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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° prev. doc.:	WK 13874/22 INIT
Subject:	F-gases Regulation: Follow-up to the WPE meeting on 13 October 2022: comments from a delegation

Following the above WPE meeting and the call for comments (WK 13874/22 INIT), delegations will find attached the comments on the proposal for the regulation on fluorinated greenhouse gases from Malta.

MALTA

Comments following the WPE on F-gases of 13 October 2022

Article 22: Imports and exports

– PRES would encourage delegations to raise any other issues or concerns related to this article.

MT suggests the inclusion of a definition for the term ‘temporary storage’.

Article 23: Controls of trade

Do delegations have any textual proposals that would address the comments?

MT is of the opinion that the requirements listed in point 3 (e) remain as in the original proposal as this information is beneficial for market surveillance officers.

In reference to paragraph 12, MT opines that if products and equipment which are not compliant with the regulation will not be allowed to be sold outside of the EU, it should be clear that the cost of destruction of the said products should be borne by the importer.

PRES would encourage delegations to raise any other issues or concerns related to this article.

N/A

Article 24: Measures to monitor illegal trade

-How would the delegations prefer to handle the delegated act in paragraph 2?

MT considers these additional measures to be an essential element of the Regulation, therefore these should be handled through implementing acts. Alternatively, MT can agree that these additional measures are evaluated and considered during the current discussions.

PRES would encourage delegations to raise any other issues or concerns related to this article.

N/A

Article 25: Trade with states or regional economic integration organisations and territories not covered by the Protocol

PRES would encourage delegations to raise any other issues or concerns related to this article.

N/A

Article 26: Reporting by undertakings

– PRES would encourage delegations to raise any other issues or concerns related to this article.

N/A

Article 27: Collections of emissions data

– PRES would encourage delegations to raise any other issues or concerns related to this article.

MT agrees that the wording in this article remains as is in the current Regulation.

Article 28: Enforcement

PRES would encourage delegations to raise any other issues or concerns related to this article, especially on the exchange of information. Textual suggestions are very welcome.

Art. 28 para. 1: MT agrees with the comments put forward by other Member States i.e., that the cooperation mechanism is not clear. The definition and role of the ‘environmental authority’ and ‘other authorities with inspection functions’, is also not clear. MT proposes to move this paragraph to a recital, providing a definition and clarifying the role of environmental authority’ and ‘other authorities with inspection functions’. In addition, the following re-wording is being proposed:

*“The competent authorities of Member States, including customs authorities, market surveillance authorities, environmental authorities and other authorities with inspection functions, shall cooperate with each other, **and where necessary**, with the competent authorities of other Member States, with the Commission, and ~~if necessary~~, with administrative authorities of third countries in order to ensure compliance with this Regulation.”*

Art. 28 para. 2: In MT, it is the Court that applies penalties. It is understood that through this article, the authority responsible would need to prosecute all economic operators found in breach of this regulation, regardless of the severity of the non-compliance, their past history of non-compliance, level of cooperation etc. As such, MT suggests that the market surveillance procedure to be adopted in this regulation, including cooperation and imposition of penalties, is that laid down in Regulation (EU) 2019/1020.

Art. 28 para. 3: It is not clear why the financial status is important for competent authorities and how the financial situation is to be determined (especially if a company has various sister companies with which it performs financial transactions). Also, if ‘environmental violations’ refer to all types of violations in respect of environmental law and not just those related to f-gases (e.g., an economic operator was once found guilty of dumping construction waste illegally), the competent authorities would need to obtain this information from Courts. This will be very difficult to implement and will result in a disproportionate administrative burden on the competent authorities.

MT believes that the market surveillance procedure to be adopted in this regulation and that is to be followed by MSAs, is that laid down in Regulation (EU) 2019/1020.

Art. 28 para 4: MT opines that the market surveillance procedure to be adopted in this regulation and that is to be followed by MSAs, is that laid down in Regulation (EU) 2019/1020.

Article 29: Obligation to carry out checks

– PRES would encourage delegations to raise any other issues or concerns related to this article.

MT reiterates that alignment with Regulation (EU) 2019/1020 is imperative.

MT does not support paragraph 2 subparagraph 3.

Art. 29 para. 6: MT would like a clarification on what is intended by ‘undertaking’s seat’. Is it where the undertaking is established, where the head office is established, where they pay taxes in the EU, etc.? What if the undertaking has multiple offices across the EU?

Article 31: Penalties

-Is the suggested paragraph 7 acceptable to delegations?

Art. 31 para. 2: MT concurs with other Member States that this paragraph is in conflict with national legislation. Due to this, Malta would support the additional paragraph 7.

General comment: penalties should remain solely within the competences of Member States, including the criteria on which these are based. It may be difficult to lay down regulations on penalties using the criteria in para. 3. Also, it is not clear why the financial situation of an undertaking is considered here, as that the same harm would be done by different undertakings for an infringement of the same nature and gravity, regardless of their financial situation. Also, the structure of some businesses (e.g., various companies owned by the same people performing internal financial transactions) may make it difficult to determine the penalty to be imposed.

Art. 29 para. 5: It may be difficult to determine the market value of the gases or products and equipment concerned because it depends on a number of variables, including the time when the gas, product or equipment was truly made available on the market, the time when it was sold, etc., thus delaying the application of penalties.

-What are the thoughts of delegations on the links to the Directive 2008/99/EC?

More time is required to assess the associated implications.

-What is the opinion of delegations on the way the maximum administrative penalties are proposed by the COM?

Article 32: Exercise of delegation

PRES would encourage delegations to raise any issues or concerns related to this article.

MT considers the requirements related to Articles 12(17) and 24 to be essential elements and therefore should not be decided upon through delegated acts.

Article 35-38: Review, Repeal, Amendment to Directive (EU) No 2019/1937, Entry into force and application

What is the view of delegations on an earlier review than 1 January 2033 as indicated in Article 35?

MT believes that the date indicated is adequate.

What is the opinion of delegations on the suggested requirement that the COM should propose additional provisions for the mobile sector within two years?

An impact assessment ought to be performed before any such requirements are introduced.

Annexes

What is the opinion of delegations on the manner in which the maximum quantities are expressed in the Annexes?

MT agrees that quantities should be expressed in CO2 equivalent rather than percentages.

Recitals

PRES would encourage delegations to raise any other issues or concerns related to the Recitals.

MT would like to include a reference to Regulation (EU) 2019/1020 where market surveillance activities are mentioned particularly in recital 36.
