Regulatory perspective in Downstream Europe’s regulatory environment – two case studies

Jean-Pierre Debruxelles
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AGENDA

1. About FuelsEurope & EU Refining Fitness Check
2. The legislative process in the EU - Two case studies:
   a) the Industrial Emissions Directive and the Air quality package (impact assessment)
   b) Adoption of implementing act of legally binding character : the Refining BREF (transparency)
3. EU Refining & Better Regulation
4. Conclusions
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About FuelsEurope
EU Refining & Fitness check
FuelsEurope represents 42 Member Companies ≈ 100% of EU Refining
Significance of Refining to the EU

- **Economic value:** EU refining contributes annually:
  - €23bn value added* to EU economy and €5B pa average investment.
  - Integration with €240bn turnover petrochemicals industry.
  - €270bn motor fuels taxation raised.

- **Environmental responsibility:** world class standards:
  - World class energy efficiency.
  - World class clean fuels to enable latest vehicle emission control.
  - World class water, air emissions and product qualities standards.

- **Reliable suppliers:**
  - Oil fuels 90% of 270m cars and 34m trucks in EU today, & still 80% in 2035.
  - Supply disruptions extremely rare due to flexible, efficient refining and distribution networks.

- **Skilled jobs and technology:** EU refining is a leading industry for:
  - 140 000 directly employed skill staff - in top 2 of EU industries.
  - Innovation in products and processes - in top 4 EU industries.
Refinery shut downs in EU and import trend

**Jamnagar refinery, India**
Expansion - for Export - underway from 1.3 Mbd to 1.8 Mbd (=13% of EU refining capacity)
EU refineries at competitive disadvantage vs non-EU export oriented refineries

- Generic EU refinery, 200 kbd
- Generic Middle-East refinery, 250 kbd
- $ / bbl of crude

1.74$ / bbl

EU-only Regulatory

IED 1.45
ETS**0.27
REACH 0.02

7.2 $ / bbl

Energy 1.1
Maintenance & Other 4.5

4.4 $ / bbl

COMPETITIVE DISADVANTAGE

~2.0

Product freight to EU*

2.8 $ / bbl

Energy 0.5
Maintenance & Other 0.7
Labour 1.6
Labour 1.6

NOTE:
*Product freight to EU - $ / bbl of product delivered to the EU
**ETS – estimated av. impact on EU refineries in phase IV
- Assumed identical crude cost

Source: Solomon Associates, Concawe
EU Refining Fitness Check: the pilot sectoral study for the period 2000-2012 just close to its conclusion

- JRC report almost final; the “Commission Staff Working Paper” yet to be issued.
- Cost of legislation 0.47 €cent/bbl during 2000-2012…
- …But no quantification of post 2012.
- Within COM, “defensive” approach of some services have somewhat influenced conclusions;

Using the Refining Fitness Check as part of the Better Regulation tools.

Refining Fitness Check should be included as an integral part of impact assessments on future legislative initiatives affecting refining:
Cumulative impact

Refining Fitness Check requires regular updates to stay relevant

Industrial Emissions
Renewable Energy (biofuel CapEx)
Renewable Energy (modelled net foregone earnings)
Fuel Quality
A look at the future: cumulative cost impact of EU legislation in 2020

The cumulative competitive disadvantage can be estimated in the range of 0.7 – 1.95$/bbl

* - For EU ETS, ‘low cost scenario assumes 16.5 €/t CO₂, high cost scenario 30 €/t CO₂

Source: Concawe, “The estimated forward cost of EU legislation for the EU refining industry”
The legislative process in the EU: two case studies
How EU laws are made

1. Citizens, interest groups, experts: discuss, consult
2. Commission: makes formal proposal
3. Parliament and Council of Ministers: decide jointly
4. National or local authorities: implement
5. Commission and Court of Justice: monitor implementation
EU: Institutions, the legislative & decision-making process

Commission
- proposes

Parliament
- amends/decides

Council
- amends/decides

Draft proposal from lead DG

Adoption by College of Commissioners

Proposal from the European Commission

European Parliament

European Parliament First Reading

Council

Act of EP & Council

Publication in the Official Journal of the European Union

Implementation in Member States
Europe’s regulatory environment - Two case studies

Co-decision procedure:
the examples of the Industrial Emissions Directive and the Air quality package versus impact assessment

IED: the IPPC review started in 2006 more than 18 months ahead of full implementation of the former IPPC directive and in the absence of many “BREFs”!

=> A ‘review’ process may start at any time for any reasons (the low BAT intake was the key driver for those willing to anticipatively amend the existing regulatory framework)
### Case study (1): Industrial Emissions Directive

**IED**: what do we get at the outlet *(2010)*

| A ‘framework’ directive accompanied by an impact assessment which says that the main impact on industrial sectors will be assessed when the key BREF(*) affecting the sector at stake will be drawn or reviewed | A directive which has virtually a limited direct impact | Secondary legislation (implementing act) matters as much as primary if not more (the same goes for many directives, e.g. ETS) |

(*) : **BREF** = **Best available techniques REFerence** document which includes legally binding BAT conclusions (i.e. BAT Associated Emission Levels)
The clean air policy package: adopted in December 2013

| A package accompanied by an impact assessment which does not correspond to what the College has adopted since the target year and the ambition level differ (the IA was released in February 2014) | Overly ambitious targets (proposal for Member States’ reduction commitments: the so-called NEC directive) based on energy forecasts (no sensitivity analysis) and on the assumption according to which key measures will deliver as expected by 2030. | A proposal for a medium combustion plants directive that did not exclude plants operated within refineries ... themselves about to be regulated (June 2014) through the REF BREF after a 6 year process (inconsistencies) |
Europe’s regulatory environment - Two case studies

**NEC proposal - State of play at EU institutions level**
(ahead of the so-called trialogue phase)

**Concrete example: NOX reduction commitment for Netherlands**

<table>
<thead>
<tr>
<th>NOX reduction compared with 2005</th>
<th>For any year from 2020 to 2024</th>
<th>For any year from 2020 to 2029</th>
<th>For any year from 2025 to 2029</th>
<th>For any year from 2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission proposal</td>
<td>n.a.</td>
<td>45%</td>
<td>n.a.</td>
<td>68%</td>
</tr>
<tr>
<td>EU Parliament ENVI report</td>
<td>45%</td>
<td>n.a.</td>
<td>67%</td>
<td>72%</td>
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<tr>
<td>Council WPE compromise text</td>
<td>n.a.</td>
<td>45%</td>
<td>n.a.</td>
<td>61%</td>
</tr>
</tbody>
</table>
Europe’s regulatory environment - Two case studies

Adoption of implementing act of legally binding character: the example of the Refining BREF and the lack of transparency

| No impact assessment (despite of what the IED IA mentioned) | No transparency on how draft BAT conclusions had been derived (see after) | Huge advocacy efforts deployed to ensure that technically and economically achievable levels of performance are eventually adopted |

- FuelsEurope
  - REFINING PRODUCTS FOR OUR EVERYDAY LIFE
Decision-making process in the EU

Comitology - Some statistics

100 basic legal acts annually

More than 2,500 implementing measures annually

Visible power

Hidden power
03 Better Regulation
Better Regulation: A very welcome proposal!

To solve a problem, you don’t always need new legislation....

• “...we must devote at least as much attention to reviewing existing laws and identifying what can be improved or simplified”.

One of the key objectives: increase transparency!

• Stakeholders will be allowed to provide feedback at different stages of the Commission regulatory process, from the very beginning (Roadmaps, Inception Impact Assessment) to the end (adoption by the College of Commissioners).

A substantial improvement: draft texts of delegated acts and “important” implementing acts will be open for public consultation by stakeholders:

• In the current configuration, overwhelming power of Commission especially on delegated acts.
• Secondary legislation may be as important as primary legislation.
What we find good in the Better Regulation proposal:

• Its key importance in the legislative process is confirmed and enhanced.
• European Parliament and Council to perform their own IA before adopting any substantial amendment to the proposal.

What we believe could be improved:

• The Commission Impact Assessment keeps being led by the Directorate General responsible for the relevant policy initiative.

• **Challenges:**
  The leading DG has a potential conflict of interest.
  Most often the IA is contracted out to 1 or more consultants who are inclined to provide the Client with the results it wishes to get.
  The IA should not only focus on the specific proposal but should consider overlaps, interactions and cumulative effects (especially with respect to Competitiveness Impact).

• **Proposal:** the scope of the IA should be broadened. If a sectoral Fitness Check is available (as in the case of the Refinery FC) it’s findings and results should be used in the IA.
What we find good in the Better Regulation proposal:

- Excellent idea to enhance the independence of this body (previously called “Impact Assessment Board”) by opening it to external experts.

What we believe could be improved:

- The RSB cannot block a Commission proposal from which the IA is found unsatisfactory: the Commission can move ahead but must publicly explain its decision.
- The RSB will look at the procedural compliance of the IA (not to actual policy).
- Proposal:
The RSB should have the possibility to address the scope, the strategic coherence and the substance of the IA as well as organising hearings where the stakeholders who consider having been not adequately listened to during the public consultations, IA, various feedback, should have the possibility to present their case.
Better Regulation: REFIT (making EU law lighter, simpler and less costly)

What we find good in the Better Regulation proposal:

- Very welcome objective to strengthen REFIT and make it “more targeted, quantitative, inclusive and politically prioritised”.
- Very welcome the REFIT Platform as a permanent forum among Commission, Members States, Stakeholders.

In particular the Fitness Check:

- The Refinery Fitness Check was launched in 2013 as a “first of a kind” process.
- It saw an excellent cooperation between the industry and the Commission.
- The final report is almost ready, and it is going to show the impact of regulations on the international competitiveness of the EU Refining Industry.

Our proposal: see also slide 8

- The Refining Fitness Check should be used as part of Better Regulation tools.
- It should be part of future Impact Assessments.
- It should be updated to stay relevant.
Conclusions

- European refineries compete in a highly competitive global market for refined petroleum products

- High costs for energy & regulatory compliance create a significant cost disadvantage versus export-oriented refineries outside of EU

- Current regulatory proposals will further increase the cost burden on EU refiners

- Presented case studies illustrate a need for improved decision-making process in the EU, greater transparency throughout the process

- Better Regulation is a step in the right direction but further work required to improve transparency and involvement of stakeholders throughout the legislative process