

Report on extension of provisions under the regulation on methane emissions in the energy sector outside EU borders

Marta Ballesteros, Laura Vona, Miguel Mota- Milieu Consulting

February 2023

Index

- ▶ Objective of the study contract
- ▶ Legal feasibility to adopt measures extending the scope to non-EU operators
- ▶ Enforcement of those measures
 - ▶ At the producer side
 - ▶ At the demand side

Objective of the study contract

- ▶ Regulation aiming to regulate and reduce methane emissions (the 'proposal for Methane Regulation').
- ▶ It envisaged three types of measures:
 - ▶ Measurement, Reporting and Verification (MRV);
 - ▶ Leak Detection and Repair (LDAR); and a
 - ▶ Ban on Routine Venting and Flaring (BRVF).
- ▶ A fair share of overall methane emissions occur outside of EU borders, this report aims to analyse the legal feasibility of applying the Methane Emissions Proposal's standards and requirements to operators outside the EU

Adoption of legal measures

- ▶ EU capacity to legislate
- ▶ The CJEU has confirmed EU jurisdiction to request compliance with EU climate legislation to aircraft operators established outside the EU for flights departing from and arriving at EU airports.
 - ▶ no breach of the sovereignty principle
 - ▶ territorial link is sufficient to justify the EU jurisdiction with measures applied in its territory
- ▶ It is legally feasible an extension of the provisions under the proposal for Methane Regulation or to adopt a new provision (e.g. establishing a methane emissions standard)

Adoption of legal measures

- ▶ WTO rules enable trade restrictions due to environmental considerations but
 - ▶ trade restrictions or conditions
 - ▶ imposed on operators outside the EU introducing products into the EU market
 - ▶ should not be discriminatory or a disguised restriction of international trade.
- ▶ Legally feasible for the Methane Regulation provisions to be equally applicable to EU operators and non-EU operators introducing a product in the EU

Adoption of legal measures

- ▶ WTO rules enable trade restrictions due to environmental considerations but
 - ▶ trade restrictions or conditions
 - ▶ imposed on operators outside the EU introducing products into the EU market
 - ▶ should not be discriminatory or a disguised restriction of international trade.
- ▶ Legally feasible for the Methane Regulation provisions to be equally applicable to EU operators and non-EU operators introducing a product in the EU

Adoption of legal measures

- ▶ Methane Regulation establishes an information duty on methane emissions for importers of fossil fuels from outside of the EU, but does not require MRV, LDAR and BRVF.
- ▶ Extending MRV, LDAR and BRVF to operators outside the EU by amending Article 1(3) of the proposal for Methane Regulation (and Art 8(6) on verification).
 - ▶ *This Regulation applies to methane emissions from both domestic and imported gas sold and consumed in the EU including those occurring outside the Union in relation to the gas that enters the EU market.*
- ▶ New paragraph under Article 13 to the proposal for Methane Regulation, limiting emissions (cap) for domestic and imported gas sold and consumed in the EU
- ▶ Enforcement would require additional measures

Enforcement

Enforcement of MRV, in particular verification of operators outside the EU.

- ▶ On the production/emissions side
 - ▶ Example and link to EU ETS (complementary) or CBAM
 - ▶ Governance Structure and responsibilities
 - ▶ The role of IMEO to collect information on emissions and ensure verification, including on the spot visits (amend Art 10 of the MR proposal)
 - ▶ The role of the Commission, similar to EU ETS
 - ▶ IMEO re monitoring and reporting of emissions from operators: Similar to ICAO and IMO. Commission with supervisory role
 - ▶ Objectivity of the institution verifying emissions
 - ▶ Ambition of CORSIA is lower than EU ETS with no emissions reduction requirements yet

Enforcement

- ▶ Enforcement on the production side
 - ▶ Examples: Art 120 OCR and FLEGT
 - ▶ The role of the Commission (amend Art 10 of MR proposal)
 - ▶ Agreement/contract with third countries trading oil and gas to establish a limit of methane emissions and MRV obligations
 - ▶ Enforcement of Member States compliance of bilateral agreements with the methane emissions limit and MRV obligations under the Methane Regulation
 - ▶ Enforcement responsibilities/official controls in the third countries incl on spot visits
 - ▶ Enforcement of Member States obligations regarding control systems

Enforcement

- ▶ Enforcement of obligations on the demand side
 - ▶ Requirements on operators that import from third countries
 - ▶ Due diligence system similar to EUTR
 - ▶ Standards clearly defined in the Methane Regulation
 - ▶ Energy v. products (definition of sustainability based on the law of the country of origine)
 - ▶ Penalty systems (similar to MR proposal)

QUESTIONS

Marta Ballesteros: marta.ballesteros@milieu.be