



Brussels, 20 June 2013
Final

Mandate

Fitness Check - Petroleum refining sector

Introduction

As part of its smart regulation policy, the European Commission announced in its Work Programme for 2010¹ that, *"to keep current regulation fit for purpose, the Commission will begin reviewing, from this year onwards, the entire body of legislation in selected policy fields through "fitness checks". The purpose is to identify excessive burdens, overlaps, gaps, inconsistencies and/or obsolete measures which may have appeared over time.*" Four pilot projects were launched in 2010, covering specific policy areas.

The Industrial Policy Communication Update² announces the Commission's intention to undertake a Fitness Check (FC) for the petroleum refining sector. This FC shall *"focus on the implementation and interaction of those policies that are most important for the competitiveness"* of this sector. The Communication furthermore states that this sector is *"critical for the EU's industrial value chain, but urgently require new investment to be made in the face of strong international competition."*

Context

According to Eurostat³, the refining sector in the EU generated in 2010 a turnover of EUR 497 billion and employed about 123 thousand people.

There were 88 refineries operating in the EU in 2011, with 704 million tonnes of primary refining capacity⁴. The EU is the second-largest producer of petroleum products in the world after the United States.

¹ COM(2010) 135 of 31 March 2010.

² COM(2012) 582 of 10 October 2012.

³ Manufacture of refined petroleum products - NACE Rev. 2 Group 19.2.

⁴ Europa Annual Report 2011.

The 2010 Staff Working Document on refining and the supply of petroleum products in the EU⁵ analysed in details key facts and challenges relevant for the sector pointing out in particular to trends such as falling demand in the EU for certain petroleum products like gasoline, increased global competition, overcapacity, reduced refining margins, and the need for significant investments to produce more middle distillates like gasoil/diesel. The impact of regulations, such as those to tighten fuel specifications, to reduce emissions from refineries and cars and to support the development of non-fossil fuels is also mentioned. The common broad policy objective of these regulations is ensuring a high level of environmental protection and limiting climate change.

Subsequently, the Commission's "Energy Roadmap 2050"⁶ stated that *"keeping a European presence in domestic refining – though one that is able to adapt capacity levels to the economic realities of a mature market – is important to the EU economy, to sectors that depend on refined products as feedstocks such as the petrochemical industry, and for security of supply."*

Following a number of divestments and shutdowns in EU refining capacities these last few years, the competitive challenges facing the refining industry have attracted increased attention from policy-makers at national⁷ and EU level. Energy Commissioner Oettinger convened for the first time in May 2012 a EU Refining Roundtable to discuss with Member States, MEPs and stakeholders the difficulties of the sector and share assessment of the situation and recommendations. Concern was expressed on the combined impact of EU policies affecting the refining sector.

Subsequently, the Commission's Joint Research Centre (JRC) organised in October 2012 a "Roundtable on Scientific Support to EU Refining Capacity" to consider key challenges for the sector and identify where scientific expertise and research should be targeted. In particular, participants to the JRC Roundtable asked for further specific analysis of the sector's situation, based on increased modelling and foresight capacities⁸, and also for more solid, evidence-based assessment on the cumulative impact of EU legislation.

Finally, a conference on EU refining was organised by DG Energy in November 2012, in which the Fitness Check for the sector, announced in the Industrial Policy Communication Update, was discussed and welcomed by participants. During the same conference, the Commission announced the establishment of the EU Refining Forum as a permanent body for discussions of relevant proposals and initiatives with potentially significant impacts on the industry and on security of supply. It was also proposed that the Forum would follow the FC.

⁵ SEC(2010) 1398 of 17 November 2010.

⁶ COM(2011) 885 of 15 December 2011.

⁷ For example, the French *Conseil général de l'environnement et du développement durable* presented in April 2012 the "*Audit sur la législation environnementale applicable aux raffineries*". The UK Department for Energy and Climate Change has launched a "UK Refining Review project" to be completed in 2013.

⁸ It should be noted that the JRC-IPTS has published in 2012 "*The OURSE model: Simulating the World Refining Sector to 2030*".

Scope of this horizontal Fitness Check

Unlike previous pilot Fitness Checks launched by the Commission that concerned policy areas, this one will focus on an industrial sector. Therefore, this FC should evaluate the impact that the most relevant EU legislative acts and initiatives have on the economic, environmental and social performance of the petroleum refining sector.

Based on previous analysis and on input received, notably in the framework of the meetings with policy-makers and stakeholders mentioned in the previous section, it appears that the pieces of EU legislation of particular relevance for the sector are:

- the Renewables Energy Directive⁹;
- the Energy Taxation Directive¹⁰;
- the EU Emissions trading system¹¹;
- the Fuels Quality Directive¹²;
- the Directive on Clean and Energy Efficient Vehicles¹³;
- the Industrial Emissions Directive¹⁴;
- the Strategic oil stocks directive¹⁵;
- the Marine fuels directive¹⁶;
- the Energy efficiency directive¹⁷;

⁹ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.

¹⁰ Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

¹¹ 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 and subsequent amendments.

¹² Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC.

¹³ Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles.

¹⁴ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

¹⁵ Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products.

¹⁶ Directive 2012/33/EU of the European Parliament and of the Council of 21 November 2012 amending Council Directive 1999/32/EC as regards the sulphur content of marine fuels.

- the Air Quality Directive¹⁸

This list of measures should be considered indicative and will be updated if necessary by the Steering Group. Within these measures, only the provisions that as a result of the assessment will be identified as of significant relevance for the sector shall be taken into account in the exercise.

On the basis of the analysis developed in the framework of the FC, other pieces of EU legislation, beyond those listed above, might be judged as or more relevant in terms of their impact on industry's costs and will therefore need to be included in the scope. This could be the case, notably, for other policies and measures linked to the strategic overall objective of decarbonisation¹⁹ but also if relevant in other horizontal policy areas. In addition, whenever deemed necessary, national legislation will be taken into account in the assessment.

Intervention logic

The measures outlined in the previous section have different features, in terms of objectives, mechanisms and resources, which need to be fully analysed and taken into account throughout the FC. One delivery of the exercise will be to develop a [diagram](#) illustrating the intervention logic of the measures and showing how they were supposed to achieve their objectives.

Overall aim of the Fitness Check

This Fitness Check should, firstly, estimate the quantitative impact of those measures that may be suitable for this kind of assessment, bearing in mind stated objectives in their respective fields. This quantitative assessment will take into account the impact of these measures on the costs and expected revenues of the EU petroleum refining industry and therefore on its capacity to invest, to innovate and to be competitive internationally, as well as the environmental and social impact such as in the case of relocation of production facilities outside of the EU that could increase emissions in third countries where industry would not be subject to comparable regulations and lead to a loss of employment in the EU.

Preferably, regulatory-related costs should be presented as a share of total costs and in comparison with other costs such as capital, raw materials, and labour. This should be supported by clear evidence.

¹⁷ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC.

¹⁸ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe.

¹⁹ As expressed, notably, in the Europe 2020 flagship initiative on “A resource-efficient Europe” and subsequent roadmaps and action plans.

This analysis, mostly of a quantitative nature, should be followed by a qualitative assessment in accordance with the Commission's general approach on fitness checks²⁰ and should therefore focus on how coherently and consistently EU legislation – specifically that which will have been identified as the most relevant for the sector – work together, whether it is effective and efficient, and to look for excessive regulatory burdens, overlaps, gaps, inconsistencies and obsolete measures. Since this FC will look at a specific industry sector rather than a policy area, there shall be a specific focus on cumulative impact of legislation and possible unintended effects, paying special attention to possible offsetting effects and overlaps.

Where it is clear that the legislation concerned has yet to have any impact on the refinery sector e.g. the period of transposition is yet to be completed or secondary legislation under the legislative act has yet to be passed, any assessment of the basic act itself can only be qualitative in nature. However, it should be considered that in some cases, also measures that have yet to fully enter into force can have an impact on investment decisions that might be quantified.

Besides the impact of EU legislation on the refining sector, other factors should not be neglected. In this sense, overcapacity and foreign competition stand out as two additional explanatory factors to be taken into account. The quantification exercise should as much as possible provide an estimate of the weight and relevance of these different factors when assessing the present difficulties of the sector. It should also identify the potential for EU legislation to help the sector respond to these challenges.

The JRC-IPTS will provide the modelling work and run the estimates of the quantitative impacts. Afterwards, DG ENTR, ENER and JRC-IPTS will propose the assessment of the qualitative analysis.

The methodologies for both stages of the study will be further discussed with the Steering Group at the outset of the assessment work.

Given the binding need of reliable and precise data for the successful conclusion of the quantitative exercise, the involvement and active cooperation of the refining industry is crucial. However, conclusions to be drawn from the exercise shall remain the sole responsibility of Commission services.

Finally, this FC should provide evidence on the impact of relevant legislations and policies on the sector. This evidence should be taken into account for future regulatory developments.

Main questions to be addressed

The list of questions for which the Fitness Check should contribute to provide an answer can be established as follows:

(1) Concerning **effectiveness**, are the achievements of the identified legislation with regard to the refining sector in line with the stated objectives? What progress has been made over time towards achieving the objectives? Which main factors (e.g. implementation by Member States, action by stakeholders, cooperation between

²⁰ http://ec.europa.eu/dgs/secretariat_general/evaluation/docs/fitness_checks_2012_en.pdf

producers) have contributed to – respectively stood in the way of – achieving these objectives? Beyond these objectives, did the legislation achieve any other significant results?

(2) Concerning **efficiency**, are there regulatory gaps, inconsistencies, overlaps or evidence of excessive administrative burdens for the refining sector? To what extent do Member States and industry respond to the requirements of different policies in terms of administrative co-operation and policy coordination? What are the policies in place in Member States and at the EU level to support the sector? Is availability of and access to funding a constraint in the implementation of the relevant legislation? What are the costs and benefits associated with the implementation of the specific legislation? Can any costs be identified that are out of proportion with the benefits achieved?

(3) Concerning **coherence**, what is the degree of integration of all instruments covered by the FC? Is the scope for integration fully exploited? Have there been unintended consequences and collateral effects? Can any specific inconsistencies and unjustified overlaps (e.g. in terms of definitions and key concepts,) across the legislation concerned and between them and other parts of EU law be identified? What is the cumulative impact of the measures on the performance of refining sector?

(4) As regards **relevance**, to what extent do the policies covered by the fitness check and their objectives address the challenge of competitive and sustainable EU refining industry along with their wider economic, social or environmental challenges? What is the value added of the EU legislation?

Fitness Check planning

1. Preparation and adoption of mandate (December 2012 - June 2013)

Initial contacts between DG ENTR, ENER and JRC-IPTS. First meeting of the Steering Group to discuss the draft mandate. First meeting of the Refining Forum to exchange views with Member States and stakeholders. Consultation of Refining Forum Members, notably on the scope of the exercise. Adoption of the mandate.

2. Study - identification and quantification of impact from EU legislation (June 2013 – May 2014)

JRC-IPTS study. Regular updates on progress to the Steering Group and to the Refining Forum.

3. Evaluation of identified EU legislation (June– July 2014)

Qualitative analysis on the effectiveness, efficiency, coherence and relevance of the relevant corpus of legislation. Drafting of the Staff Working Document.

4. Policy recommendations and finalisation of Staff Working Document (August – September 2014)

Steering Group to agree on conclusions and policy recommendations. Finalisation of the Staff Working Document.

Steering Group

DG ENTR has set up in March 2013 an Inter-Service Steering Group, including representatives of the SG, BEPA and DGs ENER, MOVE, ENV, CLIMA, JRC and TAXUD. Other DGs might be invited to join subsequently. The group could meet approximately every two months.

Consultation

Transparency and stakeholder involvement are vital for the success of the fitness check.

The main body ensuring involvement and consultation of interested parties, including among others Member States, the European Parliament, industry and trade unions, should be the EU Refining Forum established by DG ENER, meeting indicatively twice a year starting from April 2013.

Other stakeholders' consultations will be organised.

Data sources

Existing sources include the cited 2010 Commission Staff Working Document on refining and the supply of petroleum products in the EU, the JRC-IPTS Scientific and Technical Report, impact assessments of the relevant pieces of EU legislation, relevant international and national studies as well as industry's reports.

Next steps

Findings of the FC will be presented in a Commission's Staff Working Document and will serve as a basis for drawing policy conclusions on the future of the relevant regulatory framework.