



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

The Director-General

Brussels

ENER.C.2/ [REDACTED] Ares (2021) 7311503

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

Subject: Methane initiative – choice of legal instrument, list of measures and timeline for adoption

This note aims to present (i) the arguments for the choice of legal instrument for the methane legislative proposal, (ii) the main policy measures envisaged for said proposal and (iii) a detailed timeline based on the adoption date of 14 December 2021.

The arguments to prefer a regulation over a directive for the proposal are both legal and policy-based. Those arguments are described in detail in annex. In our view, a regulation is the most suitable legal instrument for the methane initiative.

From the legal point of view, a regulation would allow to impose direct obligations on companies and Member States – rather than target-driven provisions. This would be justified based on the need for harmonised data and measurement requirements and consistency with similar policy areas. The Legal Service has confirmed our understanding, albeit reserving their final position to when they review the draft legislative proposal.

From the political point of view, a regulation would allow us to address the need for legal certainty and urgency in the action to reduce anthropogenic methane emissions, as repeatedly signalled by different stakeholders and, most recently, in the IPCC's sixth Assessment Report. In contrast, directives' lengthy transposition periods, frequent transposition delays, uneven transposition measures and complex conformity checks would significantly defer action.

Before submitting the draft legislative proposal to Commissioner's review, we have prepared a list of policy measures, set out in annex, outlining the elements of the legal provisions we would propose to be reflected in the regulation.

The structure of the act would feature separate chapters for the oil and gas sector, the coal sector, and the tools for methane emissions occurring outside the EU. The oil and gas and coal chapters would each be divided in three sections, expounding the articles on measurement, reporting and verification (MRV) of methane emissions, leak detection and repair (LDAR) programmes, as well as venting and flaring restrictions.

We would request the Commissioner's agreement on the choice of regulation as the legal instrument for this proposal, as well as her approval to continue developing the legal text based on the list of measures described in annex.

Ditte Juul Jørgensen

p.o. Massimo Garribba

1. ANNEX - TYPE OF MEASURES

The proposal would be split into five chapters:

- **Chapter I** concerning the scope of the act, the definitions and the competent authorities to be appointed by the Member States for the purposes of the Regulation.
- **Chapter II** laying down the obligations for the oil and gas sector and **Chapter III** for the coal sector, each divided in several sections for MRV, LDAR and venting and flaring.
- The terms for the ‘label’ and the super-emitters tool would be set out in **Chapter IV**.
- Finally, **Chapter V** would include the provisions on penalties, delegation of powers, review and entry into force, etc.

1.1. Definitions

A common set of definitions will be very important to clarify what needs to be monitored and reported, as well as the business practices for mitigation of methane emissions. Clear definitions will be particularly important in the context of venting and flaring, as there is a need to make clear which practices are allowed and which are prohibited.

The definitions in the proposal will be based on widely accepted definitions and will be consistent with existing initiatives and stakeholder views expressed in the response to the Open Public Consultation.

1.2. Competent authority

In order to ensure that operators are effectively fulfilling the obligations laid down in the Regulation, each Member State would be tasked with appointing a competent authority – similarly to the practice in other regulations such as the Gas Security of Supply Regulation and the Risk Preparedness Regulation.

The competent authorities would be tasked with ensuring that reporting obligations imposed on operators are being fulfilled, dealing with complaints or substantiated concerns submitted by third parties and organising site checks or audits, which might include the issue of notices for operators to remedy any identified shortcomings.

1.3. MRV of methane emissions

The purpose of the MRV provisions is to lay down clear measurement, reporting and verification requirements applicable to operators. Obligations will be on companies unless ownership cannot be identified (e.g. abandoned wells and mines), in which case it will be on Member States.

With respect to oil and gas, the provisions will be based on the Oil and Gas Methane Partnership (OGMP)¹, with broader coverage and strengthened reporting requirements. For coal, the main guidance in place is the Best Practice Guidance for Effective Methane Drainage and Use in Coal Methane and the Best Practice Guidance for Effective Methane Recovery and Use from Abandoned Coal Mines, both prepared by UNECE (2016 and 2019, respectively) and applicable to underground coal mines only (not opencast lignite mines).

Who?	<p>Asset operators are responsible for ensuring the compliance with MRV obligations.</p> <p>Where ownership rights cannot be ascertained, Member States will be the responsible parties.</p>
What?	<ul style="list-style-type: none"> - Type of emissions covered: direct emissions, irrespective of the source; in the case of coal, this would include coal mine methane (CMM), ventilation air methane (VAM) and abandoned mine methane (AMM), including active and abandoned/closed mines, and would cover all ventilation shafts used as an exit of methane seeping out from the mining areas. - Aspects to be measured and reported, e.g. methane intensity. - Measurement and reporting is done at asset level. - Obligation to carry out verification of the data, by an independent third party.
Where?	<p>For oil and gas: wells, production sites, [above ground installations of] transmission networks, oil/LNG terminals, storages, distribution networks.</p> <p>For coal: underground coal mines only; lignite mines are excluded given that emissions from these mines cannot currently be reliably measured according to the IPCC (possibility to include them in a review clause of the Regulation).</p>
When?	Predefined frequency of measurement, reporting and third party verification
How?	<p>Reporting template in line with OGMP, for oil and gas; reporting template to be developed in a delegated act, for coal.</p> <p>Obligation on operators to report to the respective competent authorities; link with Governance Regulation regarding UNFCCC reporting obligations of Member States.</p> <p>Obligation on Member States and operators to promote the exchange of best practices and cooperation.</p>

¹ OGMP is a voluntary initiative on measuring and reporting of methane emissions by companies in the oil and gas sectors. To date, 72 companies have signed up to OGMP, covering 30% of global oil and gas production and assets on five continents.

1.4. LDAR obligations

The purpose of the LDAR provisions is to set the framework requirements for site and equipment surveys, to be conducted by operators in order to detect and repair leaks and to develop a practice of recording fugitive emissions. The provisions will lay down the framework, by setting minimum requirements and leaving an adequate degree of flexibility to operators. This flexibility aims to allow innovation and the development of new LDAR technologies and methods, to avoid the lock-in of the industry to the detriment of environmental protection. This approach was largely adopted by the respondents in the open public consultation, as well as by ACER and CEER in a recent white paper².

The table below describes what would be the main components of the legal provisions:

Who?	Asset operators are responsible for ensuring the compliance with LDAR obligations. Where ownership rights cannot be ascertained, Member States will be the responsible parties.
What?	General mitigation obligation (duty of care framework provision) LDAR, i.e. surveys/inspections to be conducted at asset level, including all components of the equipment/installation/facility Obligation to record all detected leaks, irrespective of size and obligation to monitor, possibly limited to larger leaks Obligation to repair all detected leaks/leaks above a certain size threshold Obligation to verify whether repair was effective; verification must be performed by an independent third party
Where?	For oil and gas: wells, production sites, [above ground installations of] transmission networks, oil/LNG terminals, storages, distribution networks. For coal: underground coal mines only; lignite mines are excluded given that emissions from these mines cannot currently be reliably measured according to the IPCC (possibility to include them in a review clause of the Regulation).
When?	Detection surveys/programmes: will include minimum frequency for leak detection and for checks after a leak repair Repair to be conducted immediately after detection or as soon as feasible after (a schedule must be drawn immediately, including justification for delay of repair); may be dependent on volume of leak; may consider exemption for cases where a repair results in additional emissions or discourages companies from high frequency LDAR
How?	Obligation to submit an LDAR programme beforehand and a report afterwards No prescription on the types of device used for LDAR: obligation of the companies/operators to prove that device/protocol is suitable; obligation of Member States to encourage innovation.

² ACER-CEER White Paper on Rules to prevent methane leakage in the energy sector, cf. [link](#)

	Require the involvement of certified or accredited professionals (e.g. according to international or European standards ISO17025, EN15446, NTA8399), in conducting the LDAR surveys and to verify whether repairs were effective
--	--

1.5. Venting and flaring

For the oil and gas sector, the provisions would be structured as follows:

- Prohibition of venting and flaring as of a certain date, accompanied by a recital explaining the need to phase-out these harmful practices;
- Exhaustive list of exceptional situations when venting or flaring are allowed, including an obligation to always consider flaring before employing venting;

With respect to the coal sector, the approach would be slightly different. Methane emissions in coal mines originate from coal seams and cracks in strata. In active mining (i.e. coal mine methane – CMM), unless captured and used commercially, gas often gets disposed of through venting and flaring (e.g. in demethanisation stations, ventilation shafts). Therefore, as given that CMM's concentration is high enough for commercial use and there are technological solutions in place in some Member States, the provisions would be structured in the following manner:

- Obligation to capture and utilise CMM; where utilisation is not possible (duty of demonstration), prescribe flaring as an alternative to venting;
- Requirement to reduce direct emissions from ventilation air methane (VAM) and, where appropriate, prescribe flaring as an alternative to venting
- Exemptions to allow venting or flaring for emergency situations during which it is necessary to ensure the safety of mining works and personnel.

Continuous monitoring and reporting is crucial to the compliance with the restrictions listed above. Therefore, both for oil and gas and for coal, the following requirements would figure in the proposal:

- Obligation of operators to provide proof that less harmful practices were not feasible;
- Reporting obligations on operators to the competent authorities, including a venting and flaring notice and a post-factum report;
- Stricter obligations for new/replaced installations and obligation to replace equipment emitting over a certain threshold (for venting) and with lower efficiency rates (for flaring);
- Obligation on the competent authorities to monitor and impose penalties.

1.6. Abandoned assets

Asset operators would be responsible for ensuring compliance in active oil and gas sites and active coal mines, as well as in those cases where ownership can be attributed. Member States will otherwise be the responsible parties.

Abandoned assets represent a challenge due to the uncertainty of methane emissions and the uncertainty in terms of liability. There, the proposal would include:

- Obligation on Member States to keep a record of owners/liable parties of sites/assets;
- Obligation on Member States to put in place methane measurement tools in abandoned assets [where methane has been measured/estimated above a certain level]; unless the former owners/licensees can be determined and pursuant to national rules on liability;
- Requirement for sealing and continued monitoring;
- Settlement mechanism or cooperation obligation in case there are joint corridors between mines preventing the assignment of emissions to a specific mine (for the competent authority appointed pursuant to the Regulation).

1.7. MRV and mitigation of methane emissions linked to EU fossil fuel consumption but occurring outside the EU

In this respect, the Regulation would include provisions setting up the two transparency and information tools: the ‘label’ and the super-emitter global methane monitoring tool, specifying the information they shall contain and defining the Commission obligations to make available and update regularly the information therein. More specifically, the articles would include:

- Obligation of the Commission to set up the label, i.e. a list of all exporting countries of fossil energy to the EU and all exporting companies from those countries;
- Requirement for the list to indicate whether the countries show regulatory equivalence with EU legislation on MRV and LDAR and, until such time when regulatory equivalence is ensured, whether the companies have signed up to the OGMP (for oil and fossil gas companies) or to a future coal-specific framework in line with future EU legislation;
- Obligation of the Commission to set up the super-emitters tool;
- Requirement for the label and the super-emitters tool to be made publicly available;

The costs of verifying the information requirements for the label and of setting up and updating the methane monitoring tool, in so far as they would require resources of the Commission or of Agencies, would need to be reflected in a legislative financial statement, accompanying the proposal.

The impact assessment also advocates for continuing diplomatic action in this matter, to encourage non-EU actors to voluntarily agree to deliver methane emissions measurements according to OGMP principles (and for coal, at a later date, according to agreement on an international MRV standard), as well as to using such information for the super-emitters tool described above. Even if diplomatic action would not warrant specific legal provisions, its role and importance should be detailed in the recitals of the proposal.

2. ANNEX - CHOICE OF LEGAL INSTRUMENT

2.1. Regulation on reducing methane emissions from the oil, fossil gas and coal sectors

The arguments to justify the choice of a Regulation are both legal and policy-based.

From a political point of view, the main argument is the urgency of dealing with methane emissions, in the context of the climate emergency and the Union's net-zero targets. The Governance Regulation³ and the feedback from stakeholders in the open public consultation have signalled the need for legal certainty and urgency in the action to reduce anthropogenic methane emissions. In contrast, Directives' lengthy transposition periods, frequent transposition delays (the latest [Single Market Scoreboard](#) pointed to an 11.5 months average delay, on an increasing trend), uneven transposition measures and lengthy transposition and conformity checks would significantly defer action. While this argument can be used for virtually any piece of EU legislation, it is especially relevant in the context of the immediate threats posed by climate change and environmental degradation.

Most recently, the Intergovernmental Panel on Climate Change (IPCC) [sixth assessment report](#) underlines the role of methane as one of the main greenhouse gases responsible for air quality degradation and climate change and points to the lack of attention this gas has received in comparison to CO₂, including as part of most countries' climate commitments. The report outlines that methane levels are at an all-time high and well above the safety limits defined in the previous IPCC Assessment Report. There is thus a need for a sharp, rapid and sustained reduction in methane emissions to slow down global warming and improve air quality. It is important to note that the report concludes that the increase of methane in the atmosphere is the result of human activity and that fossil fuels have been a large contributor to the growth in methane emissions at least since 2007, alongside agriculture (livestock) and wastewater.

From a legal point of view, the main arguments to justify the choice of a Regulation are based on the Better Regulation guidelines⁴ and consist of the following:

i. Direct obligations versus target-driven provisions

The proposal would set direct obligations on companies to monitor, measure, report and abate methane emissions - including via the phasing out of harmful industry practices such as venting and flaring – and on Member States to verify reported data and also to monitor, measure, report and abate emissions in the case of abandoned assets on their territory, when ownership cannot be attributed to any one company. In other words, it is not a target or performance-driven instrument. For this reason, it would not be conducive to have a large room of manoeuvre for Member States to define the technicalities and implementation of the provisions – as would be the case in a Directive.

³ See recital 53 and Article 16 of Regulation (EU) 2018/1999.

⁴ According to [Tool #18](#) of the Better Regulation Toolbox, regulations are generally used where it is important to achieve a uniform implementation of a policy intervention. On the other hand, targets and framework requirements requiring more detailed specifications are examples of policy interventions where a directive can be appropriate, leaving it to Member States to decide on the methods for implementation.

ii. *Legal form of related EU legislation and need for harmonised data and measurement requirements*

The goal for the monitoring, measuring and reporting provisions is to establish obligations on oil, fossil gas and coal companies to carry out asset-level measurements and report emissions of methane. This data could be fed into the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) reporting obligations of Member States, as set out in the Governance Regulation.

In order to have consistent and comparable data, it is crucial to have harmonised measurement and reporting requirements. This can be best done via a regulation, as shown by related EU legal acts⁵. On this subject, the level of discretion left to Member States in a Directive would risk discrepancies and lack of comparability of data⁶. Directly applicable legislation at EU level aims to overcome regulatory fragmentation in different Member States by preventing 27 different national systems.

iii. *Direct obligations on economic operators regarding the mitigation of methane emissions*

The goal for the mitigation provisions is to lay down obligations on oil, fossil gas and coal companies to carry out methane leakage detection and repair (LDAR) programmes, as well as to establish restrictions on venting and flaring of gases, including supplementary reporting obligations.

In order to establish restrictions on, and a phase-out of venting and flaring, a Regulation allows us to target companies directly and limit their business practices in this respect.

With respect to LDAR programmes, the proposal would set framework requirements and minimum criteria for detection and repair of leaking components. While the argument of the flexibility granted by Directives could be relevant here, we believe a case can be made for a Regulation. The intermediation of Member States to define specific national measures would not be necessarily beneficial and could lead to discrepancies. Flexibility can still be granted in a Regulation, in particular, for the case at hand, with respect to the methods and devices used for

⁵ See, for example, Regulation (EU) 2015/757 on the MRV of carbon dioxide emissions from maritime transport; Governance Regulation (EU) 2018/1999 and Implementing Regulation (EU) 2020/1208 on structure, format, submission processes and review of information reported; Implementing Regulation (EU) 2018/2066 on the monitoring and reporting of greenhouse gas emissions; Implementing Regulation (EU) 2018/2067 on the verification of data and on the accreditation of verifiers (ETS); Regulation 166/2006 on the European Pollutant Release and Transfer Register.

⁶ See, for example, the justification in the Explanatory Memorandum of the European Pollutant Register Regulation: ‘Another policy option for implementation would be a Directive. The major disadvantage of this option is its incompatibility with the need for comparable and therefore harmonised data to be delivered to the European PRTR central database. Comparability of data is a priority because the UN-ECE PRTR Protocol sets forth a number of technical options and approaches, which could – if not stringently harmonised – lead to totally different national systems and the impossibility to collect and disseminate meaningful data on European level. The level of discretion, left open for Member States in a Directive would risk discrepancies and incomparability of data. Moreover, risk of delays in transposition by the MS could frustrate the objective of a speedy conclusion and implementation of the PRTR Protocol.’

detection and repair, as well as the development on new technologies. This flexibility would be granted directly to the operators, while Member States would be required, for example, to encourage technological development and cooperation. In addition, as the other provisions, in particular for measuring, reporting and verification (MRV) and for venting and flaring, would require a regulation, it would make sense, from a systematic perspective, to have everything in one instrument.

iv. Measuring, reporting and mitigation of methane emissions linked to EU fossil fuel consumption but occurring outside the EU

Finally, with respect to methane emissions occurring outside the EU, there are two types of measures planned in the proposal: a ‘label’ for fossil energy imports into the EU and a global monitoring tool for super-emitters.

The ‘label’ would consist of a list of all exporting countries of fossil energy to the EU and all exporting companies from those countries. This list would indicate whether the countries show regulatory equivalence with EU legislation on MRV and LDAR; and whether the companies have signed up to the OGMP (for oil and fossil gas companies) or to a coal-specific standard. The list would serve as a transparency and information tool for importers of fossil energy to the EU (B2B), who would be free to choose whether to base their purchasing decision on such a list or not. Therefore, market access to the EU would not depend on compliance with regulatory equivalence or OGMP membership.

The super-emitters tool, on the other hand, would be the result of pooling global emissions data (magnitude, source and location) from existing resources and satellite technology publicly available in one place.

While those measures should not require legislative action to be put in place, it would be appropriate to have a provision setting out the Commission’s obligation to create them and the information to be included. In addition, the proposal should be accompanied by a legislative financial statement and estimated resources for the Commission to carry out these tasks.

With respect to the ‘label’, having it established in an EU act would greatly contribute to its intended behavioural effect – i.e. to encourage importers to purchase fossil energy only from compliant companies and countries. In this case, and in light of the international impact of these policy options, a Regulation is the most suitable instrument.

v. Conclusion

In light of the above, a Regulation is the appropriate legal instrument for this legislative proposal because it allows the EU to impose direct and detailed obligations on economic operators and national authorities. This instrument will reduce the burden of new EU legislation that often comes from the transposition obligations of a Directive, in line with the [2021 Communication ‘Better Regulation: Joining forces to make better laws’](#)⁷. In addition, provisions in a Regulation are

⁷ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Better regulation: Joining forces to make better laws, COM(2021)219 final, Brussels, 29.4.2021.

applicable at the same time throughout the Union, thus avoiding the inefficiencies and regulatory and administrative costs/burdens for businesses and authorities related to inconsistent or divergent transposition and implementation.

Timeline

Task	Scheduled Dates	Comments
Resubmit IA to the RSB	21 September	4 weeks for written procedure
Jour Fixe: list of measures and discussion on form of legal act	29 September	
Draft the legislative proposal	Ongoing	
ISC Dossier ready at ENER.C.2 level	early October 2021	
2. ISSG Meeting to discuss and approve the draft legislative proposal	TBD	
Cabinet review of the ISC file [including the DRAFT LEGISLATIVE proposal], and approval for the launch of the ISC	From early October 2021 to 21/10/2021	•
ISC – Consultation period	From 22/10/2021 to 12/11/2021	<p>Seek derogation for ISC without IA (to be added one week later, pending positive opinion of the RSB)</p> <p>Standard Duration: 15 working days – from launch to the deadline</p> <p>Liaising with key DGs during the process</p>
ISC – Revision of texts	From 12/11/2021 to 19/11/2021	•
DGT Translation - Request	19/11/2021	
DGT Translation – From/To	From 19/11/2021 to 14/12/2021	<u>TO BE CONFIRMED</u> based on actual length

Task	Scheduled Dates	Comments
Cabinet Approval for the submission of the procedure	From 24/11/2021 to 02/12/2021	•
Submission of the procedure file for adoption	02/12/2021 [At the latest]	<p>Dossiers should be submitted at the latest on the Thursday of the week n-2 preceding the Commission meeting</p> <p>One linguistic version is enough for launching the procedure file, but the three procedural languages (EN, FR and DE) will be required for the adoption, at the latest one day before the Commission meeting. If it is impossible to make the three linguistic versions available the day before adoption (for instance because of material made available too late to the DGT), a derogation may be requested for having the right to adopt in one linguistic version (after preliminary agreement from DG, CABs, SG)</p>
Commission meeting	14/12/2021	Oral procedure
Consultation after adoption	8 weeks	After the Commission has adopted the proposal, stakeholders have 8 weeks to submit comments on it.