorial Guinea and Cameroon) and South America, where China and India have become increasingly active in countries rich in raw materials.

Above all, the Commission is concerned with improving **market access** in countries with the sought after resources. It wants to continue achieving this goal by so-called "raw material diplomacy" with strategic partners. It is to be feared that it will - for example in the negotiations on bilateral trade agreements or within the scope of strategic dialogues - exert political and economic pressure on those countries, which, in view of these raw materials are of special importance for the EU. Hence, it is alleged that the EU has asserted a restriction of **export duties** in the preliminary concluded Economic Partnership Agreements (EPAs) with the ACP States (African, Caribbean and Pacific Group of States), which have not yet been signed by most of these countries. If these Agreements are enforced, these countries may only impose export restrictions temporarily and partly only with the approval of the EU. This would mean that these countries, among them many of the least developed countries, would lose revenue from export duties. This is particularly incomprehensible against the background that the Commission recognises in its 2008 Raw Materials Strategy the important control function of export duties for developing coun-

tries. The WTO also permits their use as important development policy instrument. Export duties can promote the **development of young industries** and increase **state revenue**.

A main reason for the introduction of export taxes in developing countries is the so-called **tariff escalation**, which industrial countries engage in. The EU too levies higher duties for finished products than for unprocessed products, which often is a real obstacle for developing countries as it reinforces their raw material dependency. Insofar, the AK welcomes that in the paragraph on development policy the Commission commits itself on improving the value chains within the developing countries. However, the Communication did not mention the move away from the tariff escalation. In conjunction with other measures (EU internal and export promotion policies, investment policy in third countries) reducing the EU tariff escalation could make a contribution to promoting development.

An existing problem, which is addressed in the Raw Materials Initiative, also affects the EU (but also Japan and the USA) currently with regard to purchasing **Rare earths** from **China**. China's export restrictions (export duties and export quotas) make it difficult for the European Union to import Rare earths (in particular for the German industry; Germany has created her own Raw Materials Strategy). The Chinese government uses the protection of life and health as well as the protection of exhaustible resources (GATT Art XX/b and g) to argue against the accusations of the industrialized countries. It has been suggested that China is almost responsible for the entire world pro-

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duction (97 %). Less known is the fact that only 30 - 35 % of the Rare earth resources is in China and it was originally mined in various parts of the earth. Due to higher wage and other production costs as well as environmental regulations in industrialized countries mining was successively abandoned (e.g. in the USA). From our point of view, supporting Chinese technology would be an important approach to reducing the well-known safety and environmental problems associated with operating mines and stone quarries. In addition, apart from reactivating closed mines one should consider the promotion of further deposits/resources (Greenland, Canada, Australia, India, Brazil, Malaysia).

In all its previous positions, the AK has been critical of the constant market-opening pressure of the EU Commission. Although it welcomes the reevaluation of the development policy within the scope of the Raw Materials Strategy (5.2.1. Development policy and sustainable supply of raw materials), the AK is against an instrumentalisation **of the development policy for economic resp. trade policy purposes**. For example, parallel to the work on the Raw Materials Strategy we have noticed the increased use of trade policy measures within the scope of the Green Paper on EU development policy, with the clear focus on improving the market access of EU Member States to raw materials.

Concerning development policy the AK supports the following principles:

With regard to developing countries, the EU should dispense with reciprocity

concerning its demands for tariff cuts and the reduction of quantitative import restrictions. In any case, in respect of the aimed at tariff cuts in free trade agreements one has to take the respective **stage of development** of the partner countries into account.

The EU should support developing countries in diversifying their economies, in reducing their dependencies on raw materials, in increasing local value added and in protecting their finite natural resources. Against this background, it should not exert any disproportionate pressure on developing countries to abolish **export duties**. Tariff reduction demands by the EU addressed to developing countries have to be reviewed under the aspect of **tariff escalation**. The so-called tariff escalation increases the price of goods with greater processing state and promotes the raw material export of developing countries, which hinders their development. The promotion of organisational/technical **know-how** shall help developing countries to increase local value creation and to enable the protection of native resources.

The sources of raw materials is not only for lesser developed countries a unique opportunity to initiate economic development in their region. In any case, this opportunity should be used to build sustainable structures (e.g. infrastructure, processing industry etc.), taking social and environmental standards into account, to develop competitive economic areas. In its Communication, the EC has to do justice to the development chances of countries with rich raw

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material resources and meet the new provisions on political coherence in the EU's foreign policy within the scope of the Lisbon Treaty, Article 208 TFEU, according to which the implementation of the Millennium Development Goals and reducing poverty have been defined as overarching foreign policy goals of the Union.

In this context, **European investors** in the raw materials industry/mining sector, but also in the value chain have to be obliged to effectively adhere to social and environmental standards. This requires credible and transparent instruments. In our opinion, the reference of the European Commission to **due diligence in the mining sector and the development of corporate principles** of European investors in third countries (page 16) is not sufficient to claim corporate responsibility. European investors have to orientate themselves towards international codes of conduct, which also provide for **complaint mechanisms** (OECD Guidelines for Multinational Enterprises) but also numerous codes of corporate governance, which demonstrate their credibility and transparency by **integrating stakeholders** such as trade unions and NROs. If the engagement of European investors is supported by public funds and facilities (e.g. EIB, development policy funding instruments) the **adherence of social and environmental minimum standards** - as recently demanded by the UN Special Rapporteur on economic and human rights in the guidelines presented.

Recycling

From our point of view, the Raw Materials Strategy is no contribution to reducing the EU's dependency on the import of raw materials. Although the significance of recycling has been emphasised, pushing for improved market access to global raw material occurrences, distracts from the necessity to reduce raw material consumption in Europe. The average per capita consumption of raw materials in Europa is three times as high as in Asia and more than four times as high than in Africa. At the same time, Europe - more than any other region - depends on the import of raw materials. Regrettably the Commission has not included any proposals on **reducing the consumption of resources** in the EU in its Communication. So far, the consumption of resources in the EU is not even measured.

Should you have any further questions
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