Working Paper N° 2

Implementing the EU Methane Regulation

Governance at the national level

Responsible ministries and competent authorities

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This paper’s original version from June 2024 was produced before the EU Methane Regulation was published in the Official Journal of the EU, based on its final text. We had assumed it would enter into force in July 2024, but it turns out it will enter into force on 4 August 2024. In this update, we have adapted all references to the date of entry into force and, consequently, to various deadlines for the implementation of individual provisions. We also corrected some typos.

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Abbreviations

BGR	German Federal Institute for Geosciences and Natural Resources
CA	Competent Authorities
CBAM	Carbon Border Adjustment Mechanism
COM	European Commission
(EU) ETS	(European) Emissions Trading System
EU-MER	EU Methane Emissions Regulation
IED	Industrial Emission Directive
KOBiZE	Polish National Center for Emission Management
LDAR	Leak Detection and Repair
MRV	Monitoring Reporting Verification (as prescribed by EU-MER)
MS	Member States
OECD	Organisation for Economic Co-operation and Development
PIG-PIB	Polish Geological Institute
RM	Responsible Ministry
RP	Responsible party
SOE	State owned enterprise
SSM	State Supervision of Mines
TFEU	Treaty on the functioning of the European Union
UBA	German Federal Environment Agency
V&F	Venting and Flaring
WP	Working Paper

Executive summary

An **effective governance at the national level** is **essential** for the **successful enforcement of** the EU Methane Regulation (EU-MER). Its implementation is largely left to executive action by the Member States (MS), who must establish competent authorities (CA) and enforce most aspects of the Regulation. This working paper therefore focuses on governance issues relevant for a successful EU-MER implementation at the national level.

The EU-MER sets the framework for national governance. It defines the obligations and tasks for different parties, including the functions that the governments and the CA must fulfil. Chapter 2 provides an overview of the overall EU-MER governance, while Chapter 3 describes the basic framework of the EU-MER at the national level and what functions are respectively assigned to the CA and to the responsible ministries (RM).

MS can establish or appoint one or more competent authorities. Many MS will establish more than one CA and assign to them different functions of EU-MER implementation, based on pre-existing structures in charge of the enforcement of other legislation that requires similar expertise. While centralisation into a single national CA reduces redundancies and transaction costs, capitalising on existing expertise may make sense. In chapter 4, we discuss these different institutional models and their implications, and draw the following conclusions:

- **The window for establishing a national governance structure is short**. By February 2025, the MS will have to notify the Commission the names of the CA responsible for the EU-MER implementation. As these long-term decisions must be taken quickly, civil society actors must act accordingly if they want to influence what is likely to be a key factor for the EU-MER's success.
- **MS should consider existing expertise and structures** when deciding on the competent authorities.
- **When MS appoint more than one CA, they should ensure an effective coordination** and oversight to achieve a consistent, coherent, and efficient implementation. This implies assigning overarching coordination to a single entity.

The CA should have autonomy from their political superiors in its day-to-day operations. The MS' governments potentially face conflicting goals and interests between an ambitious enforcement of the EU-MER and other policy priorities, such as keeping energy costs down or concerns about the security of energy supply. A sufficient degree of autonomy of the CA will be important for the effective implementation of the EU-MER and to avoid conflicting priorities affect the delivery of the EU-MER, which we discuss in Chapter 5.

To prevent undue influence and corruption, the MS should ensure appropriate compliance rules and procedures including mechanisms for whistleblowing. Companies subject to obligations may try to seek unduly influence the enforcement of the EU-MER. In Chapter 6, we identify the areas at risk to help preventing undue influence and corruption.

About this series of papers

Methane (CH_4) is the second most important greenhouse gas (GHG), having caused around 30% of the global temperature increase since the Industrial Revolution. The energy sector is responsible for more than one third of the global anthropogenic CH_4 emissions, and it offers most of the short term CH_4 abatement potential.[1] In 2021, together with the USA, the EU announced the Global Methane Pledge, a commitment to reduce global CH_4 emissions by at least 30 percent from 2020 to 2030 signed by 155 countries.[2]

The EU Methane Regulation (EU-MER) has been adopted with the overwhelming support of 85% of the European Parliament and of all EU Member States except Hungary. It enters into force on 4 August 2024.[3] If well implemented, it will be instrumental in significantly reducing the CH_4 emissions from the energy sector. Most of the CH_4 emissions associated with the energy consumed in the EU are generated in the producing countries from which the EU imports oil, gas, and coal. Therefore, the EU-MER provisions on imports are of critical importance. However, a thorough application of all EU-MER provisions at the domestic level is a necessary condition for the efficacy and acceptance of those related to imports.

The impact of the EU-MER will depend on the quality of its implementation. Even though EU regulations like the EU-MER are directly applicable in all EU Member States, its implementation requires extensive executive action as well as some regulatory provisions at the national level. This working paper is part of a series that aims to provide analysis, information, and practical support to help the Member States and encourage the newly established teams at the competent authorities (CA) to implement the EU-MER effectively, thoroughly, timely and efficiently.

There are two other working papers in this series:

- Implementing the EU Methane Regulation, Working paper N° 2. Governance at the national level: responsible ministries and competent authorities.[4]
- Implementing the EU Methane Regulation, Working paper N° 3. Penalties and selected legal issues.[5]

This series is intended to provide hands-on assistance to those involved in implementing the EU-MER at the national and at the EU level. Many of the issues we discuss are of relevance during the first 6 to 12 months after the EU-MER enters into force. To provide guidance from the very start of the EU-MER implementation, we worked on a legal text that was still in the approval process and we are releasing this series of papers just days after its formal adoption. Thus, some of the ideas contained herein could be developed further. We welcome any feedback that might help refine them.

[1] : IEA Global Methane Tracker 2024. https://www.iea.org/reports/global-methane-tracker-2024/key-findings
[2] See https://www.globalmethanepledge.org/
[3] Regulation (EU) 2024/1787 of the European Parliament and of the European Council of 13 June 2024 on methane emissions in the energy sector and amending Regulation (EU) 2019/942. See: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32024R1787
[4] Piria Raffaele, Leon Martini: Implementing the EU Methane Regulation, Working paper N° 2. Governance at the national level: responsible ministries and competent authorities. Ecologic Institute, Berlin, 2024. Available at: https://www.ecologic.eu/19719
[5] Piria Raffaele, Stephan Sina and Lina-Marie Dück: Implementing the EU Methane Regulation, Working paper N° 3. Penalties and selected legal issues. Ecologic Institute, Berlin, 2024. Available at: https://www.ecologic.eu/node/19720

Introduction

The impact of the EU Methane Regulation (EU-MER) will depend on the quality of its implementation. This paper discusses the important part of the implementation assigned by the EU-MER to the Member States (MS), who must establish competent authorities and enforce most aspects of the legislation. According to the OECD, governance is essential for the overall effectiveness of regulation.[6] Consequently, the governance of the EU-MER at the national level will deeply influence its impact and success. This working paper therefore focuses on **governance issues** relevant for a **successful EU-MER implementation at the national level.**

"Governance" is a term frequently used in the policy making community. At the same time, however, it is a contested and ambiguous concept with different definitions and interpretations.[7] In this paper, when using the term "governance", we refer to the **processes, institutions, and structures for decision-making in and enforcement of the EU-MER** at the national level. Specifically, we focus on the ministries that carry the main responsibility for EU-MER implementation, on the competent authorities, and on the relationship between them. We discuss these issues with a focus on practical considerations because, ultimately, governance is not an end in itself but a means to an end, which in this case is the implementation of the EU-MER and its effective regulatory delivery.

MS have **heterogenous institutions, capacities, and administrative models**. Moreover, MS differ substantially in the structure of their energy sectors, which implies different challenges in the EU-MER implementation and may lead to different institutional structures and governance solutions. Still, some governance issues and challenges are relevant across all MS, even if solutions may differ. Here, we discuss **three main governance challenges**:

- **How many CA** are established per MS and **how the functions and tasks** for implementing the EU-MER **are allocated** to them. In Chapter 3, we discuss the benefits and drawbacks of having several fragmented and/or decentralised CA in a MS and examine the potential implications.
- CA must have **autonomy** from their political superiors, especially the government, in their day-to-day operation. The importance and practicalities of this autonomy is discussed in Chapter 4.
- Finally, companies subject to EU-MER obligations may try to seek undue influence on the implementation and enforcement of the EU-MER. In Chapter 5, we identify the areas at risk to help **prevent undue influence and corruption**.

Before looking at the governance of the EU-MER at the national level, it is useful to introduce its overall governance at the EU level, which we describe in Chapter 1. In Chapter 2, we provide a basis for understanding the governance issues, by describing the functions and tasks of the CA and RM in implementing the EU-MER, focusing on the other actors they must interact with. Chapters 3 to 6 then discuss the central governance issues outlined above. In the final chapter 6, we develop recommendations for NGOs to inform their strategy on EU-MER governance.

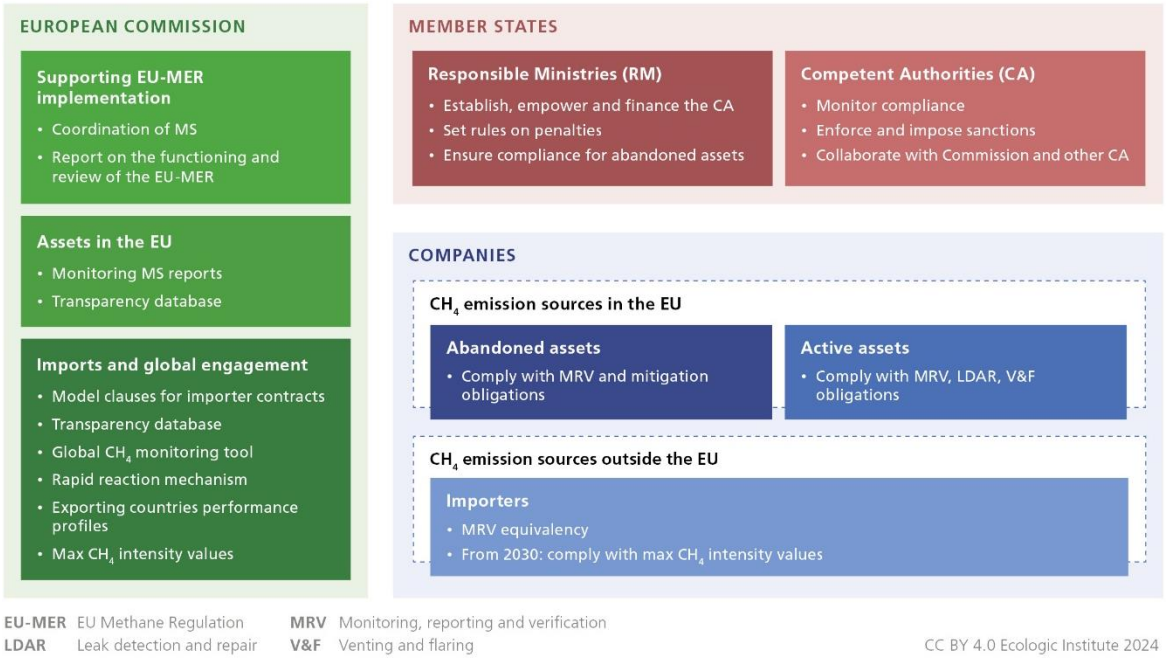
[6] OECD (2014): The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, https://doi.org/10.1787/9789264209015-en.
[7] Fukuyama, F. (2016): Governance: What do we know, and how do we know it? Annual Review of Political Science, 19, 89-105. https://doi.org/10.1146/annurev-polisci-042214-044240

1 Overview on the EU-MER governance and provisions

According to the EU legislative process, the EU-MER has been drafted and formally proposed by the European Commission, then discussed, amended and finally adopted by the two EU legislative bodies. The European Parliament adopted it by an **overwhelming majority** of 85% of the votes, with 5% abstentions and only 10% against[8]. In the Council, 26 Member States voted in favour and only Hungary against.[9] These figures demonstrate a **high level of consensus and democratic legitimation** of the EU-MER. Similar to other EU legislation, its thorough and timely implementation in each Member State is not only necessary to fulfil its climate objectives, it also is an obligation that each Member State has taken vis-à-vis its peers and the vast majority of the European electors.

Figure 1 illustrates the **key actors for the EU-MER's implementation.** These are the responsible ministries and the competent authorities of the Member States, the companies subject to EU-MER obligations and the European Commission. [10]

Figure 1: EU-MER implementation: key actors and actions



The **responsible ministries** (RM) must adopt the rules on penalties in conformity with the EU-MER provisions[11], ensure that the EU-MER obligations with regard to abandoned coal mines

[8] European Parliamentary, Plenary Session of 10 April 2024, results of votes. See: https://www.europarl.europa.eu/doceo/document/PV-9-2024-04-10-VOT_EN.pdf

[9] European Council, Session 27 May 2024, Public Session (A) items, Voting result on th Regulation on the reduction of methane emissions in the energy sector: https://video.consilium.europa.eu/event/en/27485

[10] For the sake of completeness, there are other EU-MER actors, which are not included in this list and in the figure because they play a minor role in implementation. Verifiers must verify some of the reports various entities must submit to the CA. The EU Member States' regulatory authorities in charge of the gas infrastructure must consider the costs of implementing the EU-MER carried by gas transmission and distribution operators when determining their regulated revenues. The EU Agency for the Cooperation of Energy Regulators (ACER) must define indicators and reference values concerning those costs.

[11] See our separate working paper from the same series: Piria Raffaele, Stephan Sina and Lina-Marie Dück: Implementing the EU Methane Regulation, Working paper N° 3. Penalties and selected legal issues. Ecologic Institute, Berlin, 2024. Available at: https://www.ecologic.eu/node/19720

and abandoned oil and gas wells are complied with and establish as well as empower and finance the **competent authorities** (CA), which must monitor and enforce the compliance of companies subject to EU-MER obligations. In case of infringements, the CA must impose sanctions or, in some MS, request courts to do so. In the following chapters, the relative tasks of the RM and CA and their relationships are discussed in more detail.

The **companies subject to EU-MER obligations** can be divided into three categories: companies responsible for abandoned assets in the EU, companies responsible for active assets in the EU and importers. With regard to the CH_4 emission sources within the territory of the EU, the EU-MER foresees different rules, procedures and obligations for currently active and for abandoned assets. The companies or entities responsible for the **abandoned assets** must comply with monitoring, reporting and verification (MRV) and with mitigation obligations. The active assets comprise "*oil or fossil gas exploration and production, fossil gas gathering and processing, or gas transmission, distribution and underground storage, including with regard to LNG*" [Art 2(23) of the EU-MER]. The companies responsible for these **active assets** must comply with a series of MRV, leak detection and repair (LDAR), and venting and flaring (V&F) obligations. In a results-oriented perspective, the most important category of companies are the importers of fossil fuels. This is because most of the CH_4 emissions associated with fossil fuels consumed in the EU occurs at the sites where coal, oil and gas imported into the EU are extracted. The **importers** must demonstrate that the fossil fuels imported under supply contracts signed after the entry into force of the EU-MER guarantee equivalent MRV procedures as required by the EU-MER for fuels produced in the EU. Moreover, from circa 2030 onwards, the imports under such new contracts must demonstrate a CH_4 emission intensity below a threshold to be proposed by the Commission by 2028. For old contracts, importers must demonstrate that they took all "*reasonable efforts*" to ensure that equivalent rules are implemented.[12]

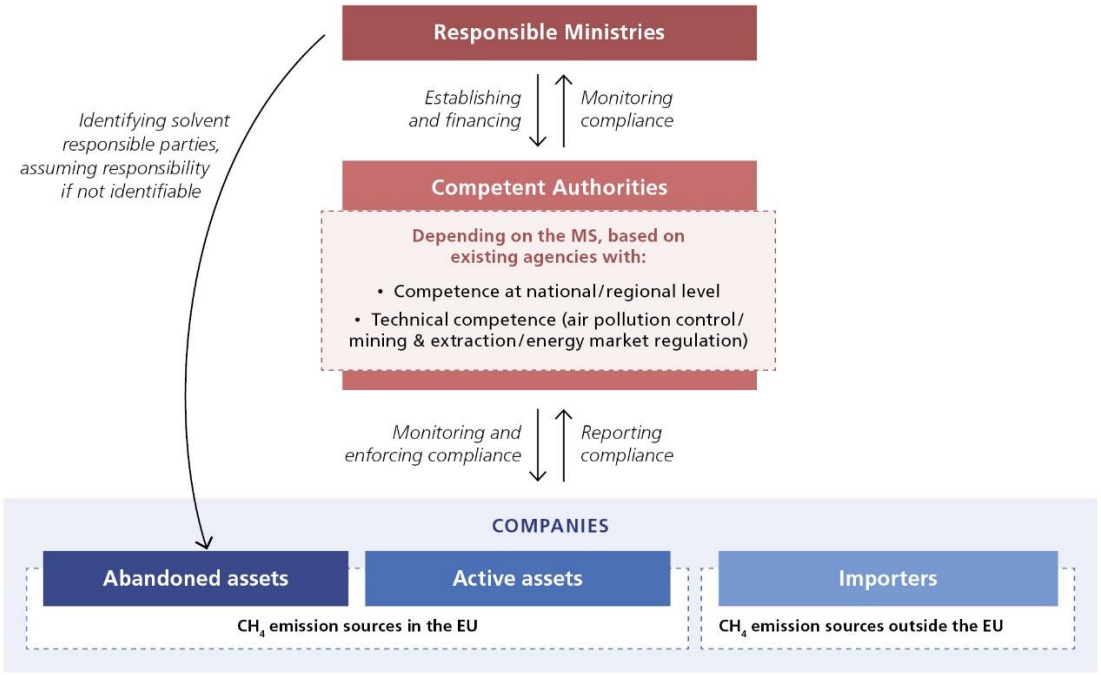
Concerning the EU-MER implementation at the national level, the **European Commission** must coordinate the CA of the MS, monitor their reports, and establish a transparency database with data on the implementation, which also covers the imports. Moreover, the Commission must produce a series of delegated acts as well as further documents and tools, like model clauses for the import contracts, the definition of a methodology to calculate the CH_4 intensity of fossil fuels and, subsequently, maximum CH_4 intensity values the fossil fuels imported to the EU will have to meet.

[12] See our Working Paper N°3 mentioned in the previous footnote.

2 The EU-MER governance at the national level

Figure 2 provides an overview of EU-MER governance at the national level: The RM establishes, oversees, and finances the CA. The CA are the central actors enforcing the EU-MER. They monitor and enforce the compliance of all entities subject to EU-MER obligations.

Figure 2: EU-MER governance at the national level



In this chapter, we discuss the actors and relationships in this figure in more detail to provide a basic understanding of the EU-MER governance at the national level. In section 2.1, we describe the EU-MER provisions with respect to the governance at the national level. In the following two sections, we describe and discuss the functions assigned by the EU-MER to the CA and to the RM respectively, focusing on how they will interact with the other key actors involved in EU-MER implementation. This is relevant for understanding the following chapters and the discrete issues and choices Member States face in implementing the EU-MER.

2.1 EU-MER provisions on the role of the CA

The EU-MER contains very **few explicit provisions on the governance of the CA**.[13] This is left entirely to the Member States. The MS must[14] "*designate one or more competent authorities responsible for monitoring and enforcing the application*" of the EU-MER. The MS must notify

[13] The provisions of Art. 4 are reflected in recital (13), which does not contain any additional indication.

[14] For the sake of clarity, we use "must" instead of the original wording "shall" for all EU-MER provisions where "shall" actually means "must" and could therefore be translated in other EU languages with verbs that could be translated back into English as "must", such as *devoir* in French, *müssen* in German and *dovere* in Italian. Usually, the official translations of "shall" in EU legal texts into these three languages completely renounces the use of a modal verb, for instance here: "*Les États membres déterminent le régime des sanctions (…)*" or "*Die Mitgliedstaaten erlassen Vorschriften über Sanktionen (…)*". See: Felici, A. (2012). 'Shall' ambiguities in EU legislative texts. Comparative Legilinguistics 10 (January):51-66. https://doi.org/10.14746/cl.2012.10.04 .

the Commission of the CA's name(s) and contact details by February 2025 and of any change thereafter [Art 4(1) EU-MER]. The MS must ensure that the CA have adequate powers and resources to perform the EU-MER obligations [Art 4(3)].

In general, the CA "*shall take, in performing their tasks, the necessary measures to ensure compliance with this Regulation*" [Art. 5(1)].

2.2 CA's functions and interactions with other actors

In this section, we describe the core functions of the CA.[15] From the point of view of a governance analysis, it is relevant to ask with which actors the CA will need to interact with. Therefore, we structure the analysis according to this criterion. To help readers scanning through this chapter, the actors are highlighted in bold.

The competent authorities will heavily interact with **companies subject to EU-MER obligations** as described above. The CA will evaluate reports submitted by these companies, among others about CH_4 emission quantifications and measurements, leak detection and repair (LDAR) plans and implementation, venting and flaring, CH_4 emission mitigation plans and CH_4 emission mitigation measures.

The CA must regularly carry out routine **inspections** of the sites and facilities run or controlled by the operators and by the responsible parties. During these inspections, the CA must check the validity of reports submitted by the companies as well as the compliance with all EU-MER provisions. The CA must carry out non-routine inspections to investigate complaints and verify the implementation of LDAR and other mitigation measures. It can carry out non-routine inspections to verify the compliance of importers as well. As discussed in our report on selected legal issues, parts of the inspection activities may be outsourced to private service providers by the CA, which, however, remain responsible for the inspection process as a whole.[16]

Based on the information obtained through the reports and the inspections, the CA must make decisions that may cause considerable costs to the companies, including the ordering of remedial actions and of amendments to the LDAR programs and the imposing of penalties in case of breaches. Decisions of this kind are prone to litigation. Therefore, if their decisions are challenged, the CA must also have the capacity to interact with the **justice system**.

The CA will also interact with the **other interested parties**. Any legal or natural person may lodge written complaints with the CA to report EU-MER breaches by operators or importers. The CA must deal with the complaints swiftly and keep the complainants informed. Following substantiated complaints, the CA must carry out non-routine inspections. Moreover, the CA must publish information and reports, including inspection reports, mitigation plans or emission monitoring reports.

Finally, the CA must cooperate with the **European Commission**, and with the **CA of other MS** and must establish adequate structures and contact points to do so. The CA may also need to cooperate with authorities from third countries. The CA must notify certain information to the Commission.

[15] A complete description of all CA tasks and what it will take to carry them out can be found in our Working Paper N° 1, see: Piria Raffaele, Ramiro de la Vega, Leon Martini and Eike Karola Velten: Implementing the EU Methane Regulation, Working paper N° 1. Tasks and resources needed at the national level. Ecologic Institute, Berlin, 2024. Available at: https://www.ecologic.eu/19718

[16] See our Working Paper N°3 on penalties selected legal issues mentioned in the footnote 11 above.

2.3 Functions of the RM and interaction with other actors

In addition to the CA, the EU-MER assigns obligations to the Member States, which we briefly summarise in this section.

The EU-MER text clearly distinguishes between the tasks assigned to the "Member States" and those assigned to their "competent authorities". With reference to the tasks assigned to the MS, the EU-MER does not assign responsibility to a specific MS entity, although this will be some government entity. As described above, we use the term "responsible ministry" (RM), to indicate the ministry that will lead the implementation of the EU-MER.

In some EU MS, the implementation of certain EU legal acts is shared among more than one ministry. This could in some MS be the case also for the EU-MER, which affects issues that might be covered by different ministries responsible for environment, climate action, energy, mining, and for managing state owned assets. Moreover, some ministries of foreign affairs might be involved, considering that the EU-MER also affects such a sensitive issue as energy import contracts. However, also in case of shared responsibilities, there usually is one ministry in the lead, which coordinates the implementation internally and represents the Member State vis-à-vis the European Commission and the other Member States.

When implementing the EU-MER, the RM have policymaking and operative functions. Their policymaking tasks include:

- setting up the CA and ensuring that they have adequate powers and resources;
- laying down the penalty regime and taking all measures to enforce it;
- ensuring that certification, verification and qualification schemes are available;
- reporting to and collaborating with the **European Commission**.

Besides the latter and the (potential) **domestic competent authorities**, these tasks do not involve strong interactions with other actors.

The operative tasks of the RM pertain to **inactive, closed, and abandoned oil and gas wells** and coal mines. The MS must set up inventories of these sites. Moreover, the RM carry the overall responsibility to ensure that CH_4 emission mitigation plans are developed, and mitigation measures implemented in each of these sites. If the RM is able to identify a private law subject that carries the legal responsibility for that sites (**responsible party,** RP), the liability for the cost of the implementation measures is carried by the RP, except the RP demonstrates that it does not dispose of sufficient financial means. If the RM is unable to identify a solvent RP, the responsibility for implementing the mitigation measures lies with the state.

Notably, in case the RM carries the responsibility for the mitigation measures, the RM has the same reporting and CH_4 emission mitigation obligations as the RP. Thus, the RM must submit reports to the CA demonstrating that it is in compliance with the EU-MER obligations. In turn, the CA has to evaluate and (dis)approve these reports in the same way (Art 18). However, the EU-MER stops short from obliging the CA to impose sanctions on the RM in case it does not comply, while the CA must impose penalties on the RP, if they are in breach [Art 33(1), Art 33(5)].

To carry out its operative tasks, the RM will interact with (potential) **responsible parties** and with **service providers** that support the planning and implementation of CH_4 emission mitigation measures in the sites under the responsibility of the RM.

Conclusion: The RM must establish one or more CA to implement the EU-MER and provide them with adequate powers and resources. The RM have operational tasks with regard to

closed and abandoned sites, where they are responsible for mitigation measures unless they identify a responsible party. In that context, the RM may have to submit reports to and be supervised by the CA.

3 Single or multiple CA per MS? Considering options and implications

In this chapter, we discuss the structural choices in the establishment of the competent authorities. The Member States (MS) have large discretion on how they set up the competent authorities (CA), and specifically how they assign functions and tasks to one or more CA. Beyond this, it is up to the MS to decide on the design of the CA.

We first consider possible institutional options of CA governance and discuss the structures and expertise they could draw on from the implementation of other legislation. We then discuss the (dis-)advantages of having several CA in a single MS and discuss the implications for specific tasks.

3.1 Different institutional models of competent authorities

Different institutional options are possible: MS may establish a single national CA or several CA, which may assume functions of EU-MER implementation according to existing expertise or regional competence. Our interviews and talks with experts from five EU countries suggest that several MS consider designating more than one CA. In those MS that consider regional CA, up to more than 30. The reason is that most of the functions the EU-MER assigns to the CA are similar to functions already fulfilled by existing agencies at national and/or regional level. In such situations, the MS will probably want to build upon their technical competences and resources, in view of avoiding duplications and unnecessary costs.

Competent authorities can build on existing expertise

Existing institutions may be designated as the CA. The following types of national competent authorities or other institutions perform tasks similar to (some of) those required by the EU-MER.

The **Industrial Emissions Directive (IED)** regulates pollutant emissions from industrial installations. **National competent authorities** grant permits, which set operational conditions including emission limits, and check compliance through inspections. The Impact Assessment accompanying the European Commission's EU-MER proposal points to the environmental inspections according to the EU Industrial Emission Directive as a model for the governance of inspections within the EU-MER.[17] In some EU MS, including Germany and Italy, the IED inspections are carried out by regional authorities, which multiplies the number of the CA. MS may want to build upon this existing expertise in air pollution monitoring and the inspection of industrial installations. However, the national competent authorities responsible for the IED

[17] European Commission (2021): Impact Assessment Report accompanying the 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, SWD 2021(459) final, p. 65. Available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2021:0459:FIN:EN:PDF
See also our Working Paper N° 3 on penalties and selected legal issues mentioned in footnote 11 above.

generally lack expertise in other fields relevant for the EU-MER, such as imports or mining and extraction of fossil fuels.

The **EU Emissions Trading System (EU ETS)** requires the establishment of **competent authorities**, which are responsible for the general implementation of the ETS, including the approval of monitoring plans, checking of Annual Emission Reports as well as inspections, which are not mandatory but encouraged by the European Commission. Similar tasks are required under the EU-MER. In most MS, there is one single CA in charge of the ETS implementation. In Germany or Ireland, for example, the CA is part of the environmental agency. In the Netherlands, the CA is an independent institution, the Dutch Emission Authority. In several other MS, the CA is a unit in a ministry. However, it must be noted that most of the CO_2 emissions covered by the EU ETS can be reliably and easily calculated on the basis of the carbon content of the fossil fuels combusted in a certain installation. Quantifying methane emissions is a different and more challenging task that requires know-how of specific technologies and procedures. The national agencies responsible for the EU ETS do not necessarily have the relative expertise, nor are they used to deal with imports, mining and extraction of fossil fuels.

The **EU Carbon Border Adjustment Mechanism (CBAM)** is enforced through **national competent authorities**, to whom declarants must submit annual declarations and purchase CBAM certificates from. In addition, custom authorities have an important role in the enforcement of CBAM, carrying out controls of imported goods and communicating this to the CBAM competent authority in the country where the declarant is located. In many Member States, the CA responsible for CBAM is the same as the one implementing the EU ETS.[18] Overall, the administrative structure of the CBAM implementation may become relevant for dealing with imports in the EU-MER. However, the measuring and quantification of emissions as well as the practices of extraction industries may not be a core competence of these agencies.

At the national level, the compliance with **regulations concerning underground resources** is often monitored and enforced by **dedicated authorities**, which therefore regulate many of the sites with CH_4 emission sources within the EU, e.g. coal mines, gas and oil wells. These dedicated authorities have extensive expertise in these industries, from workers safety to water protection and air pollution, which is relevant to the implementation of the EU-MER. Therefore, these authorities may be involved in the EU-MER implementation. However, agencies might not have a specific expertise in air pollution control, in import issues and in the economic activities covered by the EU-MER that do not happen underground, such as gas pipelines and LNG terminals.

The **energy market regulators** established according to the EU directives on the internal markets for electricity and for gas are explicitly involved with a minor role in the EU-MER. According to Art 3(1), they must "*take into account the costs incurred and investments made to comply with the obligations under this Regulation, insofar as they correspond to those of an efficient and structurally comparable regulated entity and are transparent*". This specific role is and could not be part of the tasks assigned by the EU-MER to the CA, given that only the energy regulators can carry it out. Since the energy regulators are anyway involved in EU-MER implementation, some MS might consider assigning to them also some or all of the CA functions. The energy market regulators often have other competences besides electricity and gas market know-how, such as regulating district heating or other industries involving natural

[18] See Kardish, C., Wildgrube, T. (2022): Carbon Border Adjustment Mechanism: Administrative Structure and Implementation Challenges. Climate Change 21/2022. Available at: https://www.umweltbundesamt.de/publikationen/carbon-border-adjustment-mechanism

monopolies (telecommunication, water). However, they generally have no expertise in measuring and quantifying emissions nor in issues related to imports.

In sum, each type of agency and institution mentioned in this list already has some of the expertise necessary to carry out the tasks the EU-MER assigns to the CA, but none has all of them. The monitoring of CH_4 emissions is a new task that requires specific expertise not yet available in any of these agencies. Every MS has its own peculiarities. Therefore, while making use of existing expertise and networks is reasonable and will probably be a factor that each MS will take into account, all of them will also need to invest to develop new, specific skills and capacities.[19]

In Chapter 4.2 we assess the alignment of the different types of existing agencies discussed above with the objectives of the EU-MER, as well as their autonomy from political influence.

Establishing one or several Competent Authorities

Consequently, a fundamental governance choice is about **how a MS allocates functions and responsibilities for tasks to how many CA**. This issue can be structured along two dimensions. One is the *substantive integration or fragmentation* of functions and tasks. Here, the choice is to either bundle the functions and tasks the CA are responsible for and to integrate them into *one* authority or to distribute the tasks to different authorities according to (pre-existing) competences and expertise. The other dimension is the *geographical (de-)centralisation of CA*, which asks whether some of the functions and tasks are allocated to regional CA or if all of them should be concentrated in one or more CA at the national level.

From this follows that there are in principle **four models** for the **allocation of the CA functions and tasks:**

1. **A single integrated national CA**: All functions and tasks are integrated and centralised in one competent authority at the national level. This will most likely be the case in the Netherlands, where the Dutch State Supervision of Mines (SSM) will assume the role of CA and all associated tasks.
2. **Several fragmented national CA**: The functions are allocated to different authorities at the national level, according to existing expertise and competences. This might be the case in Poland, among other countries, where the functions might be shared between the Polish Geological Institute (PIG-PIB) and the National Center for Emission Management (KOBiZE).
3. **Decentralisation to fully integrated CAs at the regional level coordinated by one at the national level**: Most CA functions and tasks could be assigned to one individual CA in each region, leaving to the national level (almost) only the function to report to and liaise with the European Commission and the CAs of the other MS. This might be the case in Belgium, where the three regions have very wide competences in the implementation of the EU ETS as well.
4. Various **combinations of the above options** are possible, which may involve some degree of substantive integration and/or of decentralisation at the regional level. Some functions and tasks could be centralised in one national CA, and others decentralised to one CA in each region. A similar design is possible as well but with substantive fragmentation at the national and/or regional level. An example of model 4 will likely be Germany, due to its constitutional arrangements, as federalism results in competences being decentralised to the *Länder*. Some functions and tasks might be performed at the national level by the German (federal) Environment Agency (UBA), other functions

[19] See our Working Paper N° 1 on the tasks and resources of the competent authorities.

might be assigned to the Federal Institute for Geosciences and Natural Resources (BGR), while still others might be allocated to the regional level. Moreover, in many of the 16 federal states there will likely be a fragmentation of functions and tasks among different agencies, for example those responsible for mining and energy and the regional authorities that currently also implement elements of the Industrial Emissions Directive.

3.2 Existing expertise: when fragmentation makes sense

Most likely, the establishment of the CA will follow path-dependencies. However, within the respective institutional contexts and constraints, some MS have a degree of discretion on how to allocate the EU-MER functions and tasks to one or more CA. Where such a leeway exists, it is relevant to ask about the benefits and drawbacks of substantive fragmentation and/or geographic decentralisation. As argued above, the ideal set-up will depend on the MS in question and its respective context. Still, some tentative generalisable statements can be made.

There are **three main advantages to centralisation and limiting the fragmentation** of responsibilities across several CA. First, centralisation reduces redundancies and makes the implementation of the EU-MER more efficient. These redundancies and inefficiencies are particularly likely to happen in the case of a division of responsibilities between several regional authorities, as this entails that each regional CA will have to build up the know-how and capacities needed to implement the MER. This can unnecessarily inflate costs and will increase the need for skilled staff, which can be difficult to find. Second, centralisation of competences allows for a bundling of specific expertise on energy sector CH_4 emission mitigations. This can have several benefits, as the lessons learned within multiple areas of enforcement can be shared more effectively. Thus, centralisation may be more conducive to harnessing the learning effects. Finally, centralisation may reduce transaction costs and need for coordination, as further discussed below.

At the same time, **it may be sensible to set-up several competent authorities**. The main advantages are that it is advisable to build upon existing structures and expertise, create synergies and avoid redundancies.

From these considerations, **some guidelines may be derived for the allocation of responsibilities** to competent authorities:

1. Only allocate responsibilities to several competent authorities if it builds on existing institutions and infrastructures (and/or if constitutionally unavoidable).
2. Avoid splitting up responsibilities into too many units and geographical entities as this may increase transaction costs, slow learning, and increase overall costs. Consider the complexities and implications outlined in the next section.
3. On the other hand, consider the transaction costs of establishing a single, integrated CA that would require transferring know-how and resources from an existing agency to the (newly) established CA.

3.3 Several CA in the same MS requires effective coordination

If more than one CA are established in the same MS, the question arises of how to ensure that the enforcement of the EU-MER is as effective, consistent and efficient as possible, across all regions and/or fields of technical competence covered by the different CA.

Relevant measures to ensure this include effective forms of coordination and communication across CA within the same MS[20], a centralised oversight and coordination as well as centralised communication structures (IT infrastructures, data management, etc.). We suggest that this coordination should be ensured by a single national entity such as a competent authority responsible for the overall coordination of the EU-MER, in addition to other specific functions it may have. In Germany, for example, this role will be assumed by the German Environment Agency.

Coordination and collaboration are important in a number of EU-MER tasks:

Inspections:

- To ensure consistency across regions and areas of enforcement and to improve efficiency, the CA in one MS (and possibly across MS) should develop common inspection protocols and procedures. For example, in Germany it does not make sense to develop the same protocols in each of the 16 federal states.
- With several CA, fostering learning and cross-organisational sharing of best-practices is more difficult than with a single integrated CA. To improve learning, CA in the different MS must develop adequate mechanisms and formats.
- Inspections can potentially be implemented more efficiently if there is close coordination among the CA. As discussed in our Working Paper N° 1, learning effects and, in some cases, economies of scale may be possible in conducting the inspections. Such effects arise with increasing numbers of inspections and thus diminish unit costs per inspection. Cooperating CA could procure their equipment or specialised services jointly and thus be able to reduce costs per inspection.
- A common inspection regime may become relevant for imports. If there are regional differences in the inspection regimes and stringency, importers may exploit these differences as a form of regulatory shopping. This risk can effectively be mitigated if there are effective forms of collaboration and oversight between the CA. Ideally, importers should be inspected by a single CA at the national level to ensure specialised expertise and consistency.

Evaluating reports: consistent decision-making and data management

- Effective data sharing among CA can improve decision-making. If CA share data effectively, there is a larger database for developing relevant benchmarks that can inform decision-making on aspects such as mitigation plans or remedial actions. For instance, if one regional CA only considers the reports that it receives from the operators based in its region, it may get a wrong impression of the market conditions relevant to judge whether a LDAR plan is acceptably ambitious. If the CA has access to LDAR reports from other regions, it might find out that LDAR actions can actually be implemented much quicker than claimed.
- The importance of information sharing among the CA is even higher when it comes to imposing remedial actions or sanctions. Such decisions may cause considerable costs to entities found in breach of EU-MER obligations. The entities may choose to challenge the decision of the CA, arguing that it is not aligned with analogous sanctions or remedial actions imposed by other CA in the same MS. This risk can effectively be mitigated if there is information sharing among the CA and, possibly, shared guidelines, benchmarks, or principles.

[20] Those across EU MS are a task of the European Commission.

Coordination with the COM and other MS

- National CA must cooperate with the Commission and the CA of other MS. Such cooperation can become ineffective if there are too many actors involved, which may be a result of several CA per MS. Consequently, there must be some form of coordination within the MS and representation of them at EU-level by a (single) coordinating CA or entity per MS. Such a process and structure can be established by the Commission. At the same time, the MS must ensure that there is effective coordination and information flow between the CA, so that information and lessons learned from other MS and the Commission are shared effectively.

Publications

- For each MS, an integrated communication infrastructure must be set up, as the reports should be made available on a single website for public access. At least here, there must be effective collaboration between the CA.

4 Autonomy of the CA from political power

The mandate of the competent authorities is to enforce the EU-MER provisions. However, as seen above, the same CA might also be responsible for the enforcement of other EU and/or national laws. Moreover, some of their functions and tasks may be affected by tensions between the EU-MER mandate and other policy goals that may be pursued by other executive institutions, including the responsible ministry that establishes, controls and, in some cases, finances the CA.

In this chapter, we discuss how such tensions or even conflicts of interests can be managed. We argue that **the CA should possess a certain degree of autonomy** from politicians and from other executive institutions, including their responsible ministries.

4.1 Areas where conflicting goals may occur

As a first step, we identify four areas where conflicting goals may occur. Further context on these CA functions and tasks can be found in Chapter 2 and in our WP N° 1 and N°3:

1. **Favouritism for state owned enterprises:** the CA may have to impose sanctions or expensive remedial actions on a series of private law entities, which may include state owned enterprises (SOE), such as operating coal mines, oil and gas wells, or gas infrastructure. Well before such decisions must be taken, the CA is in charge of evaluating the reports submitted by the SOE and to inspect their sites and premises. In such situations, there can conflicting goals between the effective implementation of the EU-MER and another government priorities, i.e. the rentability of the SOE.
2. **Monitoring government compliance**: the MS have a series of MRV and mitigation obligations with respect to closed and abandoned sites. The CA must monitor and evaluate these activities. In some cases, the CA will end up monitoring the same ministry that has assigned to them this task.
3. **Risk that importers engage in "enforcement venue shopping":** According to the EU-MER, the importers' reports are due to the CA of the MS where the legal entity of the importer is established [Art. 27.1], and not to the CA of the country where the imported fossil fuels physically enter the Union. Therefore, if importers find that some CA are

implementing the EU-MER provisions on imports in a laxer way than other MS, they could transfer the import contracts to legal entities established in those EU MS. In political science, an analogous practice is called "regulatory venue shopping"[21]. In the case of the EU-MER, it would not only refer to the regulatory venue (e.g. the rules on penalties set by the MS' legislators). Given the tangible margins of discretion of the CA when enforcing the EU-MER,[22] there could also be an "enforcement venue shopping". For instance, while they are obliged to carry out routine and non-routine inspections on operators of domestic assets, the CA may freely decide whether they carry out inspections of importers, except a substantiated complaint is lodged. The national (or even regional) governments may have an interest in attracting importers, e.g. to increase tax revenues. As a result, some government units may directly or indirectly try to exercise pressure on the CA to "soften" its enforcement style.

4. **Conflicting government priorities**: In some cases, policy makers may perceive the EU-MER mandate as conflicting with other policy goals, such as security of energy supply or low energy costs. In one point, these conflicting priorities between the EU-MER mandate and the security of energy supply is reflected in the legal text of the EU-MER.[23] Whether and under which conditions the perceptions of such conflicts is well-grounded is disputable, but not a topic of this paper.

To ensure that the CA can fulfil their mission of enforcing the EU-MER and correctly perform their functions and tasks, they should be shielded from undue pressure from politicians or other executive bodies. Therefore, we argue that they should enjoy a certain degree of autonomy. To ensure an **appropriate level of operational autonomy**, the CA should not be guided in their day-to-day operations by the orders of their (political) superiors, but by their mandate. This argument can be grounded in the EU-MER text, as it clearly requires the MS to establish CA and to provide them with the powers and resources necessary to fulfil their functions.

However, the **degree of autonomy required for the CA enforcing the EU-MER** is significantly **lower than** it is, for instance, required **for energy regulators**. The EU Directives on the internal electricity market and on the internal gas market contain incomparably more precise and strict provisions concerning the independence of the regulators than the EU-MER with regard to the CA. The CA in charge of enforcing the EU-MER should be functionally independent in their day-to-day operations. The planning and the execution of their tasks should be oriented to fulfilling their EU-MER mandate and functions, without being influenced by the consideration of potentially conflicting interests outlined above. Therefore, we argue that **the CA should have an arms-length relationship** to political superiors in the executive and legislative branch.

Overall, drawing on the **OECD's recommendation** for the independence of regulatory authorities[24], an arms-length relationship between government and CAs to safeguard their operational independence should be ensured by:

- **Delegation**: Establishing competent authorities as separate structures, thereby delegating the daily oversight and management of the CA to other administrative authorities than the ministries responsible for establishing the CA. For example, the CA

[21] Inspired by: Coen, D., Guidi, M., Yordanova, N., & Héritier, A. (2021). The logic of regulatory venue shopping: A firm's perspective. Public Policy and Administration, 36(3), 323-342. https://doi.org/10.1177/0952076718814900

[22] See our Working Paper on N°3 on penalties and selected legal issues.

[23] According to Art 33(2), the MS must "*ensure that the competent authorities have the power to impose*" a series of administrative penalties and measures relating to breaches of certain EU-MER provisions, "*provided that they do not endanger the security of energy supply*".

[24] OECD (2017): The Governance of Regulators Creating a Culture of Independence: Practical Guidance Against Undue Influence. http://www.oecd.org/gov/regulatory-policy/Culture-of-Independence-Eng-web.pdf

should not be established as units within ministries but rather as units of existing (or, where appropriate, new) administrative or executive agencies, so to establish more distance between the CA and political superiors.

- **Stable financing**: Ensuring stable multi-annual budgets and thereby reducing the political leverage the government may have with cutting financial resources to the CA, or the specific units responsible for the EU-MER enforcement within existing agencies.
- **Accountability and transparency**: Establishing clear accountability and transparency mechanisms. This is anyway foreseen by the EU-MER with the obligation to publish most reports. If thoroughly implemented, such transparency could substantially reduce the risk of favouritism because a lot of information will be publicly available and can be scrutinised.
- **Compliance rules**: Establishing clear compliance rules that lay down a code of conduct for all staff members, including the people working in companies the CA may outsource certain activities to. Ideally, the competent authorities should develop a culture of independence including through their training, recruitment and freedom of action.

4.2 Autonomy and alignment of mandates of agencies

Based on the arguments and recommendations discussed in the previous chapter, it is worth considering how autonomous the various types of existing agencies examined in chapter 3.1 are and how their mandates, as well as the mandates of the controlling ministries, align with the goals of the EU-MER. Our **abstract considerations**, based solely on the types of agencies, can only highlight potential structural aspects that may be more or less offset by national peculiarities. Therefore, **no direct conclusion can be drawn** from the following **without first considering the specific situation in each Member State** and, where relevant, at the regional level.

The **legal basis of the EU-MER** is Art 192 TFEU, which pertains to the **environment**. Accordingly, it aims to reduce CH_4 emissions to mitigate the environmental damage they cause. From this perspective, one could make the point that the **competent authorities implementing the IED and the EU ETS** show the highest degree of alignment with the mission of the EU-MER. These agencies are typically controlled by the Ministries for Environment, which further aligns their missions with that of the controlling ministries.

The **agencies responsible for import controls** and those responsible for the **regulation of underground resources exploitation** are often under the jurisdiction of the Ministries for Economic Affairs. This situation may create tension between the environmental objectives of the EU-MER and policy objectives related to economic growth. This tension could be particularly pronounced if the mission or the culture of some of the agencies overseeing underground resources is aligned with the expansion or perpetuation of mining and extraction activities. While this alignment is likely to have been historically true for some of these agencies, the extent to which these factors persist today remains a hypothesis that cannot be verified within this study and may be incorrect. As a matter of fact, many of them are currently in charge of implementing environmental legislation such as the Water Framework Directive and the Industrial Emissions Directive with regard to mines.

The primary mandate of the **gas market regulators** is to oversee the functioning of the gas markets. This responsibility involves, among other things, protecting consumers who bear the costs of the regulated revenues of the natural monopolies under regulatory control. During our discussions with experts while preparing this series of papers, the question arose as to whether energy regulators might prioritise minimising the costs of EU-MER implementation, potentially

risking its integrity. In our opinion, this question is not an issue as long as the role of the gas market regulators is confined to what is explicitly prescribed by the EU-MER, namely, assessing the costs incurred and investments made by gas transmission and gas distribution system operators when regulating their revenues (as detailed in Chapter 3.1 above). This function constitutes the daily operations of energy regulators. When determining which costs can be covered by regulated tariffs, it is imperative to accept all expenses necessary to comply with legal obligations.

If an energy regulator were to be assigned the role of the CA responsible for enforcing the EU-MER, this could potentially create a challenging situation. For instance, the gas market regulator would be tasked with deciding whether to require amendments to the LDAR programme submitted by gas transmission and distribution system operators, which could result in varying costs for these companies. Simultaneously, the gas market regulator is responsible for determining their regulated revenues and, consequently, the regulated tariffs paid by consumers. If an energy regulator is hesitant to be associated with higher tariffs, they might be less inclined to enforce rigorous implementation of the EU-MER.

However, for four reasons, we believe this risk is very limited. First, the notion that energy regulators might prioritise their own agenda to keep tariffs low at the expense of fully complying with binding EU legislation aimed at reducing global warming is merely a hypothesis, lacking evidence. Second, if such an agenda were to arise from the political level, energy regulators are more insulated from political pressure compared to other agencies, given their significantly higher level of independence. Third, the costs associated with a thorough implementation of the EU-MER are unlikely to significantly impact tariffs, as they must cover the entire costs of the gas infrastructure. Fourth, if the risk exists at all, it solely pertains to the gas infrastructure operators regulated by energy regulators. However, these operators are responsible for just a low share of the CH_4 emissions regulated the EU-MER, with the majority of emissions stemming from coal, gas and oil extraction activities within and outside the EU, sectors with which energy regulators typically have no direct involvement.

5 Prevention of undue influence and corruption

By their nature, some of the functions and tasks of the CA and of the RM are prone to be subject to undue influence and attempted corruption by the companies subject to EU-MER obligations.

In particular, we see such risks in the following activities assigned to the CA:

- evaluating the reports and plans mentioned above submitted by the companies subject to EU-MER obligations;
- conducting routine and non-routine inspections of operators and importers;
- making decisions that may cause significant costs to operators and importers, especially decisions about mandatory remedial actions and sanctions;
- handling complaints.

We also see such risks in the following tasks of the responsible ministries:

- identifying responsible parties (RP) that should take the liability for the costs of mitigation measures with regard to inactive, closed and abandoned sites;

- verifying the RP's possible statements that they lack the "*financial assurance*" to cope with this liability;
- establishing whether sanctions imposed by a competent authority do "*endanger the security of supply*".

If undue influence or even corruption were to be effective in impacting the activities of the CA or of the RM, in each of these cases, this would directly or indirectly undermine climate change mitigation. In case a RP succeeds in unduly avoiding its liability, one could think that there is no impact on climate mitigation, given that the liability is then transferred to the state. Even in case that the specific mitigation measures are carried out by a state agency in a timely manner, this has fiscal costs with the consequence that there may be fewer financial resources for other climate mitigation measures. Moreover, this is of course a burden on the state budget and damage to its credibility.

The identification of specific functions and tasks at risk is an important preliminary step for the prevention of undue influence and corruption in public and private organisations. We have provided this analysis to help people with less in-depth knowledge of the EU-MER provisions to identify those areas. When it comes to how to make the CA and RM more resilient to undue pressure and corruption attempts, we must stress that the EU-MER is just like any other field of public policy and regulation with such areas at risk.

At the national, EU and international level, there are many sources on how to prevent corruption and undue influence. As an example, we draw from an OECD publication the following recommendations for prevention measures:[25]

- **Compliance rules and procedures**: There should be clear rules and guidelines regarding compliance that build on existing legal obligations for administrative staff. These compliance rules should also include rules on activities after leaving office ("revolving door").
- **Recruiting practices**: Staff should be recruited according to skills and ethics. As part of the recruitment process, particular attention should be paid to the integrity and sense of independence of the potential staff members.
- **Incentives**: The incentives in competent authorities, including career prospects and salaries, should be adequate to disincentivise undue influence.

Whistleblowing: Competent authorities should establish processes for whistleblowing in line with the EU's Whistleblowing Directive.

[25] OECD (2017): The Governance of Regulators Creating a Culture of Independence: Practical Guidance Against Undue Influence. http://www.oecd.org/gov/regulatory-policy/Culture-of-Independence-Eng-web.pdf

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