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

Follow-up February 2023

CAN/220628

February 2023

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Law & Policy Consulting

This annex to the legal report has been prepared by Milieu Consulting as a follow up of the Consulting Agreement signed 1 July 2022. The report has been delivered by Marta Ballesteros, Laura Vona and Manuel Mota.

The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the Climate Action Network Europe.

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1. EXAMPLES OF MEASURES ADDRESSED TO REGULATE THE PRODUCTION SIDE

1.1. THE EU ETS

The Emissions Trading System (EU ETS)[1] includes methane as a pollutant in its Annex II, and therefore – at least in principle – methane is covered by the scope of the EU ETS. However, the situation is different in practice. Annex I of the EU ETS lists the "Categories of activities to which this directive applies"; the same Annex also describes the greenhouse gases emitted by those activities. Methane emissions are not mentioned in that list, and while they could potentially be covered, at the moment, the EU ETS is mainly focused on the reduction of CO_2 emissions[2]. Moreover, methane emissions are not priced under the EU ETS as there are not allowances for methane emissions that are traded[3].

An opening to a more effective and clear reduction of methane emissions now exists in relation to maritime transport. On 29 November 2022 – after an extensive discussion that lasted for 1 year and a half – the European Institutions reached a provisional agreement on the proposal for a Directive amending the EU ETS, presented by the European Commission on 14 July 2021, as part of the Fit for 55 package[4]. More precisely, greenhouse gas emissions from maritime transport will be included in the EU ETS system; details on how to include these emissions were agreed upon. Methane emissions from maritime transport are clearly mentioned in the provisional agreement and will be included in the EU ETS scope starting from 2026[5]. The political agreement reached is provisional pending formal endorsement: the Parliament and then the Council have to formally approve the agreement and adopt the pieces of legislation.

In the meantime, other actions have been taken in order to further cut methane emissions. The Methane Regulation[6] is a step ahead, but the general system could be even more efficient if combined with a reform of the EU ETS.

In the framework of the EU ETS, separate allowances for methane emissions could be created and be priced. The average annual price of carbon permits in the EU has increased significantly since the reforms to the EU ETS in 2018[7], and EU CO_2 allowances are expected to average 81.40 Euros a tonne in 2023[8]. Future permit prices are uncertain for methane emissions, which may deter investments with high up-front costs, such as methane capture technologies. Consequently, methane emissions

[1] Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (Text with EEA relevance).

[2] Carbon dioxide is mentioned for all the activities listed; nitrous oxide is mentioned three times and perfluorocarbons is mentioned once.

[3] ESWET POSITION ON THE PROPOSED REVISION OF THE EU EMISSIONS TRADING SYSTEM (EU ETS) DIRECTIVE AND THE EFFORT SHARING REGULATION (ESR) https://eswet.eu/wp-content/uploads/2022/01/ESWET_ETS-and-ESD_2022.pdf

[4] Proposal for a Directive of the European Parliament and of the Council amending directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757. COM/2021/551 final.

[5] For more information see: European Parliament, Legislative Train Schedule – Revision of the EU emission trading system (ETS), n.d., available at: https://www.europarl.europa.eu/legislative-train/package-fit-for-55/file-revision-of-the-eu-emission-trading-system-(ets) and European Council, 'Fit for 55': Council and Parliament reach provisional deal on EU emissions trading system and the Social Climate Fund, 2022, available at: https://www.consilium.europa.eu/en/press/press-releases/2022/12/18/fit-for-55-council-and-parliament-reach-provisional-deal-on-eu-emissions-trading-system-and-the-social-climate-fund/

[6] Proposal for a Regulation of the European Parliament and of the Council on methane emissions reduction in the energy sector and amending Regulation (EU) 2019/942. COM(2021) 805 final.

[7] Statista, European Union Emission Trading System (EU-ETS) carbon pricing in 2022, 2023, available at: https://www.statista.com/statistics/1322214/carbon-prices-european-union-emission-trading-scheme/#:~:text=The%20price%20of%20emissions%20allowances,98.01%20euros%20per%20metric%20ton.

[8] Trading economics, EU Carbon Permits, n.d., available at https://tradingeconomics.com/commodity/carbon

allowances could be established at levels guaranteeing a price able to provide a signal to operators to invest in technologies and practices that reduce methane emissions[9].

The modification of the EU ETS to be linked to the Methane Regulation would ensure that both instruments complement each other in addressing the reduction of methane emissions, providing a multi-layered approach and using similar tools such an MRV.

Both instruments would be even more aligned if the Methane Regulation would also apply outside the EU borders, as the EU ETS already does. In the original Report of October 2022, it has already been mentioned that – with relation to the EU ETS – the CJEU stated that EU climate legislation that applies to aircraft operators established outside the EU for flights departing from and arriving at EU airports does not breach the sovereignty principle since those aircrafts are physically in the territory of one of the Member States of the EU and are thus subject to the unlimited jurisdiction of the EU[10] (criterion of the sufficient link with the State or International organisation concerned, as expressed by AG Kokott in the Opinion of the same judgment). In the case of the Methane Regulation, the fact that methane gas is meant to enter the EU market (regardless of infrastructure ownership) would be a 'sufficient link' justifying the application of EU law outside the territory of the Union.

The intention described above to align the EU ETS with Methane Regulation would justify even more the application of the latter outside the territory of the European Union, in order to create a coherent and efficient system. This could involve stating that third countries must respect the same requirements as those in place within the EU when it comes to methane emissions and ensuring that products imported into the EU are subject to equivalent carbon pricing as products produced within the EU. Such an approach could help to level the playing field for companies operating within the EU and those importing products into the EU and could incentivize third countries to reduce their methane emissions in line with the EU's goals and requirements. This is even more important considering that the European Union has very little oil and natural gas production and – therefore, as stated in a Report of the International Energy Agency – "policy that directly regulates upstream methane emissions would have little effect" while "policies that aim to reduce consumption of natural gas, or to ensure that all gas consumed comply with certain standards, would be a more effective strategy"[11].

In order to avoid excessive administrative burden and fraudulent reporting, clear and measurable emission reduction standards for methane emissions (including from third countries) must be defined and agreed upon, to provide a basis for monitoring and enforcement. Once the standards agreed, a clear reporting system for methane emissions from third countries a similar system to the ETS for collecting, verifying, and reporting data on emissions can be applied. Effective monitoring and enforcement mechanisms would be essential to ensure compliance with the Methane Regulation when it comes to third countries.

The structure and governance system for an effective MRV applied to methane emissions needs to be clearly established in the proposal for Methane Regulation. One option could follow the example of aviation emissions from international flights. In 2016, the Member States of ICAO decided to adopt a global-market based measure for aviation emissions, i.e. the scheme CORSIA. The MRV system described in CORSIA is similar to the one developed in Articles 14 and 15 of the EU ETS and the one of the Methane Regulation itself. Aircraft operators have to report yearly their emissions to their national competent authority. To guarantee data accuracy, annual emissions reports will need to be verified by an independent third-party verification body prior to submission; verification bodies will have to be accredited under ISO 14065 and CORSIA-specific requirements. Governments will then work with ICAO to inform airlines of the number of offset credits they need[12].

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[9] From an international point of view, see, for instance: Parry, I. W., Black, S., Minnett, D. N., Mylonas, V., & Vernon, N. (2022). How to Cut Methane Emissions. IMF Staff Climate Notes.

[10] Case C-366/10 *Air Transport Association of America and Others v Secretary of State for Energy and Climate Change*, paragraph 125.

[11] International Energy Agency, Driving Down Methane Leaks from the Oil and Gas Industry – A Regulatory Roadmap and Toolkit, 2021, available at: https://www.iea.org/reports/driving-down-methane-leaks-from-the-oil-and-gas-industry

[12] IATA, Factsheet Corsia, available at: https://www.iata.org/en/iata-repository/pressroom/fact-sheets/fact-sheet---corsia/

An independent and central monitoring body could be established to monitor and enforce compliance with the requirements for methane emissions from third countries, and to carry out regular audits and inspections. The current Methane Regulation proposes IMEO as a verification body but doubts about its independence have been raised (see 2022 Report). Instead of IMEO, a bigger role could be given to the Commission (see Section on OCR below).

Additional proposals for a consistent system linking ETS and the proposal for Methane Regulation:

As already mentioned above, EU ETS should be better linked to the Methane Regulation; the two instruments could complement each other in addressing the reduction of methane emissions by providing a multi-layered approach. However, it is important to ensure that the two instruments do not overlap or create conflicting incentives; consistency between the two policies has to be ensured. The link between the two policies could be maintained in the following ways:

1. Aligning emission reduction targets and incentives: The targets and incentives provided by the EU ETS and the Methane Regulation could be aligned to ensure clear and consistent targets and set of economic incentives to reduce methane emissions.
2. Harmonize the scope: The scope of the EU ETS and the Methane Regulation should be harmonized to ensure that both systems are linked and cover the same sectors and gases, avoiding overlaps and gaps.
3. Coordinate reporting: The reporting requirements under the EU ETS and the Methane Regulation should be coordinated to ensure that companies are not subjected to excessive reporting burdens and that the data collected is consistent and comparable.
4. Complementary measures: The EU ETS and the Methane Regulation could be complementary measures, with the EU ETS providing an economic incentive for companies to reduce emissions, and the Methane Regulation providing additional regulatory requirements and enforcement mechanisms to ensure that emissions reductions are achieved. Improving the accuracy and completeness of monitoring, reporting and verification requirements would give a more accurate assessment of methane emissions and ensure that companies are held accountable for their emissions.
5. Coordinated implementation: The implementation of the modified EU ETS and the Methane regulation could be coordinated to ensure that the policies are implemented consistently and effectively and that the necessary infrastructure and systems are in place to support the policies.
6. Coordinated enforcement: The enforcement mechanisms for the EU ETS and the Methane Regulation should be coordinated to ensure that companies face a consistent set of consequences for non-compliance and that the overall enforcement efforts are effective. For instance, the two instruments could:
    - Share enforcement teams that carry out joint inspections of companies to ensure compliance with both regulations, when the company produces both emissions.
    - Share a joint database to monitor emissions and track compliance, avoiding the need for companies to report data to multiple agencies.
    - Harmonize reporting requirements to reduce the burden on companies and ensure that the data collected is consistent and comparable.
    - Share the registry for the emissions trading.

By connecting better the EU ETS to the Methane Regulation, policymakers could ensure that companies have the right incentives and regulatory requirements in place to reduce methane emissions

and contribute to efforts to mitigate climate change. In this way, the two instruments would work together effectively to incentivize the reduction of methane emissions without duplicating or conflicting efforts.

By taking these steps, it would be possible to develop effective monitoring and enforcement mechanisms to ensure compliance with requirements on methane emissions from third countries and to ensure that these requirements are effectively enforced.

1.2. CBAM

In December 2022, the EU Institutions reached a provisional and conditional agreement on the Carbon Border Adjustment Mechanism (CBAM). This agreement still needs to be confirmed by ambassadors of the EU member states and by the European Parliament, and then adopted by Parliament and Council before it is final. The proposal for the introduction of a CBAM was originally presented by the European Commission in July 2021 through the Fit-for-55 reform package. As explained on the European Commission website, the CBAM system will work as follows: "EU importers will buy carbon certificates corresponding to the carbon price that would have been paid, had the goods been produced under the EU's carbon pricing rules. Conversely, once a non-EU producer can show that they have already paid a price for the carbon used in the production of the imported goods in a third country, the corresponding cost can be fully deducted for the EU importer. The CBAM will help reduce the risk of carbon leakage by encouraging producers in non-EU countries to green their production processes"[13]. In other words, the system will force a carbon levy on imports of key goods equivalent to the prevailing price of allowances in the EU ETS unless a similar CO2 price was paid in the country of origin[14]. Moreover, as a potential EU own resource, revenues from CBAM will contribute to the EU's budget[15]. The system will be phased in gradually and will initially apply only to a selected number of goods at high risk of carbon leakage such as iron and steel, cement, fertilisers, aluminium, electricity and hydrogen, as well as some precursors and a limited number of downstream products[16]. The CBAM will gradually complement the EU ETS System and become an alternative to this: for the CBAM sectors, the free allowances will gradually be phased out as of 2026. Until free allowances are completely phased out in 2035, the CBAM will apply only to the proportion of emissions that does not benefit from free allowances under the EU ETS, thus ensuring that importers are treated in an even-handed way compared to EU producers[17].

According to Energy Monitor, the fact that the EU did not impose standards on overseas suppliers through the Methane Regulation "stands in stark contrast" with CBAM, according to which unless the country of origin pays a similar carbon price, a carbon tax will be imposed on key imports equal to the current cost of allowances in the EU EUTS. The increase of carbon standards on imported goods serves as a method of promoting EU emission standards, and there are indications that the CBAM has inspired Russia to ponder implementing its carbon tax. Thus, the question remains the same: why not also pursue a methane border tax?[18]

While in theory it seems to be possible to extend the CBAM system to methane emissions occurring

[13] European Commission, Carbon Border Adjustment Mechanism: Questions and Answers, 2021, available at: https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_3661

[14] Energy Monitor, EU Commission fails to grasp the methane nettle, 2022, available at: https://www.energymonitor.ai/tech/cleaner-fuels/eu-commission-fails-to-grasp-the-methane-nettle/

[15] European Commission, Carbon Border Adjustment Mechanism: Questions and Answers, 2021, available at: https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_3661

[16] European Council, EU climate action: provisional agreement reached on Carbon Border Adjustment Mechanism (CBAM), 2022, available at: https://www.consilium.europa.eu/en/press/press-releases/2022/12/13/eu-climate-action-provisional-agreement-reached-on-carbon-border-adjustment-mechanism-cbam/

[17] European Commission, Carbon Border Adjustment Mechanism: Questions and Answers, 2021, available at: https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_3661

[18] Energy Monitor, EU Commission fails to grasp the methane nettle, 2022, available at: https://www.energymonitor.ai/tech/cleaner-fuels/eu-commission-fails-to-grasp-the-methane-nettle/

outside of the EU, one must bear in mind some challenges that could arise. The design and implementation of a CBAM for methane emissions would need to be carefully considered to ensure that it does not result in unintended consequences, such as trade barriers, and it would also have to be in line with international trade rules. Consistency with other EU instruments would thus have to be a priority when designing and assessing this option.

Extending the CBAM to methane emissions (or designing a similar system for these emissions) would imply, for instance, taking into account the methane footprint of imported goods and apply a fee or tax on those goods to account for their higher methane emissions compared to domestically produced goods, which seems legally feasible (with the due safeguards stated above). The challenge here would be to quantify the footprint of these goods, as it would be necessary to have a reliable and accurate system in place. For this reason, the CBAM could be added to existing policy, as it does not directly solve the issue of measuring emissions. Nonetheless, this could possibly consolidate a fitting solution to dissuade excessive emissions and thus ultimately reducing them, as targeted by the proposal.

The revenues arising from this mechanism could be used, for instance, to support initiatives aiming to reduce methane emissions, as monetary incentives for compliant producers or even, in general, as funding for other movements targeting the mitigation of climate change.

1.3. THE OCR

The Official Controls Regulation (EU) 2017/625 (OCR)[19] addresses official controls and other official activities performed to ensure the application and compliance of food and feed law, rules on animal health and welfare, plant health and plant protection products with relevant EU legislation. The Regulation aims to improve food safety, animal health, and plant health by establishing a harmonized and risk-based approach to official controls across the EU. The OCR applies to non-EU countries through its provisions on imported products and establishes the conditions for the recognition of official controls carried out in third countries, the responsibilities of importers, and the right of competent authorities to carry out official controls and refuse entry of non-compliant products. Non-EU countries must have a system in place to ensure that their food and feed products meet EU food safety and animal health standards. This system must be monitored by the competent authorities of the exporting country, and the products must be accompanied by a certificate attesting to their compliance with EU standards.

The European Commission plays a key role in the application of the OCR to non-EU countries. First, it develops regulations and standards for food and feed products imported from these countries. Moreover, it also works with the competent authorities of non-EU countries to ensure that they are able to meet the EU's food safety and animal health standards. This can involve providing technical assistance and training to help them meet the standards, as well as monitoring their performance.

Regarding the monitoring of the non-EU countries' performance – as already mentioned in the original Report of October 2022 – the **Commission has an important verifier role under Article 120 of the OCR**. The Commission may verify:

- Adequate infrastructure and resources: non-EU countries must have the necessary infrastructure and resources in place to meet the requirements of the OCR, such as adequate laboratory facilities and trained personnel.
- Compliance with EU requirements: non-EU countries must demonstrate that their food and feed products meet EU food safety and animal health standards through equivalent legislation and that their systems are adequately monitored by the competent authorities.

[19] Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001 (Official Controls Regulation), (OJ L 095 7.4.2017, p. 1), available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02017R0625-20220128 .

- Effective enforcement: non-EU countries must have effective enforcement mechanisms in place to ensure that their food and feed products comply with EU requirements.

It should also be added that the above-described system may enhance the development of a strong partnership between the non-EU countries and the EU, which can involve also regular consultations and the sharing of information and best practices.

There are several concrete implementation examples of the OCR. For instance, Regulation (EU) 2021/405 lies down the lists of third countries or regions authorised for the entry into the Union of certain animals and goods intended for human consumption in accordance with the OCR itself (and, more precisely, with its Articles 126(2)(a) and 127)[20]. Another example can be found in the field of the safety of food of animal origin: the third country has to have a competent authority that carries out official controls on those operators exporting to the EU to verify that the operators are respecting the hygiene rules laid down in EU law; the competent authorities certify that the operators meet these requirements, and this health certificate accompanies the consignment to the EU[21].

As already mentioned above, the European Commission has a key role in the successful implementation of the OCR with regard to non-EU countries, being the institution responsible to carry out official controls in those countries. More specifically, the Directorate-General for Health and Food Safety (DG SANTE) has a specific division that dedicates most of its resources to Commission controls: the department for health and food audits and analysis[22]. The department produces reports of its control activities, which are in general publicly available[23]. DG SANTE develops a multi-annual plan that sets out the priorities for its controls for the following 5 years and then publishes an annual work programme, produced with the help of other Commission services (where relevant) and with EU countries[24].

The public audits published by DG SANTE seem to suggest that the Commission's right to carry out controls in third countries is indeed working. Interestingly, audit reports may make recommendations to assist the competent authorities in taking corrective measures. The actions taken are followed up either administratively, or in general follow-up audits in EU countries, or by on-the-spot audits. A recent example of successful follow-up is Report no. 2022-7445, where it is written that "*The report concludes that the competent authority has implemented most of the actions contained in the action plan provided to the Commission, and as such these actions can be considered effective in addressing the issues that prompted the recommendations of the previous audit*"[25]. It seems therefore that Commission controls' give a successful push to third countries regarding the alignment with EU standards.

As already mentioned in the original Report of October 2022, the OCR mechanism described in its Article 120 could be potentially replicated in the Methane Regulation, if some of its provisions were applied to non-EU countries. The Methane Regulation requires operators to measure and monitor their emissions and competent authorities have to verify the operator's compliance with the imposed limit. More precisely, Recital 10 of the Methane Regulation states that: "*Each Member State should appoint*

[20] Regulation (EU) 2021/405 of 24 March 2021 laying down the lists of third countries or regions thereof authorised for the entry into the Union of certain animals and goods intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council.

[21] Model health certificates are laid down for each commodity in Commission Implementing Regulation (EU) 2020/2235 of 16 December 2020 laying down rules for the application of Regulations (EU) 2016/429 and (EU) 2017/625 of the European Parliament and of the Council as regards model animal health certificates, model official certificates and model animal health/official certificates, for the entry into the Union and movements within the Union of consignments of certain categories of animals and goods, official certification regarding such certificates.

[22] For more information see: European Commission, Health and Food Audits and Analysis, n.d., available at: https://food.ec.europa.eu/horizontal-topics/official-controls-and-enforcement/health-and-food-audits-and-analysis_en

[23] European Commission, Audit Reports, n.d., available at: https://ec.europa.eu/food/audits-analysis/audit-report

[24] European Commission, Work programmes, n.d., available at: https://food.ec.europa.eu/horizontal-topics/official-controls-and-enforcement/health-and-food-audits-and-analysis/work-programmes_en

[25] Follow up the recommendations of the audit report DG(SANTE)/2020-6938 on the control system over the production of poultry meat and products intended for export to the EU. To be searched through European Commission, Audit Reports, n.d., available at: https://ec.europa.eu/food/audits-analysis/audit-report

at least one competent authority to oversee that operators effectively comply with the obligations laid down in this Regulation and should notify the Commission about such appointment and any changes thereof. The competent authorities appointed should take all the necessary measures to ensure compliance with the requirements set out in this Regulation" and Chapter II is related to "Competent authorities and independent verification". Therefore, similarities can be spotted with the OCR Regulation, where the controls done by the competent authorities of the Member States and their obligations are the very essence of the Regulation. The OCR does not apply directly to products, but it applies to the official control systems of determined products and it has an impact also on third countries. In some ways, the OCR follows the structure of a quality management system: it aims at having official controls in non-EU countries which are consistent with EU standards and of high quality. As a consequence, countries that want to export to the EU have to give guarantees of compliance with similar standards than the ones existent in the EU itself (e.g. for animal and public health). If some of the provisions of the Methane Regulation were extended to non-EU countries, this mechanism could be relevant also for methane emissions: it would imply that the third country has to have a designated authority, with structure and resources fit for the purpose of having an official system supervising and ensuring compliance with certain rules (i.e. the provisions of the Methane Regulation extended). Such a system would give the Commission the key role to carry out controls in third countries and checking the control system set there (as explained in the examples above); indirectly, this would entail importing only methane which respects the requirements set in the Methane Regulation.

1.4. FLEGT

The Forest Law Enforcement, Governance and Trade (FLEGT)[26] establishes a licensing scheme for imports of timber into the European Community. This system is based on Voluntary Partnership Agreements (VPAs) between the EU and exporting countries, A VPA is a legally binding agreement between the EU and a producer country and its aim is to improve the governance of forest sector, by promoting legality and sustainability of forest management, and reducing the trade of illegal timber. It does so by requiring the partner country to adopt and enforce laws and regulations that meet the standards of EU Timber Regulation and requiring the partner country to establish a transparent and traceable system for the management of its forest resources and the trade of forest products. This puts the burden on the production side, unlike the EUTR where the focus is on the side of the demand. It is therefore complementary to the EUTR. Ultimately, it strengthens partnerships between the EU and the partner country, through cooperation and exchange of knowledge and promotes legality through the licensing system therein, which only allows the trade of legally harvested timber between the EU and the exporting country. [27]

The verification system for FLEGT licenses involves a range of measures and procedures to ensure the credibility and integrity of the licensing process, including:

- Independent monitoring and assessment of the legality of the timber supply chain in participating countries;
- Controls and audits of timber traders and importers in the EU to verify the accuracy of the information contained in the FLEGT licenses;
- Regular reviews and evaluations of the implementation of the FLEGT licensing agreements, to ensure they are working effectively and achieving their intended results.[28]

The verification system is designed to ensure that the FLEGT licensing system provides a credible and reliable certification of legally harvested timber and helps to reduce the risk of illegal timber entering the EU market which must come from the producer, who is responsible to ensure the compliance. The European Commission is responsible for overseeing the implementation of the FLEGT licensing

[26] Available at https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32005R2173
[27] See https://efi.int/sites/default/files/files/publication-bank/2018/efi_fstp_1_2015.pdf, p. 6.
[28] See Ibid.

system and ensuring that the verification system is functioning effectively. It must be noted that certification, i.e. the procedure for evaluating the risks of their system of due diligence and verification by a third-party includes a mechanism for the verification of the compliance with applicable laws, must not be confused with FLEGT license and is not proof of legal sourcing of timber.[29]

In practice, the FLEGT VPA system seems to be proving quite effective, as several VPAs exist between the EU and exporting countries. For instance, Laos,[30] Cameroon,[31] and Indonesia[32] are some examples of countries which have concluded these agreements with the EU. Vietnam has also successfully negotiated a VPA (May 2017) and has progressed to the implementation phase. EU FLEGT was always intended to be replicated in other timber consuming countries to help reduce illegal logging. Other countries, including Australia, China, Canada, India, Indonesia, Japan, Malaysia, New Zealand, Norway, Russia, South Korea, Switzerland and the United States, have also implemented new approaches based on FLEGT. Some countries such as Australia and the US have further followed the lead of the EU and criminalised the trade of illegal forest products through the Illegal Logging Prohibition Act (2012) and the Lacey Act (2008), respectively.[33]

While it is theoretically possible to use a similar system as the VPA under the FLEGT initiative to address methane emissions, there are some safeguards to take into consideration. The VPA approach could serve as a model for negotiating, implementing, and monitoring agreements between governments and industries to reduce methane emissions, similar to how it is used to address illegal logging. However, it is important to keep in mind that each issue requires its own unique approach and solution, so any system developed to address methane emissions would need to be tailored to the specific challenges and opportunities associated with that issue. One option could be to directly include the methane standards in the VPAs that are being negotiated as an independent section.

As stated above, the different subjects entail some disparities that must be considered in these agreements when considering their applicability to methane. A contract for product and a contract for energy are two different types of agreements between two parties, often between a supplier and a customer. A contract for product typically outlines the terms of a transaction for goods or products, specifying the quantity, quality, and price of the product, as well as delivery and payment terms. The focus is on the physical goods being sold and delivered. Differently, a contract for energy, is an agreement for the sale and purchase of energy, such as electricity or natural gas. This type of contract typically outlines the terms and conditions for the delivery of energy, including the quantity, quality, price, delivery schedule, and payment terms. The focus is on the delivery of energy and the services required to produce and transmit that energy to the customer. The key difference between a contract for product and a contract for energy is the focus of the agreement. A contract for product focuses on the sale and delivery of physical goods, while a contract for energy focuses on the sale and delivery of energy and the related services required to produce and deliver that energy. This could challenge the conclusion of VPAs for methane, as the VPA system laid down by the FLEGT focuses on product, whereas methane corresponds energy. Notwithstanding, as argued above in the previous section, taking the right precautions and adjustments, it would be possible to extend the VPA system to methane emissions.

Referring back to our report from October 2022, the VPA system could be an interesting and effective solution to properly enforce the methane proposal for upstream emissions. However, similarly to the EUTR, also here political sensitivities and the EU's external relations play a key role (perhaps even more glaring for VPAs). The FLEGT has shown international negotiation of agreements can be challenging. While the EU did manage to conclude several VPAs, their negotiation took a long time. Considering the urgency to reduce methane emissions in third countries, the intended effect of concluding agreements with these countries might be mitigated. In conclusion, although having VPAs

[29] For further information, please see https://logistics.public.lu/en/formalities-procedures/required-documents/flegt-autorisation.html
[30] See https://www.wwf.org.la/projects/flegt/
[31] See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22011A0406%2802%29
[32] See https://eia-international.org/wp-content/uploads/EU-Indonesia-VPA-text-English.pdf
[33] See https://opendevelopmentmekong.net/stories/flegt/:

for methane emissions is a viable and potential effective option, the lengthy negotiations could challenge the results.

2. MEASURES ADDRESSED TO REGULATE THE DEMAND SIDE

2.1. EUTR

The EU Timber Regulation[34] lays down the obligations of operators who place timber and timber products on the market for the first time, as well as the obligations of traders. It aims to ensure that illegally harvested timber in not placed in the market by operators. To achieve this goal, the regulation has in place a due diligence system, which obliges operators to provide a due diligence document, attesting the legality of the harvested timber placed in the market. This obligation shall apply to operators who are located outside of the EU and could potentially inspire the system in place to extend the proposal on methane emissions. While the EUTR is currently in force, the EU is designing a new instrument which will replace it and go further in the preventive aim of illegal logging. In fact, there is already a proposal for a Regulation on deforestation-free products,[35] which was published on 17 November 2021. Once formally adopted by the Council and the European Parliament and after coming into force, operators and traders will have 18 months to implement it.[36] This section aims to explore the effectiveness of the enforcement system within the EUTR and discuss its possible applicability to methane emissions, despite the evident differences between gas (energy) and timber (product).

While the EUTR system displays several implementation issues, as further discussed in our report from October 2022, it is nonetheless a solution for enforcement of EU standards which could be considered for the methane proposal. It must be considered that this system is designed to create an obligation on the demand side, as the importer shall be responsible to ensure compliance with the Regulation's requirements, regardless of the document being later checked by customs and enforced by the relevant authorities.

The due diligence system has been enforced in recent years and led to a number of sanctions and other results, as stated in the 5th meeting of its Multi-Stakeholder Platform, with a focus on implementation of the EUTR and FLEGT Regulation (June 2021), held by the European Commission,[37] and where it was highlighted the following:

- EU sanctions have been imposed on trade with the Myanmar Timber Enterprise; operators sourcing timber and timber products from Myanmar after this date would therefore be in breach of Article 6 of the EUTR;
- Italian competent authorities proceeded with checks on teak imports from Myanmar. Collaborating with the Swedish competent authorities, they have an investigation ongoing to seize an incoming shipment coming from Myanmar. Ongoing proceedings concerning timber imports from Myanmar, Indonesia, Russia and Brazil;
- Swedish competent authorities reported inspecting 17 operators and one trader between April and September 2021. A prohibition decision was also made for a container of 56 tons of *Afzelia* (African Mahogany / Doussié) wood from Zambia;
- Dutch competent authorities ruled to uphold penalties imposed on two operators found in breach of the EUTR for importing teak from Myanmar. Both operators are now required to pay fines of EUR 20 000 per cubic meter of teak imported;
- Portuguese competent authorities, between April and September 2021, conducted 24 inspections on domestic operators, importing operators and traders, encompassing 30 transactions. 2 court cases took place, for imports from Russia and Brazil;

[34] Available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010R0995
[35] https://environment.ec.europa.eu/publications/proposal-regulation-deforestation-free-products_en
[36] https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7444
[37] https://ec.europa.eu/environment/forests/pdf/EUTR%20Briefing%20Note%20April-Sept%202021_FINAL%2018.10.2021.pdf. For further information, please see also https://www.clientearth.org/latest/latest-updates/news/eutr-newsletter-june-2021-august-2021/

- WWF filed complaints against Austria and Germany stating that EUTR enforcement is not sufficient.

Even in previous years, there is evidence that the EUTR's due diligence system has been effectively enforced. As stated in the biennial report for the period March 2017 - February 2019, from the European Commission to the European Parliament and the Council,[38] it was reported that a total of 2 273 infringements were identified; 1 552 infringements related to domestic timber, 700 to imported timber and 21 to unspecified timber. The majority of infringements involving domestic timber related to placing illegally harvested timber on the market (1 228), while the majority of infringements involving imported timber related to breaches of due diligence requirements (390). Of a total 2 450 enforcement actions, the majority (1 665) applied to domestic timber, with 762 to imported timber, and 23 to unspecified timber.

The implementation of the EUTR did not just lead to the application of sanctions on non-compliant actors and identification of infringements. It also motivated a positive reaction in the supply chain, making it generally safer, by ensuring the identification of the origins of timber, and its compliance with the regulation. In fact, a consultation of stakeholders and authorities has concluded the regulation has increased the documentation of supply chains; encouraged companies to invest in long-term contracts and focus on responsible suppliers – to cite one example, moving from ad hoc small shipments from 40 or so suppliers to larger, longer-term contracts with 3–5 suppliers; helped increase imports of certified timber products, particularly of complex products with multiple component parts, such as furniture; and partly as a result, increased investment in fraud-resistant systems by the Forest Stewardship Council, one of the two main global timber certification systems; increased companies' engagement with governments in supplier countries; for example, many EU buyers will now only import wood from Peru if it has been audited and cleared by OSINFOR, the independent government oversight body; increased innovation in supply chain scrutiny, for example in the use of isotopic analysis to support supply chain documentation; the development of online document management systems to link up suppliers and buyers without duplicating the paperwork load for each party; and greater use of remote sensing, drones and other measures to map supply chains and identify risks of illegal logging and deforestation.[39]

Despite the issues that have been pointed out, it is possible to conclude that the due diligence system under the EUTR works and does bring a positive impact. However, this system is based on the imposition of obligations on the demand side and therefore a due diligence system applies if the operators are the importers of oil and gas subject to methane emission restrictions. The application of a similar system to the methane supply chain would therefore possibly also make it safer and thus reduce the methane emissions, as targeted by the proposal. Some further issues arising from the EUTR system must nonetheless be considered. For instance, the lack of a clear definition of sustainability in the law of the country of origin, or variations in these definitions, have generated implementation problems that are specific to the EUTR due diligence and would not apply to the proposal for Methane Regulation if the methane emission standards are clearly defined. While this has been amended by the new instrument which will replace the EUTR and lays down criteria for the sustainability standards, the criteria of the EUTR in force are interpreted and implemented differently in Member States which makes it difficult to enforce. Rights to timber harvest has been the most commonly enforced criterion, land tenure rights and biodiversity conservation the least; it is difficult to prove the illegal origin of imported products to the standards required for a conviction, and also to show that the company placing the products on the market knew that they were illegal; the interpretation of 'due diligence' also varies between Member States. So do the levels of penalties and the resources dedicated to

[38] https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52020DC0629
[39] https://www.fern.org/fileadmin/uploads/fern/Documents/2020/Enforcing_due_diligence_legislation_plus_16102020.pdf, p. 16

enforcement. Penalties and resources are considered too low in many cases; sharing data with customs has been an issue in some Member States.[40] All of these seem applicable to methane emissions and could hinder the effectiveness of this system.

As mentioned above, however, the EUTR and the Methane Regulation have a different approach. While the latter defines EU level harmonised obligations and standards, the first considers the legislation of the country of origin to define the baseline for sustainability. This is an important difference that could help maximize efficiency of the due diligence system, should it be needed.

This is linked to the specificity of the proposal for Methane Regulation where we discuss energy traded on the basis of bilateral or multilateral agreements or contracts, whereas in the EUTR, we discuss product. In the case of energy, a due diligence system could be used to ensure that the energy sources used to produce electricity or heat are sustainable, responsibly sourced, and meet environmental and emission standards, as per the Methane Regulation. This could involve verifying the origin and production processes of different energy sources, such as oil and gas, and ensuring that they are produced and transported in compliance with the Methane Regulation.

The actual proposal for a Methane Regulation, focuses on reducing methane emissions for gas and oil, traded to the EU on the basis of an agreement between the EU and the producer country or EU Member States and the producer country. Depending on the content of those agreements, gas might be traded by EU operators which may require the adoption of enforcement measures at the demand side. As the regulation proposes, the enforcement of a system to upstream emissions would require a regulatory framework that sets clear emission targets, guidelines, and reporting requirements for companies and countries.

It is legally feasible to establish a system where all the involved actors would have to comply with the relevant requirements, including obligations to monitor and report their emissions which could be limited to an established standard. Verification and validation would be carried out by independent third parties, who would need to assess the reported emissions to ensure their accuracy and reliability, and this system would be complemented with due diligence, if or where necessary. Some political sensitivities and considerations might hinder the effectiveness of this system, considering the international relations between different actors such as the EU, EU Member States, IMEO and the participation of third countries and industry inside it.

Due diligence obligations at the demand side would be applicable when operators would be trading oil or gas directly from the third countries and they will entail ensuring compliance with the Methane Regulation standards through the due diligence system. EU Member States would then need to enforce and establish a system of dissuasive and effective penalties.

[40] Ibid., p. 10