

JOINT POSITION PAPER – NATURE RESTORATION LAW

EXECUTIVE SUMMARY

- The undersigned associations represent the largest part of the **non-energy extractive industry** in Europe with members in the 27 EU countries, providing mineral raw materials that are strategically important for the EU's raw materials needs – i.e. used to build Europe's essential infrastructure and other goods, as well as used for a large variety of important purposes such as food supply and medical production. Indeed, the minerals of the non-energy extractive industry are in many ways indispensable for the move to a climate-neutral and sustainable economy.
- Our industries have a track record in **using natural resources in the most efficient and environmentally sustainable way**, and reducing all externalities of extractive, processing, and manufacturing activities to the minimum, in compliance with strict regulatory requirements and robust environmental impact and waste management practices.
- Our sector **welcomes the overarching objectives of the EU Biodiversity Strategy for 2030**. It, therefore, welcomes initiatives to reflect those objectives in clear, applicable, and fair legal instruments. As such, we deem the Nature Restoration Law a positive initiative in its intentions, but somewhat lacking a pragmatic and realistic approach for our sector to unleash its full potential.
- The proposal seems to **not have taken the non-energy extractive sector and its main feature - which is temporary land use and restoration plans – into account**. Mineral raw materials extraction is indeed perfectly compatible with nature protection and restoration. It is by its very nature a temporary activity, which transforms land. As such, this allows managing during and after the operation time with usage-integrated protection mechanisms such as the development of temporary habitats.
- The proposal also contains several **uncertainties or imprecisions**, which disincentivise investments in our sector, such as:
 - the precise criteria used **to assess the state of restoration of an area**;
 - the more concrete implications on **the final total size of the area subjected to restoration**;
 - the fact that the Commission could decide at a later stage to **clarify definitions in delegated Acts**;
 - and the potential **retroactive feature** of the new legal provisions which could interfere with or change existing restoration plans at site level.
- Moreover, this regulation proposal seems to hamper and discourage multi-stakeholder involvement. Experience has rather proven that Biodiversity and nature restoration are best managed locally, needing the flexibility to adapt to local situations. We, therefore, deem that **concrete implication of local stakeholders through the transformation of the legal form into a directive or through the addition of provisions ensuring this in the current regulation is absolutely necessary**.
- We more generally fear that uniform decision-making taken at an EU level, too far removed from local realities and neglecting key stakeholders, **could prevent our sector from**:
 - **playing the decisive roles that it is called upon to play in tomorrow's EU**, i.e. of building **Europe's essential infrastructure adapting to climate change** (and providing the raw materials necessary for green technologies),
 - **enabling a transition to a climate-neutral, pollution-free, and circular economy** and
 - contributing to our **strategic autonomy** by boosting the domestic raw material supply (i.e. in the field of construction, and food security).

I. INTRODUCTION

Together, Aggregates Europe-UEPG, Cerame-Unie, Eurogypsum, Euromines, and EXCA, represent the largest part of the non-energy extractive industry in Europe with members in all 27 EU countries. As such, our mineral raw materials are used to build Europe's essential infrastructure adapting to climate change including homes, power lines, wind turbines, roads, railways, schools, hospitals, offices, commercial buildings, dikes, and dams. Our sectors are key for industry in EU to deliver essential goods and services for the citizens. Our members are committed to supplying essential and strategic mineral raw materials and products which enable Europe's transition to a climate-neutral, pollution free, and circular economy while our industries contribute to Europe's strategic autonomy by an exclusively domestic supply of mineral raw materials.

The European Green Deal and the new EU Industrial Strategy acknowledge that access to resources is a strategic issue both regarding the green and digital transition, as well as from a security viewpoint. The pandemic and the war in Ukraine have pushed international actors to critically assess the origins of supply chains, especially in public safety and strategic sectors. The development of diversified, resilient supply chains of sustainable raw materials is a part of the Commission's proposed EU Recovery Plan. The announced Act on Critical Raw Materials to be issued by 2023 is another relevant step in that direction.

Europe's manufacturing and construction industries are heavily dependent on the non-energy extractive industry for a wide range of essential raw materials. Our associations support the EU Green Deal's objectives and stand ready to support its implementation. In the same vein, our industries are fully committed to sustainable development and have a recognised track record, by the European Commission and environmental NGOs, on actions preserving biodiversity and the environment in general. Therefore, our organisations, as representatives of the extractive industry, welcome the EU's ambitious overarching objectives of the EU Biodiversity Strategy for 2030 and commit to contribute actively in promoting and protecting biodiversity. Extractive industries have demonstrated by practice, and by scientific and political acknowledgement that their activities can be developed in harmony with Nature, particularly in Natura 2000 environments¹.

Quarries and mines indeed offer the opportunity, by the very nature of their activity, to create atypical and pioneering environments, to orientate the use of soils positively and sustainably both from the point of view of biodiversity and carbon sequestration (by transforming, for example, large-scale cultivated areas into grasslands, wetland, or woodlands). They can also contribute to a territorial strategy to regain biodiversity (creation of refuge areas, part of an ecological continuity, etc.). Besides, quarry and mine restoration meets various territorial or social expectations which are important to consider (leisure area, return to full agricultural cultivation or pasture land, etc.) while systematically considering the needs of ecological restoration and opportunities for soil carbon sequestration in response to the challenges of the climate crisis.

In addition to taking biodiversity into account in projects, it is possible to encourage economic activities, and particularly voluntary actors such as extractive industry operators, to adopt a management approach that is both more favourable to the species and habitats to be reclaimed and more consistent with the long-term trajectory of developments through recognised and valued contractual commitments. These commitments could take the form of management plans and environmental recovery plans that go beyond the strict framework of species protection to include "temporary nature" approaches and "CEF" (Continuous Ecological Functionality) measures.

Thus, there is a **huge potential for biodiversity restoration and the promotion of ecosystem services in quarries** that could be key to reach the Biodiversity Strategy for 2030 goals while preserving this important economic activity. Multiple studies report on the **overall net benefit quarries can bring to**

¹ ["EC guidance on undertaking non-energy extractive activities in accordance with Natura 2000 requirements."](#)

biodiversity^{2 & 3}. Often occurring in and around Natura 2000 areas, the extraction process can thus act as core nodes or steppingstones and core habitats linking the Natura 2000 network by restoring biodiversity while maximising the multiplicity of services from C-sequestration to the ecosystem and human health, through temporary nature (see, LIFE in Quarries project – LIFE14 NAT/BE/000364) and through the restoration of sites considering biological stakes. By coordinating their contributions, quarries could act as the backbone of the EU Green Infrastructure network⁴. Restoring biodiversity in quarries could in addition provide local communities with high-value ecosystem services and new opportunities for carbon sinks.

Raw materials extraction is a temporary economic activity, planned over time, to supply necessary resources. The interaction between extractive industries and ecosystems is not only about **restoring land and habitats after operations**, but also **managing ecosystems during the operation time**, with usage-integrated protection mechanisms such as the use of temporary habitats. Quarries have proven to provide a refuge to endangered species.

Site restoration plan results in **turning previously degraded land or natural areas poor in biodiversity into richer biotopes**. This shows the clear potential for nature restoration played by extractive industries. Numerous examples can be found of good practices in nature restoration and biodiversity management in our mineral raw materials extraction sites (quarries and mines). Several European sectors have recently committed to a Species Protection Code of Conduct co-signed with NGO BirdLife and other extractive industries and endorsed by the European Commission⁵.

The ambitious restoration objectives which we commend should now be reflected in clear, applicable, and fair legal instruments, enabling sustainable economic growth and access to essential mineral raw materials in the EU. This needs to be done in a wide perspective, understanding that protection and restoration of nature should not be seen as opponent to land use but as an integrated and necessary part of sustainable land use.

As such, we support the establishment of nature restoration targets, which can be an effective tool to protect our ecosystems and the ecosystem services they provide. Representing a very large part of the European non-energy extractive industry, the signing business associations can significantly and positively contribute to achieving the nature restoration objectives by sharing best practices that are already implemented in restoration plans throughout extraction sites. To unleash their full restoration potential and contribution, our sectors would welcome some clarity about newly introduced key concepts, legal clarity regarding identified issues, and more involvement with local stakeholders when it comes to implementing the future nature restoration provisions.

II. IDENTIFIED CONCERNS & QUESTIONS

We understand the need to work on the Nature restoration topic on a wider scale. Being a sector committed and with experience in nature restoration practices, we have identified some concerns and/or unclarity which need to be addressed for our sector to fully unleash its contribution to the restoration objectives.

² Lemoine G (2015) Les carrières de sable : une opportunité pour les abeilles solitaires. Etablissement Public Foncier Nord-Pas de Calais - UNPG, Paris, France

³ Seleck M et al. (2019) Synthèse des inventaires biologiques des 24 carrières du Life in Quarries. Gembloux, Belgique

⁴ European Commission (2013) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Green Infrastructure (GI) – Enhancing Europe’s Natural Capital. COM (2013) 249 final. 11

⁵ [Extractive Sector Species Protection Code of Conduct](#).

1/ Legal form of the proposal and room for manoeuvre for local stakeholders

As a sector keen to contribute to nature preservation and restoration, we share the need for action across Europe. The legal nature of the proposal in its current form nevertheless sparks concerns as it seems to **entail an accelerated implementation** without flexibility, merely consulting national and local stakeholders and lacking to fully integrate them into the decision-making process in a timely and constructive manner. In addition to that, **the legally binding targets outlined in Article 4 tackle each Member State independently from how heavily populated they are, the current differences in percentage and quality of protected lands, or what habitats are possible to be developed at the national/regional level.** Given the complexity of biodiversity decision-making in general and nature restoration in particular, we consider it appropriate that the proposal focuses on ensuring that Member States together with the stakeholders analyse the state of their ecosystems and decide which measures to implement in each case, without the European Commission determining the exact actions to be carried out. The Commission's proposal in its current inception does not allow this. That is why we would advocate for **either transforming the legal form into a Directive or foreseeing substantially more concrete bottom-up implications of local stakeholders** when it comes to Member States elaborating their national nature restoration plans.

Another point of concern lies in the possibility granted by this Nature Restoration Law to **clarify undefined legal terms in subsequent delegated acts.** This entails a wobbly and hazardous legal situation, not only delaying the decision to invest in the non-energy extractive sector, but also jeopardizing the efforts undertaken by local companies attempting to implement nature restoration provisions.

2. Scope

Questions arise regarding the scope of application and the extent of the Nature Restoration Law, especially when looking at the provisions in detail:

- The proposal defines a goal in percentage and time, but the legal text refers to **'all ecosystems in need of restoration'**. This creates legal uncertainty on what it means in practice.
- It is legally uncertain how the restoration goals in the current proposal (**>20% nature restoration goal** for 2030) are going to be integrated into the EU Biodiversity Strategy for 2030 (**30% nature protection target**). This directly concerns stakeholders.
- The applicability of the term **'sufficient quality habitats'** in practice is unclear, as many criteria or monitoring techniques still need to be determined and developed & tested.
- The link between the existing Regulation proposal, the Habitats Directive, the Marine Strategy Framework Directive, and the Biodiversity Strategy for 2030 is unclear, as these different instruments have different legal weights and use different legal terms. In addition, the reference to **"areas where habitats listed in Annex I occur"** could have non-negligible ramifications on Member States' and stakeholders' social and economic sustainability. Therefore, a clarification of the continuity of the application of current well-working legislation such as Habitat Directive 92/43/CEE is needed.

Besides, **the difference operated in the proposal between Natura 2000 and non-Natura 2000 sites seems non-existent.** While we understand that Natura 2000 sites are sensitive, the application of the same provisions to non-Natura 2000 areas would be disproportionate. We fear that the generalised application of these targets on a very wide range of areas would prevent and discourage economic activity, particularly when it comes to mineral resource extraction, and result in preventing activities that contribute to climate goals and other societal goals. Such a far-reaching consequence would be unbearable and cannot be the intention of the Commission's proposal. Moreover, this specific point has not been analysed through a proper impact assessment, which would have investigated the details of these socio-economic impacts. Against this background, there is an urgent need to find an appropriate and proportionate approach to that issue.

Our sector also would need legal certainty that **the new provisions contained in the Nature Restoration Law would not be retroactive**. They should indeed not apply to sites that already have a site extraction permit and a restoration plan in place in order not to jeopardise the legal certainty acquired in the permitting process and the company's liability towards authorities and stakeholders.

3. Need for clear definitions

Our sector crucially needs **legal certainty and regulatory clarity** to plan long-term investments. Therefore, the criteria behind some definitions need to be known beforehand, to be able to determine the impact of the proposed text on the scope.

In that regard, some definitions do not provide a sufficient level of clarity, hence leading to a lack of legal certainty. While we have noted the inclusion of a definition of **lands restored in 'good condition'** and welcome the thorough analysis of the EU's habitats and extent of the challenge included in the legislative proposal and its annexes, it must become clear to our sector **through which parameters and/or concrete criteria an area is deemed restored**.

Besides, as long as the 'habitat area' concept (Art 4§10) is not defined more clearly and concretely, the socio-economic consequences are uncertain and potentially at risk.

4. Need for EU policy alignment

The European (non-energy) mineral extraction sector is key for both ensuring our **strategic autonomy in raw materials supply** (securing domestic extraction and production) and achieving the ambitious **EU climate objectives** laid out in the European Green Deal. We, therefore, call for the Nature Restoration Law to take more into account our non-energy extractive sector and other economic sectors which can have a contribution to Europe's strategic ambitions, such as the renewable energy sector. An important part of EU ecosystems (land, sea, and rivers) needs to be accessible for different economic activities to be carried out, while all directly concerned sectors should contribute to mitigate the impacts of their activities through sustainable solutions in collaboration with directly concerned stakeholders.

As such, we welcome the existence of the ex-ante impact assessment but would like to see the economic side of it improved to **determine the effects of the proposal on several relevant economic activities and sectors such as the extractive industry, renewable energy, etc.** This should consider the compilation of **existing legislation on EU businesses and assess EU dependencies on construction and other raw materials and renewable energy needs**, while also assessing the ramifications of a possible increase in imports to the EU of mineral materials and their environmental impacts as the First zero pollution monitoring and outlook report mentioned about the extractive sector⁶.

In this context, as possible under the Habitats Directive's article 6 (4), it would be reasonable to consider that the imperative reasons of overriding public interest, including those of social and economic nature, will be integrated to the legal framework regarding plans or projects of our industry, to get the optimum status for an adequate role in nature restoration.

Conclusion:

Our sector is committed to contributing to biodiversity net gain, nature protection, and nature restoration. We already implement nature restoration measures in quarrying and mining and are in favour of continuing to do so. In spite of that, it seems that our sector has not fully been considered when elaborating the Nature Restoration Law: some essential elements (such as key definitions or newly introduced concepts as well as methodologies to assess nature restoration concretely) are still unclear and need to be clarified or detailed to allow our sector to contribute to its full potential. We further deem

⁶ [First 'zero pollution' monitoring and outlook](#) 'Pathways towards cleaner air, water and soil for Europe', p.7: *"It is therefore important to better consider the environmental impacts of the goods we import and the 'export of pollution' outside the EU. This is relevant, for example, for the extraction sector in and outside the EU, considering the importance of critical raw materials to the EU's goal to increase its open strategic autonomy and accelerate the green transition."*

the local stakeholders not sufficiently associated in the future elaboration of nature restoration projects and in reaching the outlined ambitious restoration targets.

We strongly recommend a stepwise approach as the best way to develop and implement ambitious goals. On the contrary, unrealistic and unreachable policy goals spark frustration and often lead to setting even more stringent goals in the following revision stages, resulting in demotivation to involve and stimulate the concerned stakeholders. It would be a missed opportunity if our sector would be hindered in contributing to the EU's Nature Restoration objective. Besides, a law that disregards the concerns raised here could very well result in endangering the strategic autonomy of the European Union regarding the availability of certain raw materials. In everyone's interest, we would therefore call upon EU policymakers to address these points of uncertainty, while keeping the main objectives included in the core of this proposal.

III. LIST OF CO-SIGNING ASSOCIATIONS

	<p style="text-align: center;"><u>Aggregates Europe – UEPG</u></p> <p>Since 1987, Aggregates Europe - UEPG represents the European Aggregates Industry in Brussels, with 26 Members in 25 countries. It is by far the largest non-energy extractive industry, covering a demand of 3 billion tonnes of aggregates per year, produced on 26,000 sites by 15,000 companies (mostly SMEs), and employing 200,000 people across Europe.</p>	<p>Dirk Fincke Secretary General secretariat@uepg.eu</p>
	<p style="text-align: center;"><u>Cerame-Unie</u></p> <p>Cerame-Unie represents the European ceramic industry. Our mission is to ensure that the voice of this competitive, dynamic and innovative industry is heard at the EU level. Our membership is drawn from the national ceramics associations and companies across Europe with whom we work to provide solutions to challenges affecting the industry in Europe and globally. The EU Ceramic Industry is a world leader in producing value added, uniquely designed, high quality ceramic products manufactured by flexible and innovative companies, the majority of which are SMEs. The ceramics industry represents an annual production value of around €30 billion, accounting for approximately 25% of the global production, and over 200,000 direct jobs throughout the EU.</p>	<p>Daniela Vigilante Environment and Innovation Director vigilante@cerameunie.eu +32 2 808 38 80</p>
	<p style="text-align: center;"><u>Eurogypsum</u></p> <p>Eurogypsum is a European federation of national associations of producers of gypsum products (i.e. plaster and plasterboard). It is one of the few fully integrated industries (from cradle to cradle) within the construction products field. The companies which mine gypsum also process it and manufacture the value-added products and systems used extensively in construction and other industries. With a turnover of EUR 7 billion, the European gypsum and anhydrite industry operates some 160 factories and 154 quarries and generates employment directly to 28,000 persons and indirectly for 300,000 persons. The gypsum industry provides jobs to 1,100,000 plasterers and plasterboard installers. It trains around 25,000 persons per year across Europe.</p>	<p>Tristan Suffys Secretary General t.suffys@eurogypsum.org +32 491 34 07 90</p>
	<p style="text-align: center;"><u>Euromines:</u></p> <p>Euromines, the European Association of Mining, Metal Ores & Industrial Minerals, represents large and small companies and subsidiaries in Europe and in other parts of the world which provide jobs to more than 350,000 people. Through the activities and operations of these members, more than 42 different metals and minerals are produced. Their sustainable exploitation can increase Europe's supply of mineral resources, help ease imports from third countries usually applying lower environmental, corporate and social standards and foster the socio-economic growth of Europe's Regions. The European mining industry plays a crucial role in the EU ability to nurture sustainable growth including access to and supply of raw materials, providing over 30 million jobs and playing a key role in the development of modern environmentally friendly technologies.</p>	<p>Rolf Kuby Director General kuby@euromines.be +32 473 99 22 64</p>
	<p style="text-align: center;"><u>EXCA</u></p> <p>The European Expanded Clay Association is the European expanded clay association and represents the interests of all major expanded clay producers throughout Europe. Expanded clay is a well-proven, high quality, efficient and durable lightweight aggregate suitable for a wide range of applications in the construction sector. It is a sustainable construction material packed with properties that improve the economic, social and environmental performance of a building or infrastructure over its whole lifetime. With its 11 member companies in 10 countries operating some 11 plants throughout Europe EXCA represents more than 90% of the European industry.</p>	<p>Mara Caboara Secretary General mara.caboara@exca.eu</p>