

Earthworks, a US-based NGO supporting mining-affected communities globally, welcomes the EC proposal for a Battery Regulation and strongly supports the need for the transition to sustainable mobility.

Due Diligence

The mandatory due diligence set out in Art.39 is a necessary step in beginning to address the wide range of human rights and environmental abuses along the battery metals supply chain. However, greater clarity and specificity is required to ensure that the international instruments listed in Annex X are fully taken into account. For example, the right of Indigenous Peoples to Free, Prior, and Informed consent as defined in ILO 169 should be prominently and clearly stated. It is our understanding that ILO 169 is included in the Tripartite Declaration of Principles Concerning MNEs and Social Policy, however given the particular relevance of this agreement to the rights of mining-affected Indigenous communities, its lack of explicit mention is of concern.

Additionally, we believe that key battery metals, copper, manganese, bauxite and iron, should be added to the list of metals covered by this regulation.

Regarding Art.72, it is imperative, given the range of voluntary initiatives available to economic operators, only the most rigorous schemes should be recognized - such as the Initiative for Responsible Mining Assurance. Further to this, voluntary schemes should be obliged to annually disclose their findings as outlined in Art.39.

Human rights implications of environmental degradation

It is imperative that the EU Battery Regulation recognises the human rights impacts that environmental degradation and biodiversity loss can have on communities' livelihoods. As such, it is important that businesses fully operationalise environmental due diligence in the context of human rights abuse. Businesses must recognise the human rights implications of environmental degradation, as first identified by OECD Guidelines for Multinational Enterprises.

Business due diligence procedure should also operationalise the Precautionary Principle. This is a fundamental principle of EU environmental law, enshrined in Article 191(2) of the Treaty on the Functioning of the EU. The classic definition of 'a precautionary approach' comes from the 1992 Rio Declaration on Environment and Development, which states that: "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".

Recycling

While the recycling targets referred to in Art.57 and laid out in parts B and C of Annex XII are a positive step, we would like to highlight that current best practice recycling rates are upwards of 95% for Co, Cu and Ni, and approximately 90% for Li. This reality should be reflected in even greater ambition for the established targets. Ensuring the highest possible recycling rates is key to help offset demand for primary metals, and in turn, the environmental and social

consequences of their extraction.

Deep sea mining, tailings and protected areas

Minerals from recognized protected areas, including: International Union for Conservation of Nature (IUCN) protected areas designated as protected area management category 1-IV, Ramsar sites, UNESCO biosphere reserves and buffer zones, World Heritage Sites, and areas on a State Party's official Tentative List for World Heritage Site Inscription and areas with protected status under national or state laws should not be permitted in the supply chains of batteries manufactured or sold in the EEA.

Minerals extracted from the seabed, and minerals produced in mines using submarine tailings disposal should not be permitted in the supply chains of batteries manufactured or sold in the EEA. IUCN World Conservation Congress 2016, called on all states to ban marine disposal of mine tailings. Finally, the Safety First Guidelines should serve as a baseline for land-based tailings management.