

Colombian Coal

Trade and financial relationships and the CSR approach of mining companies

Diana Quiroz, Barbara Kuepper, Ward Warmerdam, and Ana Catalina Herrera

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Introduction

This note provides an overview of the Colombian coal mining sector with respects to its main actors (including mining companies and their financiers), the impacts of their activities on human rights and labour rights, the trade relations with Europe, the role of Colombian coal for Europe in the context of the current conjuncture (i.e., Europe's energy price crisis resulting from the Russian invasion of Ukraine and Europe's energy transition plans).

This note is part of a sector analysis of mining in Bolivia, Colombia, and Peru commissioned by CNV Internationaal to Profundo, to be published at the end of September 2022. The objective of the sector analysis is to map the mineral supply chain from those three Latin American countries in terms of producers, traders, European buyers, and financiers, their Corporate Social Responsibility (CSR) policies and practices, as well as the potential impacts of market trends on labour rights.

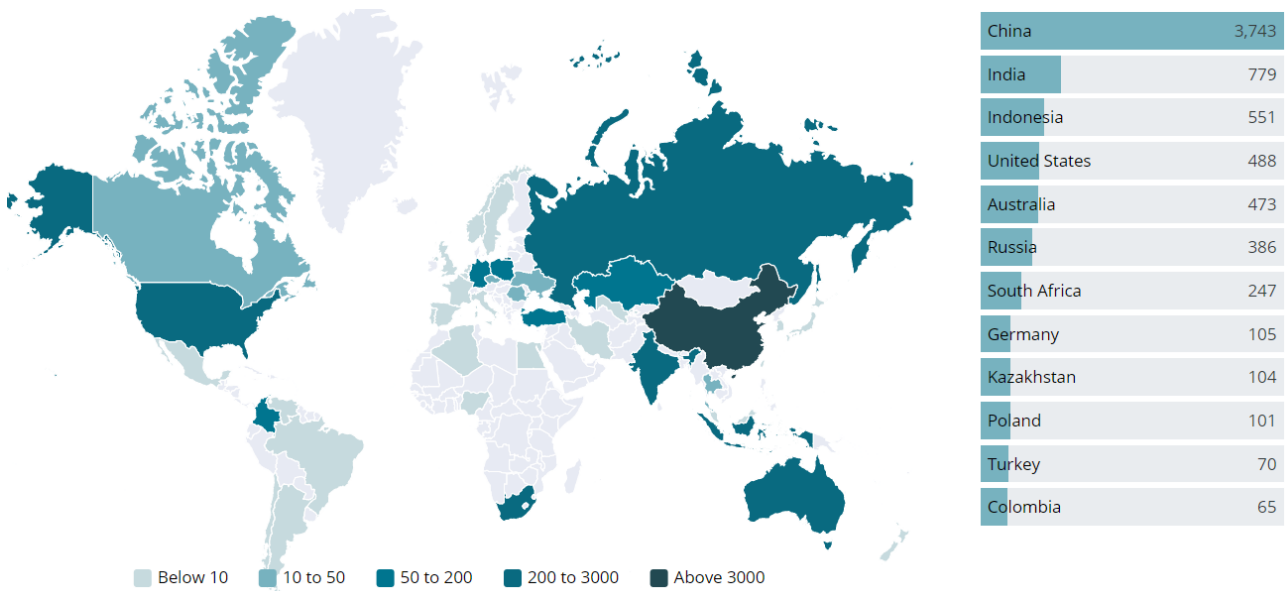
1 The Colombian coal mining sector

1.1 Sector overview

Mining is an important economic sector for Colombia. The sector attracts around 15% of foreign investments in the country and employs around 160,000 people directly, with coal accounting for around 50,000 or 31%. According to the Colombian Mining Association (Asociación Colombiana de Minería, ACM), Colombia produced 49 million metric tons in 2020.¹

According to Enerdata, this volume was somewhat higher at 65 million tons. It is clear though that Colombia is not a major producer on the global scale when comparing with China as the top coal miner, or countries like India or Indonesia. In this list, Colombia ended on the 12th place in 2020 (Figure 1).² In interpreting figures since 2020, the impact of the COVID-19 pandemic needs to be considered.

Figure 1 Global coal production in 2020 (in million tons)



Source: Enerdata (n.d.), “Yearbook 2020”, online: <https://yearbook.enerdata.net/coal-lignite/coal-production-data.html>, viewed in June 2022.

1.2 Key coal mining companies

Coal mining in Colombia is dominated by two foreign-owned companies: Drummond (U.S.) with its local subsidiary Drummond Colombia, and Glencore (Switzerland) with its Cerrejón and Prodeco subsidiaries.

1.2.1 Glencore

Human Rights due diligence

Glencore states its commitment to take into account social, ethical and environmental considerations with regards to its products and supply chains and when managing our relationships with suppliers. Glencore states this commitment through its Responsible Sourcing Policy and its Supplier Code of Conduct. These two policies are, according to Glencore, in accordance with the United Nations (UN) Universal Declaration of Human Rights, the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work, the UN Guiding Principles on Business and Human Rights (UNGPs) and the UN Global Compact.³

Glencore claims to take into account social, ethical and environmental considerations when managing its relationships with suppliers and customers. Moreover, in its policies, the company lays out its commitment to conducting due diligence on their supply chains and mitigation of human rights risks. In this context, Glencore’s sourcing policies and standards frameworks consider production, sourcing of metals and minerals and procuring goods and services, as well as its commitments and expectations vis-à-vis suppliers.⁴

Glencore’s Supplier Code of Conduct applies to any individual, organisation or company that provides, sells or leases materials directly to Glencore companies, including goods and services. According to Glencore, the standards set out in its Supplier Code of Conduct form the base of its supply chain due diligence (SCDD) programme, which Glencore claims is risk-based and in alignment with the OECD’s Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD DDG).⁵

In addition to its CSR policies, Glencore is a member of mining industry initiatives such as: International Council on Mining and Metals (ICMM) and the Voluntary Principles Initiative (VPI).⁶ The company also supports the Extractives Industries Transparency Initiative (EITI).⁷ Moreover, Glencore is assessed in the Responsible Mining Index and the Business & Human Rights Resource Centre's Transition Minerals Tracker.⁸ The company is not a member or has partnered with the Initiative for Responsible Mining Assurance (IRMA).⁹

The policies in practice

Despite its stated commitments to human rights and labour rights, there are several allegations of acts of violence by Glencore and its subsidiaries worldwide against communities and human rights defenders. Between 2018 and 2020, the Business & Human Rights Resource Centre had registered 36 cases of attacked against human rights defenders.¹⁰ In Colombia, peasant families living on the banks of the Ranchería river, in the village of Papayal, municipality of Barrancas, La Guajira, denounced an attempted forced eviction by employees of the Cerrejón coal company and the police inspectorate in November 2021.¹¹

Colombia is considered one of the most dangerous countries to exercise freedom of association, according to the Global Human Rights Index of the International Trade Union Confederation. This is reflected in acts of harassment through text messages sent to union leaders, such as what happened on September 1, 2022 when leaders of Sintracarbón (Coal Industry Workers Union) received death threats.¹²

On December 1, 2020, at the time when Glencore was taking over Cerrejón, the mine employees had to be striking for 91 days of strike when an agreement was reached between the companies and the unions Sintracarbón and Sintracerejón (Cerrejon limited workers union).¹³ However, one of the conditions for the cessation of the strike was the creation of technical tables, one of them related to the shift change, called by the workers "death shift",¹⁴ a shift that leads to the termination of work contracts due to the excessive load that has been imposed on the workers today. The heavy workload puts workers at greater risk the levels of accidents in the mine. Moreover, this shift goes against the labour culture and conquests that the workers had achieved in terms of working hours, which reflects the application of regressivity and not progressivity in labour matters. The company argued that it needed to reduce costs and remain competitive in the global market to justify the change in working shifts.¹⁵ Today, this argument has been impossible to sustain, in view of the current high coal prices and the company is applying it.

Glencore employees have reported an increase in mental illness and sleep disorders.¹⁶ In August 2022, the Colombian Ministry of Labour carried out an inspection at the Cerrejón mine to address the different OSH concerns, where the company was invited to form a tripartite commission. However, the company refused, and today Sintracarbón also denounces that the Joint Committee for Safety and Health at Work, under manoeuvres of the company, is seeking that the representation of the workers be in charge of a trusted worker of the company, which constitute an illegal practice.¹⁷ In this visit, the Ministry of Labour found that there could possibly be an undue withholding of wages since the multinational is not making the due payment of overtime or night surcharges. Workers at the mine have a workload heavier than that authorised by law. Moreover, the company does not recognise Sunday rest and other paid holidays and does not give workers time off. The Ministry of Labour has warned of an administrative sanctioning process for the violation of labour standards.¹⁸

Also with regards to OSH, the Company's Sustainability Reports lack transparency when identifying the number of occupational accidents and identifying and reporting occupational diseases, which constitutes a situation of underreporting and lack of information needed to prevent occupational diseases and accidents.¹⁹ However, exposure to coal dust can lead to lung cancer and that should be considered by the mining companies.²⁰ Due to the massive layoffs by Cerrejón on February 23, 2021, the Company was sanctioned on June 9, 2022 by the Ministry of Labour for violating the reinforced work security of ill workers, who despite being in a clear situation of vulnerability, had their employment relationship terminated.²¹

On the other hand, precarious labour, as reflected in the outsourcing of workers, is a matter of concern. The European Commission is currently processing a complaint against Colombia before the Single Entry Point, a mechanism that monitors the sustainable development chapter of the Trade Agreement between Colombia and the European Union. The plaintiff alleges labour discrimination. Despite performing the same functions within the company Carbones del Cerrejón, outsourced workers earn a substantially lower salary than workers hired directly by the company. This not only constitutes a situation of discrimination with respect to the principle of "equal pay for equal work" contemplated in ILO Convention 111, but also reflects the illegality of outsourcing.²² According to the 2021 Sustainability Report of Carbones del Cerrejón,²³ shows that out of the 11,088 workers employed at the mine, 4,889 are direct workers and 6,199 outsourced workers - more than 100% of the total number of direct workers. This difference reflects a clear policy of precariousness through the use of outsourcing. This precariousness is evident in economic matters for the worker, low levels of unionisation amongst outsourced workers, and discrimination.

In relation to the Prodeco Group, a company operating in the department of Cesar in Colombia, also owned by Glencore, the company announced the resignation of its mining titles.²⁴ Faced with this decision, the company offered its workers voluntary retirement plans under clear pressure against workers who even enjoyed reinforced labour stability, as is the case of sick workers, pre-pensioned workers and workers with union privileges.²⁵ This practice breaks the national norm. According to information provided by one of the leaders of Sintramienergetica in a meeting within the framework of Bettercoal, more than 70% of the workers suffer from occupational diseases. They also denounced that despite the decision to return titles, the company continues to operate, hiring new workers with lower salaries and clearly without conventional benefits. Moreover, union leaders are not allowed to enter the mine, despite the fact that they still have work contracts in force.²⁶

The challenges of such decision are enormous. Unfortunately, the decision taken by the company was never thought of in favour of the workers or with the purpose to collectively thinking and exit strategy that would cause the least harm to a region that depends on extractive mining. In response, in February 2022 the unions, Sintramienergetica (National Union of Workers of the Mining, Petrochemical, Agrofuels and Energy Industry), Sintracarbón and the Central Unitaria de Trabajadores went to the Multinational Companies Unit of the ILO in order to promote a space for rapprochement between the company and the union with the support of the ILO. However, this has not yet materialised in a first meeting.²⁷

Glencore's financiers

Between January 2016 and March 2022, Glencore attracted a total of US\$ 66.83 billion in loans and underwriting services, of which none can be directly attributed to the activity of Cerrejón or Prodeco. Out of the total founding received by Glencore during this period, US\$ 3.674 were provided by Dutch financiers in the form of loans and underwritings. Other European financiers provided US\$ 35.35 billion, and other global financiers provided US\$ 27,80 billion. In total 32 European financial sector actors financed the activities of Glencore during the period January 2016 – March 2022. Amongst these actors is the German Development Bank (KfW), with an investment of US\$ 114 million. The individual amounts contributed by top 20 European financiers (including all Dutch financiers) is provided in Table 1.

Table 1 Glencore's top 20 European investors (January 2016 – March 2022)

Investor (Country)	Country	Investment value (ml US\$)
BNP Paribas	France	2.106
Deutsche Bank	Germany	2.076
UBS	Switzerland	1.955
Santander	Spain	1.924
Credit Suisse	Switzerland	18.26
Barclays	United Kingdom	17.98
NatWest	United Kingdom	1.700
Crédit Agricole	France	1.670
HSBC	United Kingdom	1.658
Société Générale	France	1.653
ING Group	Netherlands	1.637
Standard Chartered	United Kingdom	1.587
Commerzbank	Germany	1.486
Banco Bilbao Vizcaya Argentaria (BBVA)	Spain	1.433
UniCredit	Italy	1.410
ABN Amro	Netherlands	1.166
Rabobank	Netherlands	871
Groupe BPCE	France	771
La Caixa Group	Spain	674
Intesa Sanpaolo	Italy	654

Source: Thomson EIKON (2022, March), Bloomberg (2022, March)

1.2.2 Drummond

Human Rights due diligence

In its Human Rights (HR) Policy, Drummond Ltd states its commitment to respect, protect and support internationally human rights across the company's business activities, in accordance with the UNGPs and the Voluntary Principles on Security and Human Rights. In this context, Drummond's HR Policy prohibits the company's employees, contractors and suppliers from any form of violation of the right to life, right to a healthy environment, right to safety and health at work, right of free association and collective bargaining, the right to land, right to non-discrimination, and the rights of ethnic minorities.²⁸

Drummond Ltd's HR Policy interpretation of "human rights" is aligned with the Political Constitution of Colombia's definition of fundamental human rights, as well as those set forth in the "Universal Declaration of Human Rights" and those developed in international treaties ratified by Colombia.²⁹ Despite its stated adherence to the Voluntary Principles on Security and Human Rights, Drummond is not a member of VPI.³⁰ Moreover, Drummond is not a member of any of the major sustainability initiatives of the mining industry.³¹

Neither Drummond Ltd (Colombia) nor Drummond Co (US parent company) have a publicly available Supplier Code of Conduct. Drummond Ltd does have a Code of Conduct, but it applies to its employees across all of Drummond's activities.³² Drummond does not appear to have a Human Rights Due Diligence policy.

Drummond Ltd published yearly sustainability reports. In its 2020 sustainability report, Drummond makes reference to the United Nations Sustainable Development Goals (SDGs). In particular, its sustainability endeavours address 10 out of 17 SDGs. Moreover, Drummond claims that 84% of its investment contracts and agreements have HR clauses. Likewise, Drummond claimed participation in multi-actor skill building initiatives around human rights, including Mining and Energy Committee, Human Rights and Coal Working Group, and Regional Centre for Responsible Businesses and Entrepreneurship (CREER).³³

The policies in practice

Contrary to its stated intentions in its corporate policies and the actions reported in its sustainability report, Drummond Ltd has been involved in several human rights controversies. In 2020, witnesses testified in the Colombian court that Drummond had ordered and paid for the murders of union leaders.³⁴ In January 2021, a coalition of Colombian and international civil society organisations filed a complaint with the OECD, alleging that Drummond has a responsibility for ongoing human rights violations in La Guajira.³⁵ In May 2022, the Corporate Accountability Lab submitted the first half of a report about the role of multinational companies, including Drummond, in the armed conflict to the Chamber for the Acknowledgement of Truth, Responsibility and Determination of Facts and Conduct of Colombia's Special Jurisdiction for Peace (JEP).³⁶

None of these grievances are published by Drummond, either in its sustainability reports, nor elsewhere. Providing transparency about grievances to wider stakeholders, through statistics, case studies or more detailed information about the handling of certain cases is one of the components of Principle 21 of the UNGPs,³⁷ which Drummond claims to align with in its Human Rights Policy.

1.2.3 Outline of Glencore and Drummond's mining activities in Colombia

Drummond produced around 33 million tonnes of coal in Colombia in 2021.³⁸ Exports by the company reached 31.5 million tons in 2021. In 2020, the impact of the COVID-19 pandemic impacted production and exports, resulting in a total of 29.7 million tons exported by Drummond.³⁹ Based on total Colombian exports of 55.6 million tons in 2021 (see section 1.3), this represented an export share of around 57%.

As announced in 2021, Glencore acquired the respective 33% shares in Cerrejón held by competitors BHP Group and Anglo American. The acquisition was completed in January 2022, making Glencore the sole owner of the coal mining company.⁴⁰ Cerrejón's production in 2021 was reported at 23.4 million tons of coal, a strong increase by almost 90% from the previous year. In 2020, production was hit by the pandemic and a three-month strike. No figures on exports were published.⁴¹

Glencore's other subsidiary, Prodeco, was the third largest coal exporter in the country, behind Cerrejón and Drummond. In 2020, Prodeco's production had decreased by 76% to 3.6 million tons.⁴² A request by Prodeco to relinquish its contracts for the Calenturitas and La Jagua mines (Cesar department) was initially declined by the Colombian National Mining Agency (ANM) in January 2021. In the meantime, the mines remained on care and maintenance (C&M).⁴³ In September 2021, the company communicated that it had obtained approval from ANM to return the concessions. It was further stated that the mines remained on C&M until the completion of the formal process.⁴⁴

While a review by Glencore had concluded that resuming the operations would have been uneconomic, the Minister of Mines and Energy Minister, Diego Mesa, stated in March 2021 that other, especially Asian investors had expressed interest in the licenses. Other options named were to auction the licenses or to close the mines down.⁴⁵

Both companies are also involved in coal logistics in Colombia, through stakes in the Ferrocarriles del Norte de Colombia (Fenoco) railroad. Drummond and Glencore hold 41% and 36.1%, respectively.^{a,46} It connects Chiriguana in Cesar province with the coastal town of Santa Marta. Glencore also controls the Puerto Nuevo coal terminal in Magdalena province, which has an access canal Drummond uses for exports.

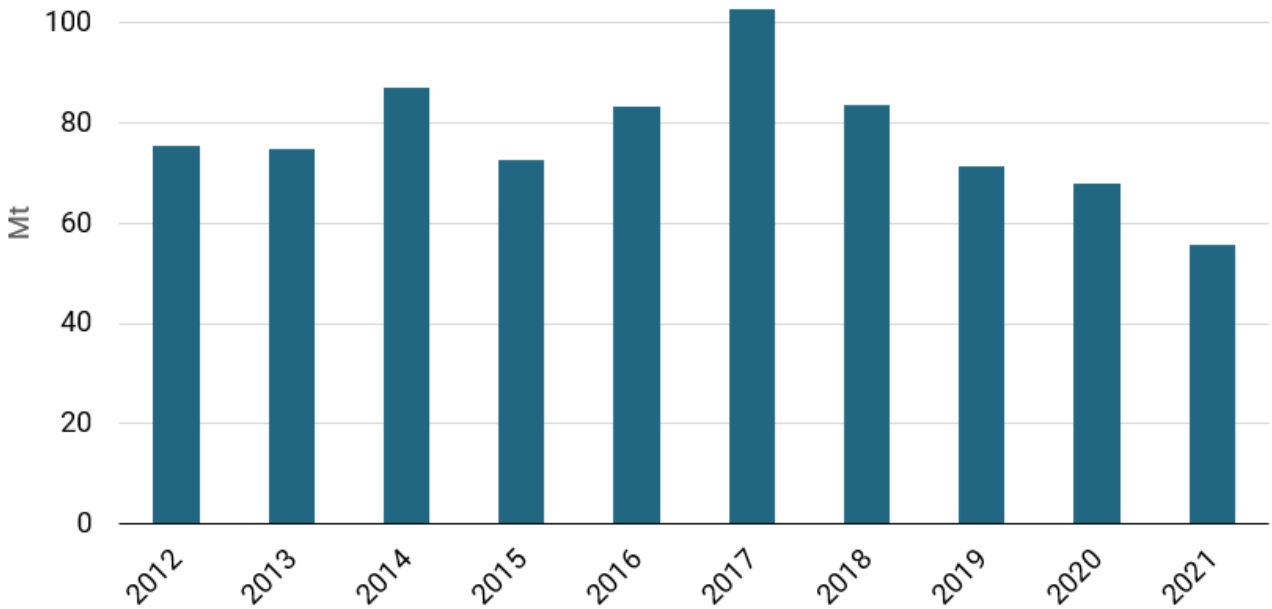
As Glencore will no longer need to use the Fenoco railroad and Santa Marta port without Prodeco, Drummond asked the commerce regulator shortly after the approval to return the licences to force Glencore to sell its stake in the railway, voicing concerns that Glencore may use its veto power to disadvantage other miners.⁴⁷

1.3 Important export markets for Colombian coal

In 2020, coal exports from Colombia reached a value of US\$ 4.26 billion, making it the second most important export commodity after oil. This equalled a volume of 67.8 million tons, or 5.4% of global coal exports, and put the country on the 6th place globally.⁴⁸ Looking at the last ten years, exports had peaked in 2017 with 102,7 million tons, but since then decreased continuously, falling to 55.6 million tons in 2021 (Figure 2).⁴⁹

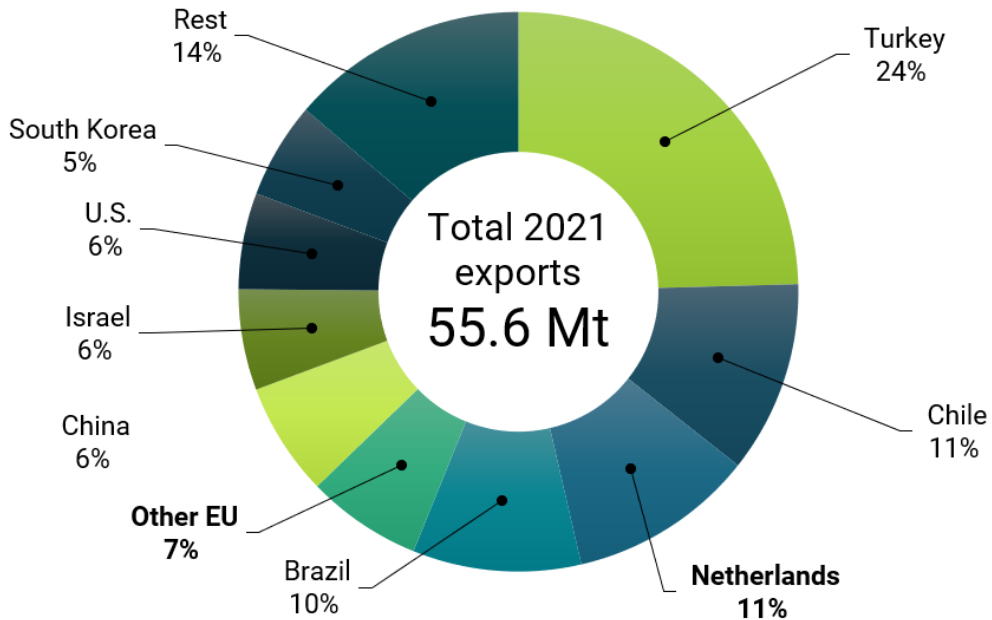
^a Other shareholders are CNR (16.9%), Consorcio Minero (3.6%), and Port & Train (2.4%).

Figure 2 Colombian coal exports, 2012 to 2021 (million tons)



Source: ITC Trademap (2022).

Figure 3 Key export destinations of Colombian coal, 2021



Source: ITC Trademap (2022).

The top destination for coal exports from Colombia is Turkey, accounting for 24% of total exports in 2021 (Figure 3). This was followed by Chile and the Netherlands with 11% each. When looking at the Netherlands as an export destination it is important though to note that the country is the top transshipment hub in Europe for further distribution of commodities to other European countries.

Coal exports from Colombia were impacted by various factors in recent years, leading to a significant drop in exports especially in 2020. The COVID-19 pandemic led to a significant decrease in the power-sector demand. For example, Cerrejon’s exports in January-May 2020 dropped by 3.4 million tons or around 30% year-on-year.⁵⁰

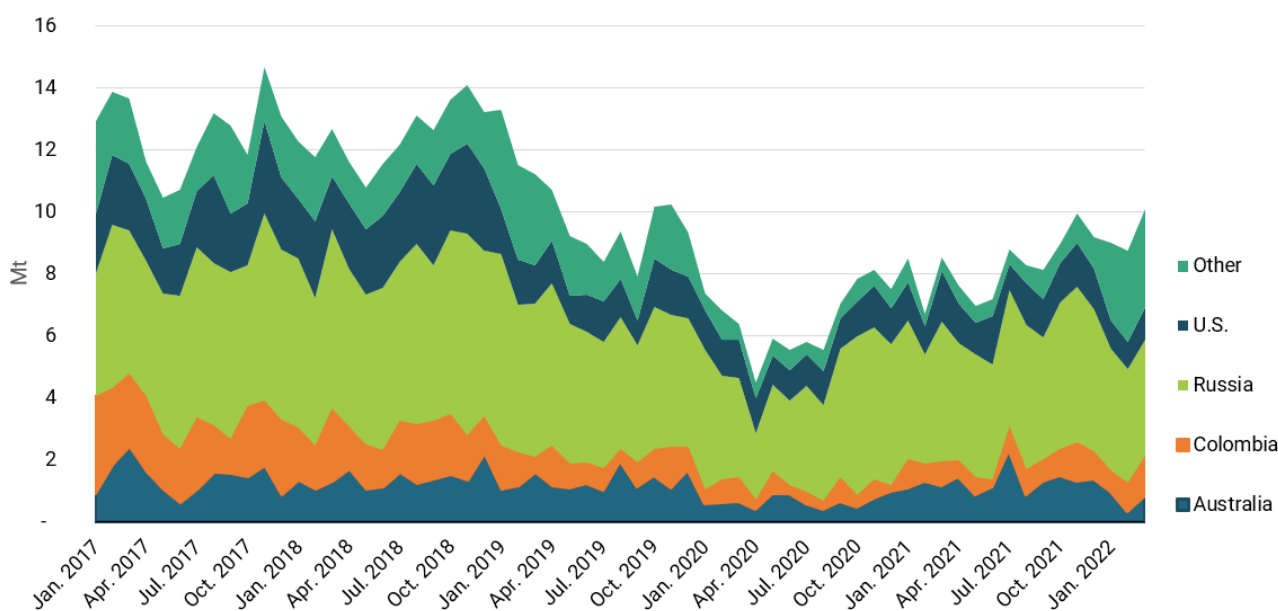
Moreover, workers at the Cerrejon mine were on a three-month strike from September to November 2020, when labour union Sintracarbon signed an agreement running until the end of 2023.⁵¹

1.4 The role of Colombian coal for Europe

In the last 2 years, the pandemic reduced energy use in the EU and at the same time several coal-fired power plants were shut down. Noteworthy events include Portugal becoming coal-free at the end of 2021,⁵² and Spanish Naturgy also closing its coal-fired power plants in the 2nd half of 2021.⁵³ Coal imports from outside the EU picked up again in September 2020 but remain at a lower level than before 2020 (Figure 4).

The role of Colombia has decreased already for several years, dropping from 25.4 million tons in 2017 to 5.8 million tons in 2020. 2021 saw an increase to 8.9 million tons. It remains to be seen in how far the Russian war in Ukraine will impact these developments. While too early for a detailed analysis, a comparison of the first quarter 2022 with the previous year shows an increase in coal imports from Colombia to the EU by 28%.⁵⁴

Figure 4 EU coal imports from non-EU origins, January 2017 to March 2022 (million tons)



Source: Eurostat (2022).

1.5 European energy companies using Colombian coal

A selection of companies relevant on the Dutch and European power market have been selected for a further analysis of the corporate social responsibility approach and will be included in the research report that will be published in August 2022. Shipment data for Colombian coal is only available until February 2021, hampering a detailed analysis in recent coal imports from Colombia by individual market actors. Moreover, large volumes of Colombian coal are handled by traders who then supply energy companies. Information on these relationships is hardly available.

Nonetheless, there are indications that the following European companies that have imported Colombian coal between 2018 and 2021:

- Uniper Group (Germany)
- Vattenfall (Germany)
- EnBW (Germany)
- Onyx Power (Germany)
- Enel (Italy)
- RWE (Germany)

Moreover, in 2022, it was announced that ESB (Ireland) had started importing Colombian coal again.⁵⁵

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