

Referentenentwurf (Stand: 26.05.2020) des Bundesministeriums für Umwelt, Naturschutz und nukleare Sicherheit

Entwurf eines Gesetzes zur Bekämpfung des illegalen Handels mit fluorierten Treibhausgasen

Comments provided by Chemours International Operations Sàrl

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Referenz	Text	Kommentar BMU	Kommentar Impact on value chain
§12i	Additional provisions to Chapter III of Regulation (EU) No 517/2014		
(1)	It shall be prohibited to make available to third parties, transfer to third parties or purchase from third parties products and equipment which have been placed on the market in breach of Article 11(1) in conjunction with Annex III of Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 (OJ L 150, 20.5.2014, p. 195). Sentence 1 shall not apply if the provision, transfer or acquisition is made for return or disposal.	The first sentence of paragraph 1 prohibits the (further) making available or supplying to third parties and the acquisition of products and equipment listed in Annex III which were placed on the market for the first time in breach of a prohibition to that effect in Article 11(1) in conjunction with Annex III. The effect of this provision is that there is no longer a legal market for products placed illegally on the market. It enables the competent authorities to take action against any other member of the supply chain, including those who knew or should have known of the infringement, when they find that the first placing on the market of such products and equipment was objectively contrary to Union law. The question of whether the person concerned was aware of the infringement or should have been aware of it with the care to be expected under the circumstances of the individual case, however, plays a decisive role in applying the penalty under Section 27(1)(5a)(a) ChemG, which presupposes intent or negligence. The regulation also enables the state authorities to take measures against any participant in the supply chain to clarify the suspicion even in the case of suspected violations of Union law. In particular, this includes measures in accordance with Article 21 (3) and (4) of the Chemicals Act and significantly improves the scope for action in the detection of violations of Union law. Sentence 2 contains an exception for the provision, delivery or purchase for return or disposal. The exception opens up legitimate options for action in particular for addressees of official orders and authorities in the event of evidence of a violation.	Recommendation to add: "In addition, the use of non-refillable containers for fluorinated greenhouse gases used to service, maintain or fill refrigeration, air-conditioning or heat-pump equipment, fire protection systems or switchgear, or for use as solvents, shall be prohibited."
(2)	Any person supplying products or equipment not subject to a prohibition in accordance with Article 11(1) in conjunction with Annex III to Regulation (EU) No 517/2014 because they were already placed on the market before the date of prohibition referred to in Annex III to Regulation (EU) No 517/2014 shall, upon supply, submit a written or electronic declaration stating 1. the name and address of the supplier, 2. a confirmation that the product or device was placed on the market for the first time before the date of prohibition set out in Annex III, and	According to the first sentence, anyone who supplies products or establishments listed in Annex III to the Regulation which were first placed on the market in the Union before the relevant cut-off date specified in Annex III is obliged to confirm in writing or electronically on delivery that the goods were placed on the market before the relevant cut-off date. The purpose of such confirmation shall be to assist the purchaser in complying with the prohibition in paragraph 1 and to enable him, for his part, to confirm the previous acquisition in the event of any further supply. Their untrue delivery is punishable under the new §27a paragraph 1 ChemG. According to numbers 1 to 3, the corresponding declaration must contain information on the identity of the declarant, a confirmation that the product was placed on the market before the deadline and information on the connection between the declaration and the specific product or equipment. According to sentence 2, the documentation obligation mentioned in sentence 1 does not apply if it is obvious, due to the construction type, condition or labelling of the products or equipment, that they were placed on the market for the first time before the respective cut-off date. The purchaser and the recipient are obliged under sentence 3 to retain the information mentioned in sentence 1 in order to enable the supply chain to be traced. Sentence 4 contains a special provision on the scope of the facts to be presented and proven by the authority for an infringement pursuant to paragraph 1. In the event that the information pursuant to sentence 1 is submitted to the respective supervisory authority, there shall be a presumption that there has been no violation of the prohibitions of paragraph 1. However, the presumption may be	Recommendation to add: "In addition, the use of non-refillable containers for fluorinated greenhouse gases used to service, maintain or fill refrigeration, air-conditioning or heat-pump equipment, fire protection systems or switchgear, or for use as solvents, placed on the market before the date of prohibition shall be prohibited."

	<p>3. identification features of the product or device which allow the declaration to be uniquely linked. Sentence 1 shall not apply if it is obvious from the circumstances, in particular the design and condition of the product or device or the manufacturer's identification marks on it, that the first placing on the market took place before the date of prohibition. The information pursuant to sentence 1 shall be retained or stored by both the supplier and the purchaser for a period of at least three years after transmission. Submission of the information pursuant to paragraph 2, first sentence, to the competent authority shall give rise to the presumption that there has been no infringement of paragraph 1 by the person concerned.</p>	<p>rebutted by the authority. This may be done either by establishing, on the basis of the information submitted, even obvious deficiencies with regard to the confirmations or means of identification submitted, or by otherwise proving that there has been a breach of paragraph 1.</p>	<p>Comment: For cases where non-refillable containers are involved, the responsibility is on Quota Holders and other value chain players to provide documentation that the material was placed on the market prior to the date of prohibition.</p>
(3)	<p>Anyone who makes fluorinated greenhouse gases, products or equipment subject to a labelling obligation pursuant to Article 12 of Regulation (EU) No 517/2014 available again to third parties or transfers them to third parties shall ensure that the label to be affixed pursuant to Article 12 of Regulation (EU) No 517/2014 in conjunction with Article 2 of Implementing Regulation (EU) 2015/2068 when placing them on the market is maintained or reaffixed.</p>	<p>Paragraph 3 requires the supplier to maintain or renew a label required for the first placing on the market of fluorinated greenhouse gases, products or equipment upon subsequent supply or further supply. This will enable other operators in the supply chain and the enforcement authorities to assess already on the basis of the labelling whether the F-gases, products or equipment concerned are subject to or exempted from the bans of the EU F-Gas Regulation.</p>	<p>Comment 1: Potential additional work for distributors, contractors to ensure labelling is consistently applied down the value chain.</p> <p>Comment 2: Contractors and Installers have to monitor accuracy/presence of proper labelling and not purchase if labelling is incorrect/missing.</p>
New item			<p>Recommend to add: "Article to address enforcement of Article 13 of Regulation (EU) No 517/2014, particularly related to Article 13(3) on the prohibition of the use of fluorinated greenhouse gases, with a global warming potential of 2 500 or more, to service or maintain refrigeration equipment with a charge size of 40 tonnes of CO2 equivalent or more. Owners or service companies to keep record of equipment</p>

			used (HFCs related) and make sure they are in compliance with Art 13(3)”
§ 12j	Additional provisions to Chapter IV of Regulation (EU) No 517/2014		
(1)	It is prohibited to make partly fluorinated hydrocarbons within the meaning of Article 2 Par. 2 of Regulation (EU) No. 517/2014 available to third parties, to transfer them to third parties or to use them within the meaning of Article 2 Par. 9 of Regulation (EU) No. 517/2014 which have been placed on the market in violation of the requirements of Article 15 Par. 1 second subparagraph of Regulation (EU) No. 517/2014. Sentence 1 shall not apply if the provision, transfer or use is for return or disposal	Sentence 1 prohibits the making available as well as the supply of HFCs which were placed on the market for the first time along the further supply chain without or in excess of the quota allocated or transferred in accordance with Article 16 or Article 18 or without the existence of an exemption under Article 15 (2) or (4) At the same time, the provision contains a ban on the use of illegally placed HFCs on the market, as the illegal trade in HFCs subject to quotas involves to a considerable extent internet orders from end users for their own use. With regard to the effects of the provision and the meaning of its second sentence, reference can be made to the comments in the explanatory statement on §12i (1).	Add: “For the purposes of this article, Article 15(2) or (4) of the F-Gas Regulation does not exempt undertakings from the documentation requirements outlined in this legislation.”
(2)	Any producer or importer of partly fluorinated hydrocarbons within the meaning of Article 2 Par. 2 of Regulation (EU) No. 517/2014 who sells partly fluorinated hydrocarbons within the meaning of Article 2 Par. 2 of Regulation (EU) No. 517/2014 to third parties shall submit a declaration in writing or electronically with each delivery, which contains the following 1. the name and address of the producer or importer 2. a confirmation, (a) that, and for which year, a quota has been allocated or transferred to him for the substances or mixtures supplied in accordance with Article 16 or 18 of Regulation (EU) No 517/2014 (b) that there is a specific exemption from the quota requirement under Article 15(2) and (4) of Regulation (EU) No 517/2014, (c) that the substances or mixtures were already placed on the market before 1 January 2015; or (d) that the delivery is made exclusively for return or disposal. 3. identification features of the substances or mixtures or their	The regulation regulates a documentation obligation for manufacturers or importers when placing HFCs on the market for the first time. In a declaration to be attached to the consignment, the name and address must be given in accordance with point 1, the legality of the relevant delivery must be confirmed in accordance with point 2 on the basis of the criteria listed in points (a) to (d), and in accordance with point 3 the delivery must be clearly assigned to the relevant declaration. Together with the obligation to pass on the information under paragraph 4, this provision enables each member of the supply chain to satisfy itself and to demonstrate to the authorities, with the presumption of conformity of paragraph 5, that the requirements of Union law under Chapter IV of the EU F-Gas Regulation have been met and that even if the supply or use continues, it will not be in breach of the requirement of paragraph 1. At the same time, the documentation enables the enforcement authorities to trace the supply chain back to the first placing on the market. In order for the documentation to fulfil its purpose of providing assurance of compliance to other parties involved, the reliability of the information it contains is crucial. The making of untrue declarations is therefore punishable under §27a ChemG.	Comment 1 : This could create a loophole – make sure this will not create abuse of art 2(c); example: someone provides a document stating the products are purchased before 2015 Comment 2: Under (3) a tracking system, e.g. barcoding packages or with identification number by value chain company is meant. It's the responsibility of the package owner Recommendation on last sentence: Provide a non-exhaustive list of acceptable identification features (Identifikationsmerkmale).

	containers which enable the declaration to be unambiguously assigned		
(3)	Any supplier of partly fluorinated hydrocarbons within the meaning of Article 2 Par. 2 of Regulation (EU) No. 517/2014 for its own use or for supply to third parties from a supplier from another member state of the European Union without receiving a declaration as set out in Par. 2 from the latter shall identify the information specified in Par. 2 and, in the case of supply to third parties, shall submit a declaration in writing or electronically for each supply, from which the information specified in Par. 2 and its own name and address can be derived.	Paragraph 3 concerns the situation where HFCs originate in other Member States of the Union and no declaration of legality has been made under paragraph 2. In this case, the participant in the supply chain who obtains the substance or mixture from the other Member State is obliged to identify the information referred to in paragraph 2, e.g. by making enquiries of the foreign supplier, and, if he continues to supply the substance or mixture himself, to submit a declaration as required by paragraph 2 when supplying it. The obligation to investigate also exists if the person concerned does not continue to supply the substance or mixture but uses it himself so that the authorities have a starting point for checking compliance with paragraph 1. The presumption of compliance with paragraph 6 and the penalties according to §27a ChemG also apply to the information determined on this basis.	Comment: It is perfectly reasonable and legal to require such declarations from suppliers based in another MS. Possibly can be supplemented by a requirement of mutual assistance for the member states competent authorities involved (especially in case of e-Commerce platforms)
(4)	For each subsequent supply of the substance or mixture in the supply chain, the relevant supplier shall communicate the content of the declaration referred to in paragraphs 2 or 3 and his own name and address to the acquirer in writing or electronically.	This requirement shall ensure that all participants in the supply chain are enabled, by means of written or electronic communication of the information referred to in paragraphs 2 or 3, to provide the information referred to in paragraphs 2 or 3 in turn in the event of further supply and, where appropriate, to submit it to the competent authority referred to in paragraph 6, including the identity of their own supplier. With regard to the identity of the supplier, the obligation to provide information pursuant to paragraph 4 shall apply only to the supplier directly concerned and not to the identity of any upstream supplier (unless this information forms part of the information pursuant to paragraphs 2 or 3). Thus, the course of the supply chain remains confidential vis-à-vis the customer. However, in connection with the retention obligations of all parties involved pursuant to paragraph 5, the authorities are given the opportunity to trace them if necessary.	
(5)	The information referred to in paragraphs 2 to 4 shall be retained or stored by both the transferor and the transferee for a period of at least three years after transfer.	Paragraph 5 lays down an obligation for all actors in the supply chain to keep records of the information to be provided under paragraphs 2 to 4. This allows the supply chain to be traced in individual cases.	
(6)	The submission of the information referred to in paragraph 2 or 3 to the competent authority shall give rise to a presumption that there has been no breach of paragraph 1 by the person concerned. If the person concerned is unable to submit the information or otherwise demonstrate that the requirements of the second subparagraph of Article 15(1) of Regulation (EU) No 517/2014 have been met when placing the substance or mixture on the market, the competent authority may prohibit further supply or use of the substance or mixture.	Sentence 1 contains, as does Section 12i (2) sentence 4, a special provision on the scope of the facts to be presented and proven by the authority for an infringement under (1). If the information pursuant to subsections (2) to (4) is submitted to the respective supervisory authority, there is a presumption that there is no infringement of the prohibitions of subsection (1). The presumption may also be rebutted by the authority. In this respect reference is made to the comments on §12i (2) sentence 4. Sentence 2 contains an independent power of order for the respective competent Land authorities. This may prohibit the supply or use of the F-Gas if a party concerned cannot provide the information pursuant to paragraphs 2 to 4 and cannot otherwise demonstrate that the quota requirements of Article 15 (1), second subparagraph, of Regulation (EU) No. 517/2014 have been met. The power to issue orders enables the authority to intervene, on the basis of objective circumstances and independently of evidence of an infringement of Union law, in the very practical situation where the origin of the substance or mixture remains unclear and the person concerned has neither made any effort to establish the legality of his or her purchase nor can he or she make a decisive contribution to clarifying the situation. The authority to issue orders is to be exercised at its discretion. The requirements for the substantiation of claims follow from §294 of the Code of Civil Procedure.	Question: What is the consequence if further supply or use of the substance or mixture is prohibited and who bears the costs? What does this prohibition look like? How can a further supply be avoided? Recommendation: Change "may" with "shall" in the last sentence. Proposal: The costs for "prohibiting further supply or

			use" (= confiscating) shall be borne by the infringer.
§12k	Authorisation to issue ordinances to the extent permissible under Union law, the Federal Government is authorised by ordinance with the consent of the Bundesrat		
(1)	to make more detailed provisions on the content, form and transmission of the information pursuant to Section 12i (2) and Section 12j (1), (2) and (3) and on storage pursuant to Section 12i (2) and Section 12j (5)	According to point 1, the Federal Government may lay down details of the form, content and storage of the documentation referred to in sections 12i and 12j.	
(2)	to provide that, by whom and in what form the particulars referred to in Section 12i(2) and Section 12j(1), (2) and (3) must be affixed in whole or in part as labelling on containers, products or equipment	Number 2 authorises the Federal Government to regulate details of the labelling requirements in sections 12i(2) and 12j(1) to (3).	
(3)	to quota or otherwise limit the production of fluorinated greenhouse gases subject to reduction commitments under the Montreal Protocol for the protection of the ozone layer to the extent necessary to meet the reduction commitments	Under the authorisation in point 3, the Federal Government may introduce a quantitative quota for the production of HFCs in Germany. This authorisation is necessary to ensure, if necessary, compliance with the maximum quantities for the production of HFCs in Germany laid down in the Montreal Protocol. A need for national regulation may arise from the fact that the EU F-Gas Regulation does not cover production in full and that exceptions in EU law could possibly lead to the international requirements being exceeded in relation to individual member states.	Comment: Limiting production of fluorinated greenhouse gases is not related to this draft. This concern should be regulated and addressed at EU level.