

Enforcing the EU F-Gas Regulation, what can Member States do?

This paper explores the tools that Member States have, or can create, in the context of the EU-F-Gas Regulation. The legal base of the EU F-Gas regulation is article 191(1) of the Treaty on the Functioning of the European Union. It therefore leaves it to Member States to take additional measures as long as they do not interfere with the fundamental principles of the European Union, in particular, the free circulation of goods and persons.

In the context of the rise of illegal trade in HFCs (HFCs that are placed on the market without quota), we suggest some tools that Member State can implement without the need for an amendment to the F-Gas Regulation.

1. Prohibit the supply and use of HFCs in non-refillable cylinders.

The F-Gas regulation prohibits the placing on the market of HFCs in non-refillable cylinders, but their subsequent use in the supply chain is not regulated (explicitly prohibited). Therefore, only the act of placing on the market of HFCs of non-refillable cylinders is a breach of the F-Gas Regulation, but not their subsequent use in the EU. This can be remedied by making the supply or use of HFCs in non-refillable cylinders in the EU an offence. Obviously, there will be a need for a transitional period during which holders of HFCs in non-refillable cylinders can be used. In our view the transitional period could be relatively limited (3 months). Likewise, their use should still be permitted for export purposes (already permitted, since the HFCs are not placed on the EU Market), or internal laboratory (Quality Assurance) purposes.

2. Targeted and Random Checks of HFC supply

Under article 6 of the F-Gas Regulation, both operators/owners of equipment and suppliers must keep records of the HFCs supplied and consumed. We recommend that this obligation applies to the full supply chain of F-Gases, and that Member States conduct both targeted and random checks of these records, following through the complete supply chain up to an including the producer/importer of the HFCs. Targeted checks focus on especially vulnerable users such as car air-conditioning repair shops, dairy farms and small retail outlets. Anyone failing to provide evidence of purchases could be fined to an amount equivalent to the CO₂-eq of the purchase under the EU Emissions Trading System (appr. €25/T CO₂-eq). Anyone in the supply chain who fails to provide evidence, in addition, should lose their license in case of recidivism.

3. Enhanced VAT checks on HFC purchases

It appears that many purchases of illegal HFCs are made on a cash-only basis. We therefore recommend that certified servicing companies under art 11.4 of the F-Gas Regulation are subject to enhanced checks under the VAT rules (risk-based approach). In order to prevent unfair competition, this must go hand-in-hand with checks of the logbooks of operators/owners of equipment and vulnerable users of HFCs (e.g. automotive repair shops) as suggested above.

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4. Dissuasive Penalties

At present, penalties for infringement of the F-Gas Regulation are considered as a “cost of doing business”. We recommend that any intentional breach of obligations under the F-Gas Regulation is subject to a fine no less than the ETS value of the HFCs imported or used illegally (appr. € 25 T CO₂-eq), and the cost of destruction in case of confiscation.

5. Enhance Customs Involvement

Customs Authorities have many responsibilities and are often overwhelmed by the number of tasks they are expected to complete. From our discussions with Customs Authorities, it seems that there is little awareness of the restrictions under the F-Gas Regulation EFCTC has developed a “Decision Tree” which intends to assist front-line customs agents to determine if HFCs declared for Import are legitimate. One of the critical elements is access to the EU F-Gas portal where customs can check if the consignee is registered in the F-Gas Registry ([Fgas Registry System](#)) and the quota allocated. We strongly recommend that Member States require any importer of HFCs to include their registration ID in their customs declarations (e.g in Box 44 of the Import Declaration).

It also appears that a substantial quantity of HFCs are entering the EU under transit rules (“T-1”). We recommend to request a security for the CO₂-eq value of the shipment (at € 25/T CO₂-eq).

Moreover, Customs in cooperation with DG CLIMA could create lists for monitoring:

- Companies exceeding Quota (which claim to re-export, etc);
- Companies claiming their cargo ‘in transit’ – and track that they leave the EU
- Companies importing HFCs under the 100 TCO₂eq threshold (but who may repeatedly import)

The European FluoroCarbons Technical Committee is a Cefic Sector Group that monitors legislation related to HFCs (hydrofluorocarbons), and HFOs (hydrofluoro-olefins) in the EU and at global level. Fluorocarbons are used as feedstock, as refrigerants, as solvents and as blowing agents for insulation plastic foams.

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