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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	AT comments on the Methane Regulation (ST 14812/23 + ADD 1)

Delegations will find in the annex the AT comments on the Methane Regulation (ST 14812/23 + ADD 1).

Methane Regulation
Austrian Comments on Doc. 14812/23+ADD1 as follow-up to EWP of
07/11/2023

AT thanks the ES PCY for the efforts to proceed with this file and to reach a political agreement before COP 28 if possible. AT strongly supports the ambitions of the EU for a timely introduction of effective measures to counter and reduce methane emissions in the energy sector. In particular, AT supports a strong external dimension of the methane regime.

It is known that the document ST 14812/23 +ADD1 was only submitted Monday afternoon, leaving little time for a proper review. AT reserves its right for further comments in the course of negotiations and also refers to previous AT statements on the topic.

On the external dimension (comments in the same order as the articles in the aforementioned document):

Article 28 (Methane transparency database and methane intensity performance profiles) and others:

The Presidency's approach to clarify "the wording and the scope, in order to ensure that the provisions apply to crude oil, natural gas and coal" is understood but should not entail the risk of confusion as to assume that the scope of application relating to the external dimension is different from the one generally defined in Article 1. Ambiguities in this regard should be avoided.

Article 28 paragraph 2:

It is now planned that the methane transparency database shall also include "indicative values estimating the methane emissions related to the transport of crude oil, natural gas and coal to the Union". It should be ensured that such indicative information is based on solid, verifiable and comprehensible data so as not to create a picture that contradicts the actual circumstances.

Article 28 paragraph 2b:

An annual update of methane performance profiles seems very useful in order to take account of recent developments in emissions reduction.

The methane performance profiles shall contain inter alia "an assessments of the efforts undertaken on methane emissions monitoring, reporting and abatement [...]". It might be more tangible to speak of "measures" rather than "efforts" in this context. The same argument would also apply to (41a) (definitions to be included in article 2). With a view to the aforementioned (41a) it could also be questioned whether "related to the crude oil, natural gas and coal that they are responsible for" represents a legally clear concept. What precisely does "responsible" mean in this context?

Article 29 (Methane emitters global monitoring tool and rapid reaction mechanisms)

AT supports the Presidency's intention to strengthen the envisaged super emitter rapid reaction mechanism to detect and exchange information on super emitting events.

Article 27a (MRV equivalence)

AT supports the Presidency's intention to oblige importers to inform about the results of their efforts to require MRV equivalence for contracts concluded before the entry into force of the Methane Regulation. AT also supports that for existing contracts companies shall undertake all reasonable efforts to provide an indication on what sort of efforts have been undertaken. This argument applies also to Art 27b.

Article 30

AT explicitly supports the addition that the imposition of administrative penalties and administrative measures relating to breaches of Articles 27, 27a and 27b is linked to the condition that "they do not endanger the security of energy supply."

On Article 14:

In general, on Art 14 LDAR and related parts (such as Art 2 or Annex 1), AT prefers a risk-based approach. The frequencies for different components of assets would thus depend on certain technical criteria (such as status, type of asset, pressure level, material, age, etc.). AT therefore appreciates that this requirement of taking into account the different risk-profiles of components that was part of the Council mandate is maintained by the PCY in the new suggested potential compromises.

On the tables and exact values which then follow in Art 14 and Annex I, AT wishes to restate that verifiable and independent information on the feasibility and practicalities of different test routines is essential in order to arrive at the most effective methane regime possible. Such comprehensive information seems to have been lacking in the negotiations so far. The goal must be an ambitious, efficient and effective regime to counter methane emissions, which is why this regime must also be technically and practically feasible (e. g. concerning the availability of service providers).

Standards – Article 14 and others

As stated in Doc ST 14812/23 +ADD 1 a "common approach will be required for all the requirements/standards indicated in different provisions of the Regulation". With a view to requirements/standards, as explained by the Presidency/COM and understood by AT, also for legal reason, the logics that underpins the Methane Regulation is to use standards in the following order as available: European standards and technical prescriptions pursuant to Article 29a – international standards – other (such as OGMP 2.0, best practices etc.). In this context it needs to be ensured that in this process established rules that have proven themselves in practice and are conducive to the objectives of the regulation are taken adequately into account.

Art 14(2aa)

AT acknowledges the efforts to improve Article 14(2aa), although AT remains critical of this provision, as it is still associated with the risk of false incentives, inconsistent

handling and ultimately also circumvention. With the addition of a new, second condition, namely that "these leaks aggregated represent less than [0.25%] of the total mass gas or [0.03%] of the total mass oil processed or extracted in those five preceding years" an improvement has been achieved in principle, because it is of course more difficult to fulfill two criteria instead of just one, but here too it is very questionable whether the basis for this percentage calculation can actually be determined reliably and uniformly. Moreover, how can the given percentage figures be justified? Also, the risk of false incentives remains. Undesirable adverse effects on the achievement of the objectives pursued by the Regulation must be avoided.

Article 14(3) and Annex I

With a view to the two-step approach as foreseen at different places in the document - which basically means that certain LDAR surveys may be carried out from distance first and in case a leak is detected with a second detection as close as possible to the source - a consistent approach needs to be assured that takes into account not only practical implications, but also does not bring with it the risk of an unequal approach by operators and adverse effects on the achievement of the objectives pursued by the Methane Regulation.

The cases in which a survey from a distance could be carried out would have to be clearly defined. Also, it would have to be clear which distance would be acceptable. Moreover, it must be assured that any such measurement from a distance delivers reliable and uniform information also in real life conditions. Also, it is questionable how improper use of a device could be avoided. So far the text only seems to rely on the manufacturer's specifications of the detection device concerned. In this context attention is drawn also to the difference in the relevant wording between Article 14 (3) and Annex I.

Article 14(4), first subparagraph

With a view to repair obligations AT supports an ambitious approach based on the idea that leaks should be repaired in principle, unless clearly defined exceptional conditions are met.

Article 14(5), second subparagraph

With a view to small leaks an approach that would allow to delay the survey to check at least once whether the size of loss of methane has changed up to 12 months, although notwithstanding standard survey routines, seems questionable. 12 months seems to be a rather long period of time. As soon as a leak is detected, it is clear that there is a problem that should not be ignored for up to 12 months.

On Article 18:

On Art 18 inactive wells, temporarily plugged wells, and permanently plugged and abandoned wells, and the respective annex IV, regarding point 8, in the Coreper-document, AT takes note of the Presidency's suggestions. In line with previous AT comments, AT would like to observe the following:

Article 18 (1)

A general publicity requirement should be carefully balanced against the background of security considerations without prejudice to the fact that transparency is essential in the factual context. See also Article 18 (4).

Article 18(2)

What exactly does "and to water" refer to? What "water" is meant here? Is this about offshore installations? A clarification in the text seems necessary.

Article 18(6), first subparagraph

In accordance with Annex IV, eighth paragraph, iii, and in order to avoid any inconsistency, it should read "[...] shall develop a mitigation plan to remediate, reclaim **or** [instead of "and"] permanently plug [...]" in Article 18(6), first subparagraph.

Annex IV, sixth paragraph a, point vi:

Annex IV sixth paragraph states information elements that shall be included in the inventories of inactive wells, temporarily plugged wells, and permanently plugged and abandoned wells pursuant to Art 18. In point vi, AT would like question the inclusion of "seismic data for the well" as default because the focus should rather be on the correct liquidation of a well (with seismic data e. g. as complementary information).

Annex IV, seventh paragraph:

Concerning the documentation to demonstrate that there are no methane emissions from a well or well site, it should be avoided that any data that has already been made known to the competent authority (e. g. concerning proper liquidation) has to be transmitted again (any redundancy shall be avoided in general), and equal handling throughout the Union shall be striven for.

On coal mines:

On coal mines in Section 3 of Chapter 4, regarding point 9 in the Coreper-document, AT appreciates the clarification that fully flooded coal mines that have been fully flooded for more than 10 years are exempted from the measurement and quantification obligations, and as stated before, AT would prefer keeping a timeframe of 50 years.