EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

The Director-General

Brussels,
ENER/C/[redacted]

**NOTE TO THE ATTENTION OF MR STEFANO GRASSI,
HEAD OF CABINET TO COMMISSIONER KADRI SIMSON**

Subject: Preferred options in the impact assessment of the methane policy proposals

This note complements the note transmitted to you on 26 March, which contained an initial proposal on the policy options, by providing the results of the analysis of the policy options and choice of preferred options to be included in the impact assessment.

The impact assessment will be submitted to the Regulatory Scrutiny Board on 23 June 2021. Adoption of the proposal is planned for November 2021 (see annex 2). An inception impact assessment was submitted for public consultation from 22 December to 26 January 2021 and an open public consultation (OPC) was held between 5 February and 1 May 2021, which gathered 131 responses. The level of support as well as key outcomes for each of the different policy options that are being assessed in the impact assessment in response to the questionnaire of the OPC is conveyed in the detailed analysis of the options in annex 1. Furthermore, annex 3 contains an overview of the public consultation.

For each policy area, a recap of the policy options and proposed choice of preferred options are provided. An option 0 (business as usual) is not included in the present note, but will be included in the impact assessment for each policy area.

We consider that the policy options proposed below will together contribute to a politically ambitious as well as realistic set of policy proposals on energy-related methane emissions. The proposal is on track for adoption for 1 December, reinforcing the EU's leadership position on addressing methane emissions at the global scale. We propose to include obligations on both EU and non-EU actors with regards to measurement, reporting as well as mitigation of methane emissions linked to EU fossil energy consumption, with the view to making the set of proposal as ambitious as possible while ensuring feasibility and credibility of implementation.

The detailed responses of stakeholders to the open public consultation have been carefully considered and in each policy area, we believe that we have struck the best possible balance between the various views that have been communicated to us, taking into account particularly the recommendations that will lead to real and effective decreases in methane emissions in the EU and in countries supplying the EU.

Each preferred option under each policy area represents what we consider, on the basis of the information that we have today, to be the most ambitious and at the same time feasible options. In the instances whereby we have not recommended the most far-reaching options in

legislative terms, we indicate either the possibility how a higher level of ambition can be achieved at a later stage (for example by already including future empowerment enabling the Commission to review the level of ambition at a later date) or we indicate how other, non-legislative action could achieve effective results.

Overview of the preferred options:

Policy area 1: Improving measuring and reporting (MRV) of methane emissions in the EU

Preferred option: Option 1.2: Legislative measure on measuring and reporting of oil, fossil gas and coal companies.

Legislative measure on oil and fossil gas companies to carry-out asset-level measurements and reporting of direct emissions of methane by transposing relevant parts of the Oil and Gas Methane Partnership (OGMP) 2.0 standard into EU law and applying it to activities in the EU territory. As regards coal methane emissions, as there is no currently available methodology, the legislation would include general principles based on which the exact methodology would be set via a delegated act at a later stage.

Indirect emissions will not be covered at this stage (these are mainly emissions occurring as a result of incomplete combustion). While such emissions are relevant and inclusion has been requested by some NGOs, including them at this stage is neither possible, nor, in some instances, warranted. We do not currently have a sound methodology to measure and report them. OGMP does not cover indirect emissions, and the only international standard that exists on indirect emissions is not widely recommended by stakeholders.

The indirect emissions which were specifically requested to be included such as methane emissions from plastics production or from oil refining are low according to data from national greenhouse gas (GHG) inventories and are already covered in an EU measurement and reporting regulation: the European Pollutants Database. There is therefore a risk of double regulation. The largest share of indirect emissions according to GHG inventories occur at the consumption stage in the residential sector (and are mainly methane slip from solid biomass and coal consumption), so very diffuse and difficult to impose measuring and reporting responsibilities via the upcoming legislation. As a complementary action, given the importance of improving the picture on all methane emissions, and to ensure companies are made responsible for all their emissions, we propose to work with industry (including manufacturers of fuel consuming end use appliances) on a possible a voluntary initiative or a possible industry standard to tackle indirect emissions. In addition, we might consider further guidance or an empowerment for a later stage. We will also explore the possibilities of further reinforcing mitigation of methane slip from end use appliances in ecodesign standards.

Policy area 2: Mitigation of methane emissions in the EU

Preferred option: Option 2.3 *(adapted):* ***Legislative measure on mitigation of direct methane emissions in the oil, fossil gas and coal sectors.***

This measure covers leak detection and repair and a ban on routine venting and flaring, both applicable to the oil and gas sectors, as well as specific requirements to recover and use coal mine methane in the case of both operating and non-operating (closed) mines.

For the inclusion of coal to be successful, it would be crucial to include such investments under the current revision of the State aid guidelines for energy and environmental protection (the future 'Climate, energy and environment State aid guidelines – CEEAG), as the current coal mine methane emission reduction schemes in existence in the EU, which have proven effective, rely on subsidies. This was not included in the version sent for the inter-service consultation by DG COMP but we have included a proposal to this effect in our reply to it.

At this stage, we do not recommend to propose a performance requirement (relative or absolute) or target in the initial legislation. The main reason for it is lack of proper measurements and reliable data. Without this it is difficult to come up with an appropriate standard and to enforce it on companies. All stakeholders (including NGOs) agree on this.

But such an instrument could be appealing, as it allows regulated entities to choose themselves how best to abate their methane emissions, and could potentially play a role alongside the mitigation requirements included in the preferred option, even if we consider that requirements on leakage detection and repair and a ban on venting and flaring will already achieve considerable methane emission reductions. We propose therefore that it could be considered at a later date, once we have a robust measurement and reporting framework in place and data is available. To this effect, we could already include in the legislative proposal the empowerment to assess the need to put in place such performance requirements or standards in the future. Key MEPs, in particular Jutta Paulus, have explicitly spoken in favour of the idea of empowerment through a delegated act. We propose therefore for the Commissioner's consideration the possibility to already include such empowerment in our proposals.

As regards indirect emissions, the same considerations as for policy area 1 apply.

Policy area 3 - Measuring, reporting and mitigating methane emissions linked to EU fossil fuel consumption but occurring outside the EU

Preferred option: **A combination of options 3.1 and 3.3**: **which amounts to diplomatic action and the development of a voluntary transparency instrument as well as a mandatory measure to provide information on whether the monitoring, reporting, verification, and mitigation of methane emissions of oil, fossil gas and coal consumed in the EU was followed in the case of imports.**

In more detail:

Option 3.1:

1. Encourage all relevant non-EU actors in the fossil energy production and supply chain linked to oil, fossil gas and coal consumed in the EU to voluntarily agree to deliver methane emissions measurements according to Oil and Gas Methane Partnership (OGMP) principles, and tasking the International Methane Emissions Observatory (IMEO) with compiling and publishing a methane-supply index (MSI) at EU and international level, composed using existing and reported data from countries' emissions inventories as well as satellite data and, in time, global data processed and published by the IMEO.

Option 3.3:

2. Create a mandatory label/certificate. We propose for the EU to develop and establish a WTO compliant label for fossil energy imports into the EU, containing the following, cumulative, key pieces of information:
   - Proof that mirroring of EU legislation on measurement and reporting and mitigation of methane emissions (via leakage detection and repair and limits to venting and flaring) has been carried out in the countries where the fossil energy is produced throughout the supply chain;
   - Indication of whether the fossil energy is being purchased from a company that has signed up to the OGMP;

3. Super emitter global methane monitoring tool
   In addition, we propose that the EU set up its own global methane monitoring tool based on Copernicus satellite inputs which will regularly publish the results of aerial monitoring of super emitters from around the world (complementing the work of IMEO) and which will provide continuous updates on the magnitude, recurrence of high methane-emitting sources and their exact location. It could also have a methane regulation reporting module, which would regularly publish progress on methane regulations of key exporting countries to the EU. It would not duplicate what the IMEO is aiming to do, as even if data from aerial tools like Copernicus sattelites will be available to IMEO, the aim of IMEO is not to produce a super emitter monitoring tool, but to use the data to verify and reconcile company-level measurements of methane emissions. In addition, it would be completely independent from (success of) the IMEO.

Such a proposal under option 3.3 would enhance transparency, but it would not lead to refusing market entry to fossil fuels that do not comply with the EU measurement, reporting and mitigation measures. In addition, this option would further incentivise international companies to sign up to OGMP or to adopt similar measurement, reporting and mitigation measures and to cooperate with the EU. As regards the obligation of a label, we will reach out to DG Trade in order to ensure that it will be designed in a WTO-compliant way.

At this stage we do not think that the EU is in a realistic position to obligate energy suppliers via stronger legal means as it would be unable to verify or enforce compliance with the measurement, reporting and mitigation obligations.

As regards the possibility to impose a performance requirement or standard, the same considerations as under policy area 2 are valid also in this context. The requirements on

which information needs to be included in the label could evolve over time based on additional data becoming available and in particular to take into account the possibility to adopt performance requirements via a delegated act. We therefore suggest to provide the possibility in the legislation to amend the required content of the label. In order to comply with WTO, we could not impose a more stringent obligation on imported products than on domestic ones (i.e. we can only impose a performance standard on imported gas if such a standard is applicable within the EU). The empowerment to review such an instrument could however already make it clear that it should consider the possibility of such an instrument including non-EU suppliers in its scope.

Another consideration is whether stronger consequences could be attached, in particular if a performance requirement is established in the future. Some stakeholders speak in favour of measures like **pricing methane emissions or a ban**. Various models of **pricing** exists, such as a market-based methane emissions pricing, taxation or a methane border adjustment mechanism, which could be linked to a standard (e.g. the tax or the border adjustment would apply to the emissions that go beyond the applicable EU standard). Such measures could be explored once sufficient data are available and a standard exists in subsequent legislation. As regards the option of a **ban**, we consider it unrealistic at this stage and in the near future to require that fossil fuel coming from outside the EU which do not respect these obligations could be refused access to the EU market considering our import dependence (95% for oil, 83% for fossil gas) and potential risk to security of supply.

We kindly ask for the Commissioner's guidance as regards our proposals for the preferred options in order to finalise the Impact Assessment for submission to the Regulatory Scrutiny Board.

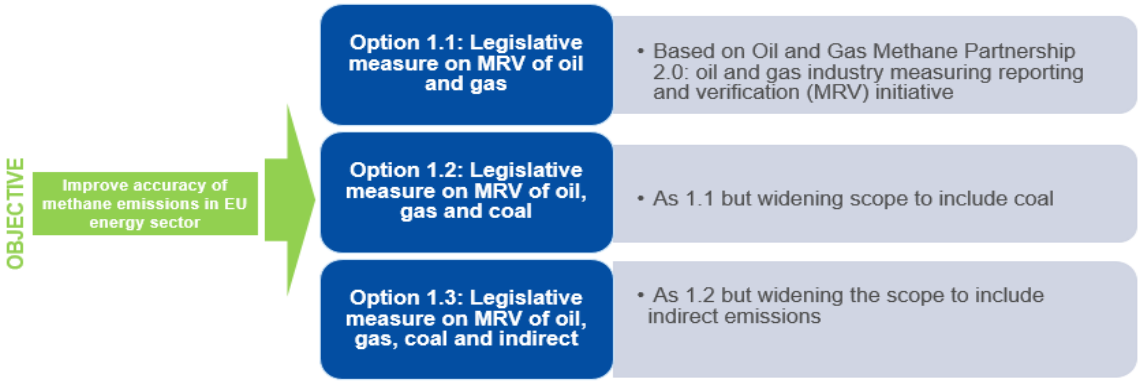
[e-signed]

Ditte Juul Jørgensen

Annex 1: Detailed analysis of the options

1. Policy area 1: Improving measuring and reporting of methane emissions in the EU

i. Policy options



Option 1.1: **Legislative measure on measuring and reporting of oil and fossil gas companies**. Legislative measure on oil and fossil gas companies to carry-out asset-level measurements and reporting of direct emissions of methane by transposing relevant parts of the Oil and Gas Methane Partnership (OGMP) 2.0 standard into EU law and applying it to activities in the EU territory.

Option 1.2: **Legislative measure on measuring and reporting of oil, fossil gas and coal companies.** As per 1.1 but widening the scope to include coal methane emissions.

Option 1.3: **Legislative measure on measuring and reporting of direct and indirect emissions.** As option 1.2 but widening the scope further to include indirect emissions, which occur from final end use/consumption of energy.

Energy sector methane emissions also occur when oil, fossil gas or coal are used/processed in the production of other products or used as fuels. Such (indirect) emissions represent almost a third of methane emissions in the EU. Such emissions are not covered by the Oil and Gas Methane Partnership.

Some oil and gas companies are already voluntarily reporting such indirect emissions, and IPIECA (the global oil and gas industry association for advancing environmental and social performance) recommends that oil and gas companies should undertake reporting on the basis of an existing international standard – the GHG Protocol scope 3 reporting standard. This option seeks to set binding rules on companies to report their indirect emissions based on that standard or any other more suitable standard, depending on responses to the open public consultation.

ii. Comparison of policy options and choice of preferred option

We propose to favour policy option 1.2: Legislative measure on measuring and reporting of oil, fossil gas and coal companies. There is widespread support among stakeholders for transposing OGMP into an EU measuring reporting and verification (MRV) regulation (78% of responses in the OPC) for the oil and gas sectors, which is also backed by all the EU oil and gas trade associations. There is also very high and widespread support for including coal into an MRV regulation (96% of responses), including by the coal industry.

Among the views expressing the need not to follow exactly the OGMP framework, a certain number of key points are worth highlighting and taking into account in the drafting of the proposal, among which:

1. It lacks certainty and clarity regarding verification. The OGMP framework gives the role of verification only to the International Methane Emissions Observatory (IMEO). We propose to follow the exmaple of existing EU MRV legislation such as the Monitoring Mechanism Regulation or the European Pollutant Release and Transfer Register, and add an intermediary role for relevant authorities or independent third parties before final check by the IMEO.

2. The Commission and national governments should be empowered with the authority to secure access to company data, with the aim to deliver transparency at the company and, over time, at the facility level, noting that OGMP aggregates all data and only publishes a summary of the data on an annual basis. Again, we propose to seek inspiration from existing legislation and in any case to allow some company data considered confidential to not be divulged.

In addition, the coal industry is adamant that OGMP, being tailor-made for the oil and gas industry, is not suitable for coal. As no EU or international coal-specific MRV standard exists, it would have to be developed. The coal industry (Euracoal) already started working on detailed proposals for a coal specific MRV framework in 2020, and propose that the Commission set up and chair an expert group composed of coal stakeholders to come up with a proposal. We propose to respond favourably to this proposal, though would rather suggest an observer role for the Commission, and to express the need to ensure wide and active participation of all stakeholders.

Why not opt for option 1.3, which also includes indirect emissions? Because:

- Less than half of responses to the OPC were in support to include indirect emissions from any one of a list of categories provided in the OPC (industry, power generation, transport, residential or other);
- Methane emissions from industrial installations such as oil refining, chemicals and plastics (specific sectors which certain takeholders asked us to include in our proposals) are not only relatively small according to the national grenhouse gas inventories data but they are already covered in the European Pollutant Release and Transfer Register, which is itself an MRV regulation, which covers methane among its pollutants and which requires plant-specific data to be reported.
- There is no consensus on any existing international standards among stakeholders on indirect emissions.

Nevertheless, some indirect emissions can be large (for instance, methane emissions in the residential sector represent 17% of methane emissions in the EU according to national inventories data), and the oil, fossil gas and coal sectors should not be allowed to claim that they do not have a shared responsibility for emissions which they are not directly responsible for but which are the result of methane losses occurring during the processing, and/or combustion/consumption stages of their product.

Obtaining better information on these sources is also warranted in order to have a full picture of methane emissions caused by these fossil fuels. Taking the example of coal, direct

emissions represent already 32% of overall energy sector-related methane emissions in the EU (1,000 Kilotons of methane). But if the emissions from methane linked to coal fuel combustion in households are added , that's another 130 Kilotons of methane, which bumps up the share of emissions from coal to 36%.

There are existing voluntary initiatives out there from a number of oil and gas companies which are reporting their indirect emissions.

We therefore propose as a compromise that industry voluntary initiatives are further encouraged, and to ask the industry to voluntarily sign up to an existing international standard, to elaborate a new standard or work to increase the scope of OGMP to indirect emissions.

In addition, we might consider further guidance or an empowerment for a later stage. We will also explore the possibilities of further reinforcing mitigation of methane slip from end use appliances in ecodesign standards.

Note on impacts of a legislative measure to improve measuring and report methane emissions in the EU:

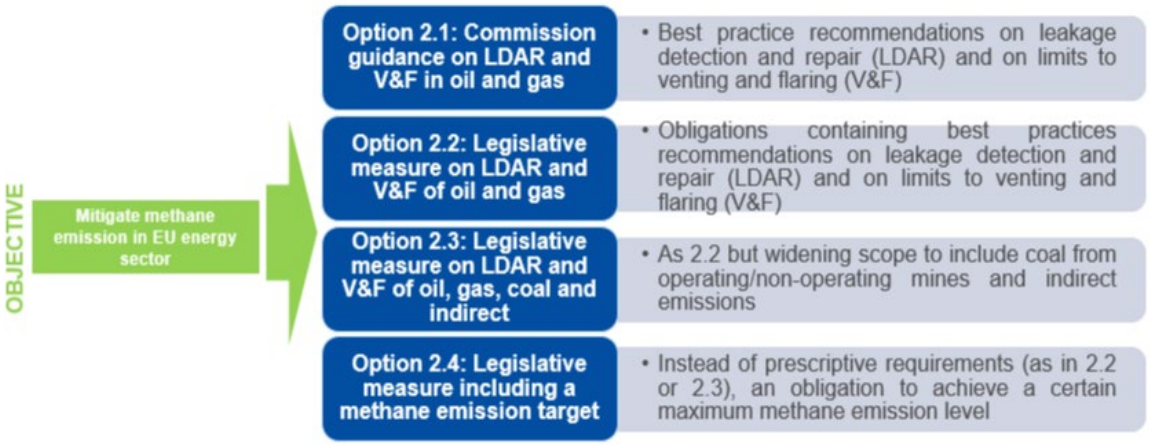
As regards the assessment of the administrative burden, no public figures exist and so far the industry has not provided any numbers, although the industry associations were approached and asked to provide some numbers. UNEP (in the context of OGMP) was also approached but responded that they did not carry out such estimations.

1. While we will further continue our outreach to industry to get figures, we note the high and widespread support for including MRV of methane emissions into legislation, including by industry (gas, oil and coal) and the fact that EU companies are already incurring reporting costs as part of their reporting of emissions data (for all greenhouse gases, not just methane) to national authorities in the context of national inventories greenhouse gas data reporting. Furthermore, many EU companies have signed up to OGMP, meaning that they will already be incurring the costs of OGMP reporting.
2. For regulated businesses, the Council of European Energy Regulators (CEER) has already expressed the view that TSOs, storage operators and LNG operators, as well as DSOs above a size threshold, should be obliged to measure and report their methane emissions according to a standard methodology, and that national regulatory authorities are willing to recognize efficiently incurred costs for regulated entities[1].

Policy area 2 - Mitigation of methane emissions in the EU

i. Policy options

[1] Presentation by CEER at the 16th of March EC workshop on a regulatory approach on leak detection and repair.



Option 2.1: **Commission guidance on mitigation of methane emissions in the oil and fossil gas sectors.** Commission guidance containing best practice recommendations covering key aspects of the main prescriptive measures typically used to mitigate methane emissions in the oil and fossil gas sector, which includes obligations on methane leakage detection and repair and limits on venting and flaring.

Option 2.2: **Legislative measure on mitigation of methane emissions in the oil and fossil gas sectors.** As per option 2.1 but a legislative measure.

Option 2.3: **Legislative measure on mitigation of methane emissions in the oil, fossil gas and coal sectors as well as indirect emissions**. As per option 2.2 but with an increased scope of emissions, covering a) coal from both operating and non-operating mines, and b) indirect emissions from the oil, fossil gas and coal value chain.

Option 2.4: **Legislative measure to achieve a certain reduction in methane emissions via a performance requirement (target or standard)**. Instead of specific, prescriptive, measures dictating how to reduce methane emissions in the energy sector (as per options 2.1 to 2.3), another approach to mitigating methane emissions is via performance or outcome-based requirements which require companies to meet a specific emissions target for a specific piece of equipment or facility, but without specifying how the company must meet that target. This option was added since the last note, in line with the methane strategy, in order to mirror the option on targets/standards that could apply to imported gas. This is necessary, because for a measure to be WTO compliant, it must treat domestic and imported products in a non-discriminatory manner.

ii. Comparison of policy options and choice of preferred option

We propose to favour a version of option 2.3:, in that it will include gas, oil, coal, covering both leaks and planned (vented and flared) emissions, but not indirect emissions.

Following the choice and reasoning for not proposing an obligation to report indirect emissions under policy area 1, it stands to reason; we have too little clarity and understanding on the causes of much of these emissions to know what kind of mitigation measures would need to be considered. In addition, in the case of methane emissions from oil refining, chemicals and plastics production plants, these are all covered by the Industrial Emissions Directive (IED), which regulates pollutant emissions from industrial installations. It requires

installations undertaking certain industrial activities to operate in accordance with a permit and conditions which include emission limit values based on best available techniques.

Note however that the scope of the IED excludes all fossil gas upstream mid and downstream (LNG, underground gas storage, transmission, distribution) as well as coal mining/extraction, which itself provides an additional justification for covering all these sectors in the present proposal.

All oil and gas industry associations are in support of putting into EU legislation an obligation on leak detection and repair (LDAR), and NGOs are also widely supportive of such an obligation. Such an obligation is also widely supported by National Regulatory Authorities.

As regards a ban on routine venting and flaring, all NGOs and industry believe that it is feasible to phase out routine venting and flaring associated with energy produced and consumed in the EU. Such an obligation is also widely supported by National Regulatory Authorities. The industry responses are more nuanced than those of NGOs, but it is clear from the detailed responses of industry to the OPC questions on what a ban on routine venting and flaring should contain that they conditionally support such an obligation. The industry association representing the mid and downstream gas sectors responded that in those sectors, gas can always be dispatched to the market, and therefore that there is no justification either to vent or flare it. The industry representing the upstream gas and oil industry considers that by definition, venting during gas production is always safety venting/non-routine venting, as gas vented cannot be sold and is a loss. Such a statement can be used to make the case for ensuring that that is true via legislation. In addition, many oil companies (a number of which are also fossil gas companies) have committed to achieving zero routine flaring by 2030, as signatories to the World Bank zero routine flaring by 2030 initiative[2], so it could be easily argued, especially if we ensure a sufficiently comparable approach to that of the World Bank's in our proposals, that they could not reasonably oppose it.

On both obligations, on LDAR and restrictions on venting and flaring for oil and gas companies, both industry and NGOs have provided very detailed replies of what should be contained in them.

On the costs and benefits of mitigation of methane emissions in the energy sector

As regards the assessment of the administrative burden, there are a number of publically available estimations on the costs of mitigating methane emissions in the energy sector (especially oil and gas, much less so coal) which reveal that they can pay for themselves, especially at times of high fossil gas prices (estimations from the IEA and from UNEP), as well as GAINS projections (from the CTP Impact Assessment) which confirm that, and which will be reflected in the impact assessment in favour of putting such measures into legislation. This is especially true for LDAR. Estimations from UNEP also include benefits of reducing methane emissions, which will also be included in the analysis. Though the oil

[2] Company endorsers of the initiative include BP, Chevron, ConocoPhillips, Eni, Equinor, Entreprise Tunisienne d'Activités Pétrolières, Galp Energia, Kuwait Oil Company, Nigerian National Petroleum Corporation (NNPC), Total, Sonatrach, Shell, Socar, Repsol, Wintershall Dea, to name but a few, the rest can be found here: https://www.worldbank.org/en/programs/zero-routine-flaring-by-2030#4

and gas industry disputes some of the costs estimations - especially those of the IEA – they have not to date not proposed alternative figures.

On coal, we are hopeful that we will be able to obtain information submitted by the German government in relation to their support scheme promoting the use of coal mine methane to produce electricity.

On obligating coal mines to mitigate their methane emissions

As regards the inclusion of mitigation measures of coal mine methane in the proposal, the public consultation yielded high and widespread support (80% of responses). Interestingly, although the European coal federation, Euracoal, did not respond positively, Polska Grupa Górnicza, which is Poland's largest mining group, did.

There are however many arguments in favour of including coal in the mitigation measures of the proposal which should allow us to make a convincing case in the impact assessment, in addition to the wide support expressed in the pubic consultation:

1. The existence of proven and effective regulations in the EU (such as France, Germany and the UK) and which have led to significant reductions in direct emissions of methane in all of those countries (from operating and/or non-operating mines).
2. In Poland (close to 70% of total emissions from coal mining in the EU) and Romania (second biggest emitter, around 18% of emissions), methane emissions from coal mines have fallen by only 17% for Poland, and have stayed the same for Romania, since 1990. EU level action is therefore clearly warranted.
3. Recent academic study and projections show that global coal mine methane emissions will continue to grow in the future, even with declining coal production.
4. NGOs are agreed that although the EU should phase out the use of coal as soon as possible, until such a time accompanying measures to abate methane emissions (as well as in the case of abandoned coal mines) are needed.

The proviso, however, is that coal mine methane emissions, with few exceptions, do not pay for themselves, quite unlike in the case of oil and gas. The successful schemes we speak of in France, Germany and the UK all have in common that specific support mechanisms have been put in place to recover and use methane from operating and/or closed/abandoned mines for power generation which function with a dedicated feed-in tariff. In addition, in Germany, methane from both operating and non-operating mines are treated as a renewable resource in the country's Renewable Energy Sources Act (EEG).

In this context it will be therefore crucial that the Guidelines on State aid for environmental protection and energy include relevant measures for this, which is not currently the case in the version sent for ISC by DG COMP.

Why not recommend option 2.4, in complement to the other options?

At this stage, we do not recommend to propose a performance requirement (relative or absolute) or target in the initial legislation. The main reason for it is lack of proper measurements and reliable data. Without this it is difficult to come up with an appropriate standard and to enforce it on companies. All stakeholders (including NGOs) agree on this.

But such an instrument is appealing, as it allows regulated entities to choose themselves how best to abate their methane emissions. We propose therefore that it could be considered at a later date, once we have a robust measurement and reporting framework in place and data is available. To this effect, we could already include in the legislative proposal the empowerment for a delegated act to set such performance requirements or standards in the future. Key MEPs, in particular Jutta Paulus, have explicitly spoken in favour of the idea of empowerment through a delegated act. We propose therefore for the Commissioner's consideration the possibility to already include such empowerment in our proposals.

There are several ways such performance requirements could be set:

1. Absolute targets: which represents an absolute target reduction in methane emissions of an activity;
2. Intensity target: which represents a relative target reduction in methane emissions of an activity, usually using total methane emissions of an activity as a share of total production/energy sold.

The latter is the type that all stakeholders (NGOs and industry included) in favour of such an instrument refer to in their policy recommendations to mitigate methane emissions in the energy sector. The advantage of such an approach is that it allows straightforward comparisons between entities with different production levels.

12 major oil and gas companies have committed to a voluntary methane emissions intensity target via the Oil and Gas Climate Initiative (OGCI), with the ambition to reduce the collective average methane intensity of their aggregated upstream oil & gas operations to below 0.25 % by 2025 (from a baseline of 0.32 % in 2017), with an ambition to achieve a level of 0.2 %.

A number of oil and gas companies have also signed up to absolute targets. And according to an industry report that includes a survey of such targets, there are apparently many more oil and/or gas companies that have absolute rather than intensity (greenhouse gas or methane specific) emission reduction targets[3].

The problem common to all these types of requirements is that until there is a full and accurate understanding of the levels and magnitude of methane emissions on which they are based, one cannot assess their effectiveness. The only way, for instance, that we could gauge whether the OGCI initiative (or any target on methane emission reductions by any entity, whether company or country) is meaningful, and is really achieving the methane emission reductions it claims to be achieving, is if we had access to accurate, representative and independently verified methane emissions data based on plant-level measurements for those companies, but we do not have this data.

However if we are successful in putting in place into EU legislation our favoured options in policy area I, with time we should be in a position to consider such requirements. Indeed, one of the key justifications for developing robust MRV that leads to plant-level methane emission measurements, reporting and verification is that it is the necessary basis for being able to consider a much broader methane emission mitigation toolkit than we are currently able to do, as certain instruments, such as performance-based requirements or economic

[3] IOGP/GIE/MARCOGAS report on guidelines for methane emissions target setting, Aril 2020

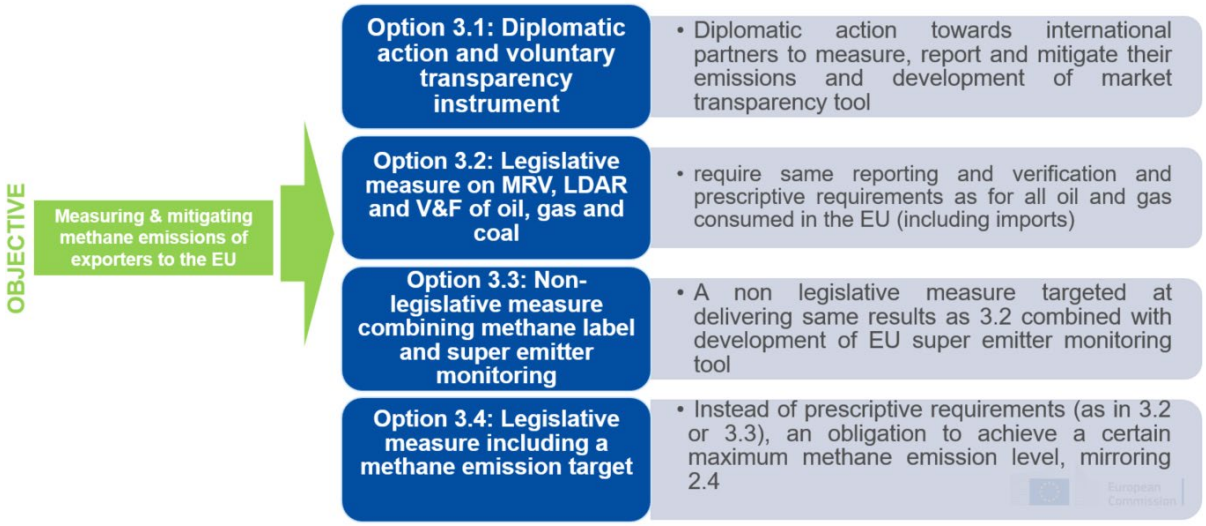
instruments, depend on it. And this is something that stakeholders who responded to the OPC overwhelmingly agree with, even if many of them are very much in support of such instruments. In principle, it could be envisaged in the legislation to seek empowerment to adopt such performance targets or standards in the future.
The public consultation on the use of performance requirements yielded the following answers:

1. 32% of responses consider that prescriptive mitigation requirements, (such as MRV, LDAR and V&F), in and of themselves, can be sufficient to drive further decreases in methane emissions.
2. 64% of responses consider that performance-based requirements are necessary to achieve significant methane emissions reductions in the energy sector.
3. 94% of responses consider that performance-based requirements first need a robust measurement and reporting regime and that they require an accurate baseline understanding of the level of emissions.

Policy area 3 – Measuring, reporting and mitigating methane emissions linked to EU fossil fuel consumption but occurring outside the EU

While under policy areas 1 and 2 only methane emissions linked to the energy sector occurring within the EU are considered, policy area 3 examines various policy options which could potentially be used if the scope was increased to include all methane emissions linked to the consumption of fossil fuels in the EU, therefore including the same obligations as on EU actors also on non-EU actors selling oil and gas into the EU market.

i. Policy options



Option 3.1: **Diplomatic action and voluntary transparency instrument**. This would include diplomatic action with the objective to get non-EU actors exporting fossil energy to the EU to voluntarily agree to deliver methane emissions measurements according to OGMP principles.

This option also includes using this information for the development of an international market transparency tool (Market Supply Index, via the International Methane emissions

Observatory (IMEO)) which will provide methane emission information from different sources of fossil energy from around the globe. The intention with such an instrument would be to empower buyers of fossil energy for consumption in the EU or elsewhere to voluntarily make informed purchasing decisions on the basis of the methane emissions of fossil energy sources.

Option 3.2: **Legislative measure on measuring, reporting and mitigation of fossil energy sector emissions**. Mirrors favoured options emerging from policy areas 1 and 2, but applying them also to oil and fossil gas imported to the EU.

Option 3.3: **Non-legislative measure on mitigation of methane emissions in the oil and fossil gas sectors.** With the aim of achieving the same results as 3.2 but via non-legislative means and including the development of an EU initiative to develop a global super emitter monitoring tool as an incentive

Option 3.4: **Legislative measure to achieve a certain reduction in methane emissions.** Mirrors option 2.4 exactly but applying it also to oil and fossil gas imported to the EU.

ii. Comparison of policy options and choice of preferred option

There was high and widespread support expressed via responses to the public consultation on the notion of covering all emissions linked to EU fossil energy consumption, including those occurring outside the EU. The results of the public consultation were as follows:

- 96% of responses are supportive of the development of a methane transparency tool and the setting up of the IMEO and the development of a methane supply index;
    - 12% of responses consider that such a market transparency tool should play a central role, and be the key instrument to provide the energy sector the incentives to reduce their methane emissions;
    - 70% of responses consider that such a market transparency tool should play a role alongside and together with obligations on MRV, LDAR and limits on venting and flaring on exporters of fossil energy into the EU;
    - 5% of responses consider that such a market transparency tool should play a role together with methane intensity standards on exporters of fossil energy into the EU.
- 72% of responses consider that EU legislation on methane emissions in the energy sector should extend obligations to companies importing fossil energy into the EU/companies exporting fossil energy to the EU.
- 65% of responses consider that it is feasible to impose the same obligations on MRV, LDAR and venting and flaring equally on all actors of the oil and gas value chain for oil and gas consumed in the EU, including actors from outside of the EU.
- 86% of responses are supportive of EU legislation imposing performance requirements on companies exporting fossil energy to the EU

We propose to favour option 3.1, in combination with option 3.3.

Option 3.1 This option includes tasking the International Methane Emissions Observatory (IMEO) with compiling and publishing a methane-supply index (MSI) at EU and international level, composed using existing and reported data from countries' emissions

inventories as well as satellite data and, in time, global data processed and published by the IMEO.

The widespread publication and recognition of such data could act as a strong incentive for operators to put in place effective regulations and to reduce their methane emissions.

The appeal of such an option is that it avoids all the difficult political, technical and enforcement questions linked to the prospect of attempting to obligate exporters of fossil energy to the EU via legislative means.

The success of such an option is however very uncertain, as it relies on a number of prerequisites:

1. It relies on the success of the IMEO, which is not yet proven at the time of writing. This depends on the willingness of at least a few key fossil producing countries and a few key fossil importing countries (other than the EU) supporting the initiative;

2. Even if 1 was fulfilled, to ensure a comprehensive coverage of emissions, it requires at the very least that all important fossil energy producing countries agree to measure and report their methane emissions according to (at least) OGMP level requirements;

3. Even if 2 was fulfilled, it relies on agreement (by these same countries) for the IMEO to compile and publish a methane-supply index giving full transparency on their methane emissions and being relaxed about what that might reveal about their practices and how it might be used by fossil energy buyers.

For these reasons, option 3.1 by itself is insufficient.

Option 3.2 mirrors two options that we have proposed as favoured options in the previous policy areas, and that we think we can convincingly defend in the context of methane emissions occurring in the EU territory. We could make the case for 3.2 also on the basis of wide support by stakeholders to cover all sources of emissions linked to EU fossil fuel consumption. The appeal of such an option is that it is based on a morally uncontestable rationale that if companies based in the EU which produce or transport energy which is consumed in the EU should be obligated to meet certain prescriptive requirements, then so too should companies that produce or transport energy outside of the EU but which is destined for final consumption in the EU.

Other than questions of ensuring compliance and enforcement of EU regulations in third countries, a central issue is with regards to what would be considered the most effective incentive in terms of the consequence of non-compliance. Stakeholders that are most vocal about the need to regulate also non-EU providers of fossil energy to the EU want to condition EU market entry of fossil energy on suppliers meeting conditions which, in the case of options 3.2 and 3.3 would amount to prohibition from placing fossil gas on the EU market without systematic and mandatory methane monitoring; when flaring occurs during production and processing unless evidence is provided that the limited use of flaring is for a legitimate purpose; without evidence of mandatory and periodic (at least quarterly) LDAR[4].

[4] See Climate Action Network response to OPC.

They consider that such an approach would be WTO compliant on the basis that under WTO jurisprudence, the EU may condition market access upon compliance with certain measures so long as well-defined conditions are met, for example that the measures are equally applicable to EU domestic actors, that they are necessary to achieve the level of protection set out by the EU, that they are not applied in a discriminatory manner and that they afford third countries (or, more specifically, their national actors subject to the measures) the ability to comply with alternative measures that are comparable in effectiveness.

This is indeed the approach that is typically taken in EU regulations which cover non-EU entities in their scope. If we take the example of existing EU regulations on products or even renewable fuels (the RED), the penalty for failing to comply with mandatory minimum requirements which can include final product characteristics as well as production requirements is the impossibility to access EU markets[5].

There are however two major issues with taking such an approach in these methane legislative proposals:

1. In the context of what we have mind already for regulations in the EU in policy areas 1 and 2 on MRV, LDAR and on venting and flaring, the intention is not to condition market entry upon compliance with EU methane legislation, and none of the existing relevant EU regulations which either regulate MRV or mitigation of methane emissions (such as the Monitoring Mechanism Regulation, European Pollutant Registry or the Industrial Emissions Directive) have such an approach, so doing it for exports into the EU would be a non-starter;

2. The EU is dependent on imports for 95% of its oil consumption and 83% of its fossil gas consumption, such a measure could therefore put EU energy security at risk.

Option 3.3 aims at achieving the same results as option 3.2 but taking a **non-legislative approach** with an additional incentive component. It is composed of two complementary parts:

1. **Create a mandatory label/certificate. We propose for the EU to develop and establish a WTO compliant label for fossil energy imports into the EU, containing the following, cumulative, pieces of information:**

    - Proof that mirroring of EU legislation on measurement and reporting and mitigation of methane emissions (via leakage detection and repair and limits to venting and flaring) has been carried out in the countries where the fossil energy is produced throughout the supply chain;

    - Indication of whether the fossil energy is being purchased from a company that has signed up to the OGMP;

2. **Super emitter global methane monitoring tool**

[5] Under RED, access to the market is possible, but the products not meeting the sustainability criteria cannot get subsidies nor be counted towards the EU Member States' renewable targets.

In addition, we propose that the EU set up its own global methane monitoring tool based on Copernicus satellite inputs which will regularly publish the results of aerial monitoring of super emitters from around the world (complementing the work of IMEO) and which will provide continuous updates on the magnitude, recurrence of high methane-emitting sources and their exact location. It could also have a methane regulation reporting module, which would regularly publish progress on methane regulations of key exporting countries to the EU.

Such a proposal under option 3.3 would enhance transparency, but it would not lead to refusing market entry to fossil fuels that do not comply with the EU measurement, reporting and mitigation measures. In addition, this option would further incentivise international companies to sign up to OGMP or to adopt similar measurement, reporting and mitigation measures and to cooperate with the EU. As regards the obligation of a label, we will reach out to DG Trade in order to ensure that it will be designed in a WTO-compliant way.

It would not duplicate what the IMEO is aiming to do, as even if data from aerial tools like Copernicus sattelites will be available to IMEO, the aim of IMEO is not to produce a super emitter monitoring tool, but to use the data to verify and reconcile company-level measurements of methane emissions. In addition, it would be completely independent from (success of) the IMEO.

At this stage we do not think that the EU is in a realistic position to obligate energy suppliers via stronger legal means as it would be unable to verify or enforce compliance with the measurement, reporting and mitigation obligations.

Option 3.4 is not retained **for the same reason that option 2.4 is not retained**, we simply do not have the data today to allow us to put it into our proposals. As regards the possibility to impose a performance requirement or standard, the same considerations as under policy area 2 are valid also in this context. The requirements on which information needs to be included in the label could evolve over time based on additional data becoming available and in particular to take into account the possibility to adopt performance requirements via a delegated act. We therefore suggest to provide the possibility in the legislation to amend the required content of the label. In order to comply with WTO, we could not impose a more stringent obligation on imported products than on domestic ones (i.e. we can only impose a performance standard on imported gas if such a standard is applicable within the EU). The empowerment to review such an instrument could however already make it clear that it should consider the possibility of such an instrument including non-EU suppliers in its scope.

Another consideration is whether stronger consequences could be attached, in particular if a performance requirement is established in the future. Some stakeholders advocate for measures like **pricing methane emissions or a ban**. Various models of **pricing** exists, such as a market-based methane emissions pricing, taxation or a methane border adjustment mechanism, which could be linked to a standard (e.g. the tax or the border adjustment would apply to the emissions that go beyond the applicable EU standard). Such measures could be explored once sufficient data are available and a standard exists in subsequent legislation. As regards the option of a **ban**, we consider it unrealistic at this stage and in the near future to require that fossil fuel coming from outside the EU which do not respect these obligations could be refused access to the EU market considering our import dependence (95% for oil, 83% for fossil gas) and potential risk to security of supply.

Annex 2: Timeline methane legislative proposal

Action	Completed on /Target Date
Publication of the Roadmap / Inception Impact Assessment	22 December 2020 – 26 January 2021
Launch public consultation (12 weeks)	**5 February – 1 May 2021**
Drafting the impact assessment SWD:	
• Submission of the general structure, problem definition, problem drivers, objectives and policy options to Cabinet	26 March
• Submission of preferred policy options to Cabinet	28 May 2021
• JF discussions on policy options	31 March 2021 (policy options) 2 June 2021 (preferred options)
ISSG meetings to discuss the evaluation and IA SWDs	20 May 2021 June 2021
Submit draft evaluation and IA to DG and CAB for final approval (including assessment of the options)	June 2021
Submission of the IA to the Regulatory Scrutiny Board	**23 June 2021**
Regulatory Scrutiny Board	**22 July 2021**
Drafting legislative proposal	May –September 2021
• Submission of the first draft legislative proposals to DG	13 September
• Continuous updates in JF until adoption	
Draft proposal + evaluation SWD + IA SWD by DG/CAB sent for approval	20 September
Launch ISC (Evaluation +IA SWDs +proposal) + translation	**05 October**
Submission of revised proposal to Cab	05 November
Launch adoption procedure	**18 November**
RSCC	**25 November**
Hebdo	**29 November**
Adoption by the College	**1 December**

Annex 3: statistics of responses to methane legislative proposal OPC questionnaire

The questionnaire gathered 131 participants of which 55 came from companies or business organisations, 28 from business associations, 22 from EU citizens, 11 from NGOs, 6 from Public authorities, 4 from academic/research institutions, 1 from non-EU citizen and 4 from others.

In terms of origins of responses, 27 answers came from France out of which 18 identical or very similar. Many replies came from Belgium with 21 answers, Germany with 13 answers, Italy with 9 answers. Austria totalled 8 answers. Netherlands, Poland and Spain gathered 7 answers each. Czechia totalled 4 answers. Denmark had 3 answers. Slovakia and Slovenia had 2 answers each. Hungary, Ireland and Latvia totalled 1 answer. A significant number of answers came from outside the EU, starting with the United States with 7 answers, the United Kingdom and Norway with 3 answers, and Japan and Switzerland with 1 answer each.

The results of the OPC are very positive and brought valuable information to elaborate the impact assessment:

- Strong support by stakeholders on prescriptive measuring and mitigation requirements to establish a robust measurement and reporting scheme.
- Most responses support the Commission to base its MRV proposals for oil and gas on the methodology of the OGMP.
- The majority of responses support the inclusion of coal in MRV and mitigation.
- Some stakeholders want to extend the coverage of the scope of the proposals to end-users.
- A majority of stakeholders consider that the legislation should cover all oil and gas entering the EU market.
- On the instruments used for leak detection, respondents did not want to include the type of device used for detecting leaks and the methods used to quantify fugitive leaks.
- On venting and flaring, most stakeholders estimated that it is feasible to eliminate routine venting and flaring associated with energy produced and consumed in the EU, over different times periods. The majority agreed that a common set of definitions and parameters for venting and flaring are necessary.
- A majority of the respondents considered that the overall benefits of putting in place legislative measures to ensure robust and effective measurement, reporting and mitigation of methane emissions outweigh the costs to industry.
- On coal emissions mitigation, for a majority of respondents, the EU regulation should cover coalmine methane.
- On coalmine methane mitigation, safety requirements for ventilation appear to be an important consideration.
- A majority of stakeholders indicated that abandoned mine methane ownership rights should be addressed in EU legislation.