



Council of the European Union
General Secretariat

Brussels, 30 March 2023

WK 4413/2023 INIT

LIMITE

ENV
CLIMA
CODEC

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° prev. doc.:	WK 4230/2023 INIT
N° Cion doc.:	ST 8042 2022 INIT + ADD 1
Subject:	F-gases Regulation: Follow-up to the WPE meeting on 27 March 2023 (pm): Comments from delegations

Following the above WPE meeting and the call for comments (WK 4230/23 INIT), delegations will find attached comments from DK, MT and PL.

MALTA

Written Comments on the Proposal for a Regulation of the European Parliament and of the Council on fluorinated greenhouse gases, amending Directive (EU) 2019/1937 and repealing Regulation (EU) No 517/2014

Follow-up to the WPE held on 27 March 2023.

Article 3 – definitions

Regarding the definition of ‘reclamation’ in Article 3 (13), what is meant by authorised facilities? Authorised by whom? And what are the criteria for such authorisations?

Article 4 – Prevention of emissions

On Article 4 (5) subpara. 2 – Malta would like to suggest the following text:

‘For the purpose of providing that evidence, producers shall draw up a declaration of conformity and join supporting documentation on the production facility and the mitigation measures adopted to prevent emissions of trifluoromethane. In cases where the party placing on the market is not the producer, the former needs to ensure that the correct declaration of conformity is available prior to placing the product on the EU market. Producers and importers shall keep the declaration of conformity and supporting documentation for a period of at least five years after the placing on the market and make them available, upon request, to national competent authorities and to the Commission.’

Article 11

Annex IV Placing on the market prohibitions referred to in Article 11(1)

Malta notes the new proposed postponement of the ban dates in points 16b and 18b compared to the previous text. However, the timelines proposed by Poland in the joint non-paper are highly preferred. In a small country like Malta, equipment is normally used until its end-of-life. It is not feasible for companies to invest millions to change their equipment to newer technology when the return is low and will not cover the cost. We need to ensure that enough time is given for several suppliers to undergo these changes, so as to minimise market disruptions.

Article 12 – Labelling and product and equipment information

Article 12(4) – Malta would like to amend the last sentence as follows:

‘The label shall be written in the official languages, **or in a language or languages as stipulated by the Member State** in which the good is to be placed on the market or made available or supplied.’

The rationale is based on the consideration that it should be up to the Member States to analyse which languages are used and understood by its present population.

Article 13 – Control of use

Malta welcomes the postponement of the ban to 2025 in Article 13(3) although would prefer 2026 so to ensure that small businesses have enough time to change the equipment, especially when taking into consideration the timeline for the entry into force of this proposal. A situation where the ban starts to apply as soon as the proposal enters into force is to be avoided.

Regarding the changes proposed in Article 13(5)(6)(7), Malta supports the compromise proposed.

Article 13(7) – Malta does not agree with the introduction of this provision. MT is of the opinion that the 2-year period introduced for putting into service equipment following its ban, does not take into consideration the timelines of market distribution networks. Two years is not enough for small businesses (who would have bought their supply from other distributors) to sell their stock.

Regarding Article 13 para. 7b, Malta prefers the previous wording as it was more consistent with what is stated in Article 11(1) last subparagraph.

Article 17 – Determination of reference values and allocation of quotas for placing hydrofluorocarbons on the market

Malta still prefers the price of 1-2 euro, however, is willing to accept the proposed fee of 2.50 euro in the spirit of compromise if the majority of Member States are willing to accept this.

The proposal envisages declarations for receipt of quotas from the reserve every 3 years. Malta opines that the declarations should be made on an annual basis so as to provide undertakings with sufficient flexibility, particularly in view of the fact that the proposal is envisaging a payment system for quotas. Companies, particularly SMEs, can be reasonably expected to encounter significant difficulties when planning on a 3-year basis, especially due to new technologies and alternatives which are constantly being developed.

Malta would like to understand better how the redistribution of unpaid quota will work in practice, e.g. will it be distributed in equal shares or will the shares vary depending on the quota already allocated?

Additionally, Malta still cannot agree with the distribution of the unpaid quota free of charge. For the first 4 years after the date of entry into force the unpaid quota should be sold at the same price proposed if not lost.

Furthermore, the empowerment to the Commission for the adoption of delegated acts to amend paragraph 5 of Article 17, should be changed to implementing acts. The rationale for this suggestion stems from the fact that the quota allocation system, including the allocation of remaining/unpaid quotas, should be viewed as an essential element of the proposal.

Malta also notes the three different options proposed for the HFC phase-down and is more inclined towards option 3 but could also accept option 2 as a compromise.

Article 19 – Pre-charging of equipment with hydrofluorocarbons

Regarding Article 19(1) on the inclusion of metered-dose inhalers in the quota system – Malta encourages the Commission to review timelines in order to ensure the continuity of patient care worldwide. Stakeholders need to be consulted on the matter to ensure that the timelines proposed do not hinder patient access to affordable medicines.

Article 26 – Reporting by undertakings

Malta opposes the lower reporting threshold. This will drive SMEs out of the market due to undue excessively burdensome obligation related to the drawing up of a report for such a small amount.

Article 27 – Collection of emissions data

Malta finds that the drafting of this provision as currently drafted in Article 20 of Regulation (EU) 517/2014 is preferable and would therefore prefer that such drafting is retained. Moreover, in terms of the second paragraph of this Article, Malta proposes the use of the term ‘may’ in place of ‘shall’. Malta also suggests that the Commission sets up and manages the centralised electronic system referred to in this paragraph to record the data collected in accordance with Article 7.

Malta asks the Commission to provide a template and establish the methodology for such reporting to ensure a streamlined approach across Member States, for instance through Implementing Acts.

Article 28 – Cooperation and exchange of information

Art. 28 para. 1 – Malta believes 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. Malta 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 Malta, 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, Malta 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). Moreover, 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 the Courts. This will be very difficult to implement and will result in a disproportionate administrative burden on the competent authorities.

Malta 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, therefore a reference to the said Regulation is to be included here. The same applies for Art. 28 para 4.

Article 29 – Obligation to carry out checks

Art. 29 para. 6 – Malta would like a clarification on what is intended by ‘undertaking’s seat’. Does it refer to where the undertaking is established, where the head office is established, where taxes are paid in the EU, etc.? How should it be understood if the undertaking has multiple offices across the EU?

Article 31 – Penalties

Malta prefers the original proposal, hence, to retain the wording: ‘They may take into consideration...’ This would allow market surveillance officials to analyse the best approach on a case-by-case basis. This approach is also faithful to the spirit and provisions of Regulation (EU) 2019/1020.

Annex IV

As already mentioned in the notes for Article 11, Malta does not support the backtracking to the previous, more restrictive bans and supports the suggestions presented in the Polish joint non-paper.

Remaining issues in the recitals, chapter I-IX and further annexes

The proposed changes to recitals 19b and 35 are not visible in document 7162/23.

POLAND

We agree with all amendments proposed in the Steering Note.

- (1) Technical amendments to paragraphs 1, 2 and 4 of Article 4:
In paragraphs 1 and 2 there is the same typo – “contain” should be replaced with “contains”
In paragraphs 2 and 4 the phrase “Manufacturers of facilities” does not make sense since facilities cannot be manufactured. We suggest that with regard to facilities “manufacturers” are replaced with “installers” or “builders”
 - (2) Question whether our understanding of the text of paragraphs 4 and 5 of Article 8 after amendments introduced by the PRES is correct:
Our understanding is that there are two options with regard to handling of foams or boards containing F-gases:
 - a. Foams containing F-gases may be sent first for recovery of F-gases that MUST be destroyed after being recovered and then the remaining foams without F-gases may either be destroyed or recycled
 - b. Foams containing F-gases may be sent for destruction without recovery of F-gases
 - (3) Typo in Article 10, paragraph 1 point (b) – the phrase “points (a) to (f)” that relates to Article 5 paragraph 2 should be replaced with the phrase “points (a) to (e).
Please, note that in the original Commission text the same reference was correctly made to points (a) to (f), but in that text point (g) corresponded to electrical switchgear and point (f) corresponded to the organic Rankine cycle. Now in SE PRES text in Art. 5(2) point (f) corresponds to electrical switchgear and point e) to organic Rankine cycle. If the reference to points (a) to (f) remained in Art. 10(1)(b) it would mean that leakage checking of electrical switchgears would require personal certificate what definitely was not the intention of the authors of the revised text.
 - (4) Technical amendments to Article 10, paragraphs 6 and 10.
The term “undertaking” is used in Art. 10(6) and Art. 10(10) to mean (most probably) legal persons because in Art. 10(1) which deals with certification of natural persons the term “natural persons” is used. In our view both in Art. 10(6) and 10(10) “undertaking” should be replaced with “legal person” in order to avoid any doubts. Please, note that “undertaking” is defined as legal or natural person in Art. (3). There should be no doubts since Art. 10 deals with certification of natural persons and legal persons and it has to be clear which paragraphs relate to which of these “undertakings.
 - (5) Since “national safety standards” were replaced with “safety requirements” in several points of Annex IV concerning bans on placing on the market of equipment it seems obvious the same replacement should be made in Annex IV in points related to placing on the market of foams (point 19) and of technical aerosols (point 20).
 - (6) Typo in Annex IV – point (14) is missing, so numbering of points should be amended and once it is done – it should be checked whether such change of numbers did not affect any references to these points in the text.
-



Comments on technical elements raised by the Danish delegation in the proposed F-gas regulation

We thank the presidency for the amendments to address some technical issues and the steering note on the issues. Below please find a repetition of our comments on ensuring consistency which we raised at the meeting:

Article 2 – Scope

The proposed text is:

1. This Regulation applies to the fluorinated greenhouse gases listed in Annexes I, II and ~~II~~ **III, either as pure substances or as mixtures containing such substances whether alone or in a mixture.**

We want to ensure consistency with other European chemicals legislations and therefore would prefer to simply refer to ‘substances’ rather than ‘pure substances’. Substances are generally understood to be pure and distinct from ‘mixtures’ in chemicals legislations such as REACH and CLP.

Annexes I, II and III – ‘Fluorinated greenhouse gases ... and other compounds’

We support the clarification in the titles of the annexes.

The term ‘other (per)fluorinated compounds’ is used in Annexes I and III of the current proposal. The term ‘compounds’ is also used the current regulation in annexes I and II.

However, Annex II in the current proposal uses the term ‘other fluorinated substances’. We would prefer using the term ‘compounds’ consistently throughout.