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INFORMATION

From: To:	General Secretariat of the Council Working Party on the Environment
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Subject:	F-gas Proposal: Non-paper by the Commission services: Summary of replies to key questions raised by MS delegations

Delegations will find attached a non-paper of the Commission services containing summary of replies to key questions raised by MS delegations on the F-gas Proposal.

Non-paper by the Commission services

Summary of replies to key questions raised by MS delegations on the F-gas Proposal

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Chapter I

What are fluorinated greenhouse gases and why they are not defined in Article 3?

Fluorinated greenhouse gases are referred to in Article 2. Article 2 states that, *fluorinated greenhouse gases are those gases listed in Annexes I, II and III whether alone or in mixture as well as the products and equipment, and parts thereof, containing such gases or relying on such gases*. Since the proposal only determines the scope of those gases for the purpose of this Regulation (meaning which gases are covered in particular) it is more appropriate to refer to them in Article 2 which establishes the material scope of the Regulation, instead of in Article 3 that includes the definitions.

When the proposal refers to 'fluorinated greenhouse gases' without indicating a specific Annex(s), it means that the concerned provision applies to all three Annexes (Annex I, II and III).

What does the definition of placing on the market cover in Article 3(6)?

It covers the following activities:

a. in cases of imports (substances or equipment), the customs procedure release for free circulation (as in current Regulation)

b. in cases of substances produced or of equipment manufactured in the Union:

- their supply or making available to another person (=legal or natural), including through online sales, into the Union for the first time (as in current Regulation), or
- for own use (the 'own use' for produced substances is already included in the current Regulation and has been extended to also cover manufactured equipment)

Why does the definition of 'placing of the market' in Article 3(6) only apply 'for the first time'?

This is existing text. If 'for the first time' would be omitted, quota would be required every single time a gas or a product/equipment is sold down the supply chain after the initial placing on the market occurred. Furthermore, the product bans would apply also to products lawfully placed on the market and sold to another person after a prohibition date has been triggered. If it is intended that prohibitions or other restrictions shall apply downstream it is explicitly required in the proposed provisions.

Why is there a definition of imports, in addition to a definition of placing on the market? Is this not a duplication?

No. The definition of 'import' is covering all special import procedures and temporary storage whereas 'placing on the market', in the case of imports, covers only the procedure 'release for free circulation'. The proposal refers to import or placing on the market depending on the intended scope of the requirement. The 2009 ODS Regulation and the ODS proposal also include both definitions.

What is the link with Regulation (EU) 2019/1020 (Market Surveillance Regulation)? Why not use the same definition of 'placing on the market' included in that Market Surveillance Regulation (Article 3(2))?

The gases and products/equipment containing such gases that are covered under the F-gas Regulation are considered as 'harmonised goods'. Thus they are covered under the Market Surveillance Regulation (see Annex I 'harmonised EU legislation' where both ODS and F-gas Regulations are mentioned).

The Market Surveillance Regulation applies 'so far as there are no specific provisions in other sectorial legislation that regulates matters in a more specific manner'. This means that where the F-gas Regulation proposal establishes specific rules, for example those covered under Article 23, those rules will apply as a priority. Where the F-gas Regulation has no rules then the horizontal Market Surveillance rules would apply.

The 'placing on the market' related definitions included in the Market Surveillance Regulation is different from the definition in the F-gas Regulation (it covers the sale to another person, including offers to sell, rather than release for free circulation). The F-gas Regulation is *lex specialis*, and it therefore has its own, distinct definition for placing on the market which primarily ensures the correct implementation of the phase-down system (quota and bans). The F-gas and the Ozone Regulation proposals have the same definition of 'placing on the market'.

What is the intention for adding 'parts of' in Article 2(2) and Art 11(1). Will it prohibit repair where spare parts are needed?

The inclusions implies that the market prohibitions explicitly apply to cases where parts of a prohibited product or equipment are imported separately and then assembled later on a location. It is not the intention to cover all cases of replacements of small parts needed during repairs and maintenance (e.g. valves, screws).

Chapter II

What is the meaning of technically necessary in Article 4(1)?

This is an existing provision. Technically necessary means that the release of the gas is needed for the purpose of using the equipment (e.g. skin cooling equipment). However, even in cases where the release is unavoidable, all possible efforts must be made to prevent that it is released into the atmosphere.

On leakage checks: Is Article 5(1) stricter on HFOs than on Annex I f-gases?

It is not straightforward to compare what is stricter because the thresholds reflect different aspects. The main concern relating to Annex I gases is the potential climate impact, which is a product of the weight in metric terms and the GWP. The main concern relating to gases in Annex II Section I (H(C)FOs) is linked to other potential environmental effects (not the GWP). If the focus is only on the weight in metric terms also for Annex I gases it means that the resulting threshold corresponding to the CO2e limit for Annex I gases will be lower for gases with a GWP above 5000 and higher for gases with a GWP below 5000 compared to the 1 kg limit applicable for H(C)FOs.

What is 'reuse' referring to in Article 8(4) and (5)?

It applies to both the gas and the foam.

Is it a duplication to refer both to EU legislation on waste as well as to national law in Article 8(7)?

No. EU waste legislation is consisting of Directives that need to be transposed at national level. So both need to be mentioned especially since national implementation measures vary.

Certification in Article 10 – what has been proposed as regards alternatives to F-gases?

Article 10 envisages that the existing certification and training programmes will be extended to cover alternative substances to f-gases (including H(C)FOs and naturals). In addition, the requirement to be certified/appropriately qualified when carrying out the relevant tasks under Article 10(1) has been extended to also cover H(C)FOs.

Chapter III

What is the implication of Article 11(1) third subparagraph?

The provision envisages that two years following the triggering of a ban in Annex IV, the concerned products or equipment can only be supplied to another person if there is evidence that the product or equipment was initially lawfully placed on the market (meaning before the ban was triggered). Thus, after two years the burden of proof is shifting from the enforcement authorities to the seller to facilitate the work of enforcement authorities such as market surveillance authorities. Note that this is a condition is not prohibiting the re-sale of goods that were initially placed lawfully on the market.

What are non-refillable containers referring to in Articles 11(3) and 23(12) and Annex IV?

As in the current F-gas Regulation, non-refillable containers are those that:

i) cannot be refilled by design; or

ii) may be refillable by design but no arrangements have been made prior to the selling/POM to ensure their return and refill-ability upon sale/POM. Lack of such arrangements ('evidence') would render the container non-refillable.

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Which non-refillable containers are banned?

The current F-gas Regulation bans non-refillable containers used to service, maintain or fill refrigeration, air-conditioning or heat pump equipment, fire protection systems or switchgear, or for use as solvents, since 2007. That ban is retained in Annex IV, point 1.

In addition, Article 11(3) establishes a placing on the market prohibition of all non-refillable containers, as well as a prohibition of their import, further supply, use or export, unless for laboratory uses. Non-refillable containers may only be stored and transported for disposal.

How will the quota allocation price system be implemented in accordance with Article 17(5)?

This is explained in detail in the impact assessment. In short:

- The Commission will inform undertakings of the maximum quota allocation calculated for each one and of the amount due for that maximum quota allocation (3 euro per 1 ton CO2eq.).
- Undertakings will be requested to pay within a set deadline. They may opt to pay for only part of their calculated maximum quota allocation.
- The Commission will allocate to each undertaking the quota paid by December (of the previous calendar year).
- Quota not paid shall be re-distributed by the Commission for free ONLY to those undertakings that have paid for the maximum quota allocation calculated, on the basis of their quota share.
- The F-gas Portal will be used for communicating with undertakings their maximum quota allocations and the amounts due.
- The deriving revenue from the quota price will be used to cover costs related to the HFC quota system and the F-gas and ODS licensing systems required under the Montreal Protocol as well as the necessary links to the EU Single Window. Any remaining revenue will go back to the Union's general budget.

Why is unpaid quota being re-distributed?

The Maximum Quantity of quota to be allocated each year is laid down in Annex VII. These amounts reflect the quantities of HFCs that are expected to be needed while safeguarding the level of ambition. Thus, allocating a lower amount would result in undue shortage of HFCs. The fact that a quota holder does not want to pay for the quota (that used to be free) does not imply that the amount of HFCs is not needed in the market. To put it differently: the second allocation concerns quota not paid and not quota not needed.

What is the meaning of 'major disruption of the market or where the mechanism is not fulfilling its purpose and is having undesirable effects' in Article 17(6)?

One concern could be if the quota price, proposed at 3 euro per t CO2eq, turns out to be far too low to have an effect on limiting the market to genuine gas traders. Another example could be if due to unforeseen circumstances the method for re-distributing quota would result in serious shortage of supply to certain sectors needing a specific type of HFC and ample supply to other sectors needing other types of HFCs. In any case the maximum quantity of HFCs laid down in Annex VII must be respected.

Why was the threshold of 100 tonnes of CO2eq removed with respect to the placing on the market of bulk HFC and with respect to reporting on bulk HFCs?

It is necessary to ensure compliance with the Montreal Protocol which does not apply any thresholds on bulk HFCs. The Montreal Protocol is not regulating products and equipment so the 100 tonnes of CO2eq threshold has been retained in that case.

What has changed on MDIs (metered dose inhalers) compared to current Regulation?

HFCs for MDI uses are no longer exempted from the phase-down schedule. That means that the placing on the market of HFCs for MDIs requires quota. To ensure there is enough quota supply to cover the demand importers and producers of such HFCs are allocated additional quota (Annex VII, point 4(ii). In addition, MDIs that contain f-gases listed in Annex I or II, must be labelled before being placed on the market.

Because MDIs are entering the phase-down system later than other HFCs, it was necessary to establish a separate reference value for those undertakings that have been reporting MDI uses in the past. The quota allocated to these undertakings from that separate reference value may be used to place HFCs on the market for any of the authorised uses (not only for MDIs). To enable the calculation of the reference values the proposal retains the existing labelling requirements for gases being placed on the market for producing MDIs as well as the specific reporting requirements for gases supplied for the production of MDIs.

Why should auditors be registered in the F-gas Portal?

The Commission will implement an online verification process of reports, whereby auditors will be able to access the reporting via the F-gas Portal and verify the data reported by undertakings online. For this reason they must register in the F-gas Portal. The online verification process will result in a more efficient process for companies and increased control by Member States.

Annex IV

What is new in the proposed prohibitions in Annex IV?

- Point 3 third indent, from 2024: extends the existing PFC/HFC23 ban for fire protection equipment to any other Annex I gas of 150 and above, except if required to meet safety rules.

- Point 11 third indent, from 2024: extends the existing HFC ban for refrigerators and freezers for commercial use to all f-gases of 150 and above.
- Point 12, from 2025: Any self-contained RAC systems containing f-gases of 150 and above (e.g. cream and ice cream makers, ice makers, cooled trolleys, water coolers, juice makers, beer and wine coolers, heat pump tumble driers etc.). Is intended to cover stationary installations only.
- Point 14 from 2024: extends the HFC ban for stationary refrigeration in point 13 to all f-gases with GWP above 2500.
- Point 17 from 2025: extends the existing HFC ban on plug-in room AC to all f-gases of 150 and above as well as to other self-contained AC and heat pump. It is intended to include monoblock heat pumps and should not cover chillers (2030) and rooftop AC (capacity >50kW) or larger HP > 50kW. The addition of 'heat pump' is a mere clarification as heat pump is also covered under the term 'air-conditioning' in the current regulation.
- Point 18(b) and (c), from 2027: stationary split systems
  -of a rated capacity of up to and including 12 kW with F-gases with a GWP of 150 or more except if required to comply with safety rules
  -of a rated capacity of more than 12 kW with F-gases with a GWP of 750 or more except if required to comply with safety rules
  Includes split heat pumps connected on site by e.g. having companion valves
- Point 21, from 2024: personal care products (creams, mousses, foams) containing f-gases
- Point 22, from 2024: skin cooling equipment containing f-gases of 150 and above, except if required for strictly medical reasons.
- Point 23, from 2026-2031: installation and replacement of certain electrical switchgear, unless evidence is provided that no other suitable alternative is available on technical grounds.

What does 'self-contained' mean in Annex IV?

- For reference, the standard EN378 defines self-contained as 'factory produced refrigeration system, in a suitable frame or enclosure, that is fabricated and transported complete, or in two or more sections and in which no refrigerant-containing parts are connected on side other than by isolation valves (i.e. no companion valves)'.

Why is the reference to 'hermetically sealed' replaced with 'self-contained' only in Annex IV?

Annex IV has a different scope and purpose: the term 'self-contained' is only used in Annex IV in order to prescribe the specific type of equipment that is banned. However, for the purpose of leakage checks, the definition of hermetically sealed in Article 3 and the conditions set out in Article 5(1) remain applicable.

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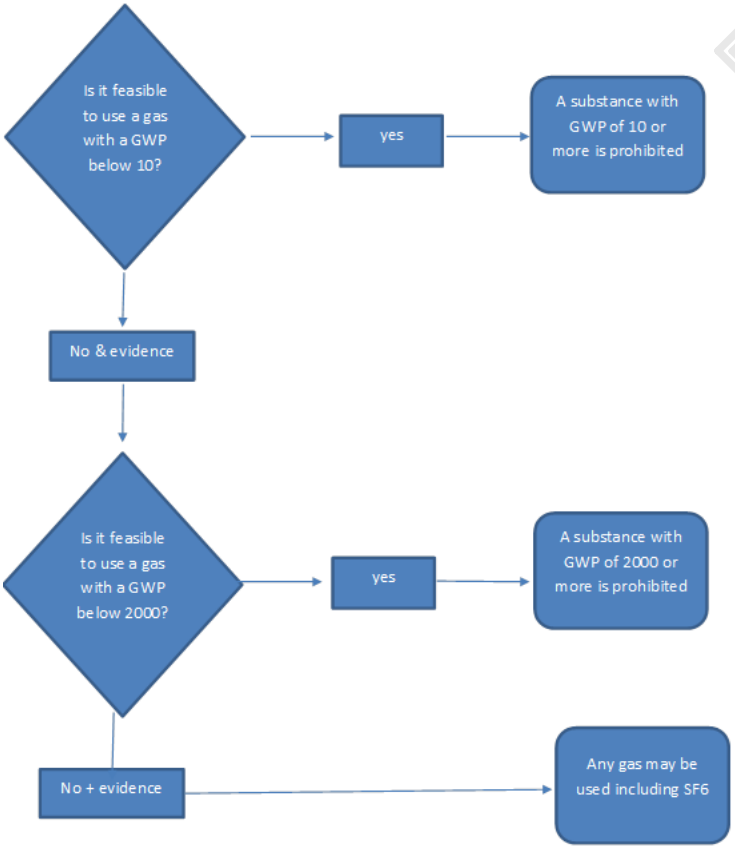
How will the ban in point 23 of Annex IV work in practice?



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Article 23 – customs controls

Is transit covered under import?

Yes. The definition of an import explicitly covers transit. Undertakings importing or exporting under the transit procedure must also be registered in the F-gas Portal (but no quota requirements). The requirement for designated customs offices also applies in transit procedures.

Is temporary storage covered under import?

Yes. The definition of an import explicitly covers temporary storage. The requirement for designated customs offices also applies in temporary storage. However, there is no obligation to be registered in the F-gas Portal under temporary storage (so no quota obligations neither).

What is meant by 'if importer not available'?

It means if not relevant/applicable for the customs declaration in the specific case (it does not mean that somehow the importer cannot be identified). For example, under the transit procedure the person that lodges a customs declaration is not called 'an importer' but 'a declarant'.

Why refer to both confiscation/seizure?

The Union Customs Code refers to both terms thus the same approach has been retained here. Different national systems use either one or both terms (usually confiscation is temporary and seizure is a permanent action).

Confiscation/seizure of illegal goods: what is the difference between subparagraph 1 and 2 of 23(12)?

For non-refillable containers there is a clear obligation to confiscate/seize/withdraw from the market for disposal. Destruction is one way of disposing.

For other cases, in particular quota exceedances, other measures than disposal may be taken. That could be auctioning or allowing that the HFCs remain in customs warehouses (not POM) until sufficient quota are available.

Should both registration and quota/authorisation availability be checked by customs?

Yes. These are two different obligations. They will be checked automatically by the interconnection with the EU Single Window Environment for Customs.

What are the requirements to become a designated customs office?

There is a certain discretion for Member States to implement this, provided that:

- offices are sufficiently equipped to carry out physical controls (for example ensuring that samples can be taken for laboratory checks);
- are knowledgeable on the issue of illegal trade (training and awareness raising for customs officers on illegal trade of HFCs; risks, affected gases and products, how to identify non-refillable containers etc.).

Should designated offices have on-site all the necessary equipment to do the needed controls?

No. For example there is no obligation to have on-site laboratory equipment to test samples. This can be outsourced.

What is the state of play of the interconnection with EU Single Window Environment for Customs (via CERTEX)?

CERTEX is currently being built on the basis of the rules in the current F-gas Regulation and will need to be slightly adapted to the future rules (Article 23 in particular), even though most of the message exchanges will remain in place. Currently only the import function is developed. The export function is in the process of being designed. The process for developing CERTEX is not within the scope of the F-gas Regulation.

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Article 31 – Penalties

Do Article 31 (3) and (4) apply to both administrative and criminal sanctions?

Yes

What is the objective of Article 31(5)?

To empower the administrative authorities to issue fines, where needed, for the specified illegal activities without prejudice to any penalties that may apply under criminal law and while fully respecting the principle of *ne bis in idem* (a principle ensuring that a person cannot be punished and be subject to several procedures twice for the same facts) as well as the procedural autonomy of Member States.

Annex I

Why are the GWP values which will be used to convert F-gas emissions into CO2 t eq. taken from the IPCC AR 4th?

As noted in recital 7 this is to ensure consistency with the Montreal Protocol and facilitate the reporting to the Protocol which is based on the IPCC AR 4th.

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