

Guidance on Confiscated HFCs and EU Waste Regulations

The purpose of this document is to provide guidance to Customs Authorities related to hydrofluorocarbons (“HFCs”) that have been seized and/or confiscated in contravention of the EU F-Gas Regulation (517/2014), specifically where placing on the market is explicitly prohibited as in the case of non-refillable containers, or instances where importers hold no or insufficient quota allocation to place the HFCs on the EU market.

Depending on the circumstances, confiscated HFCs may or may not be considered waste. This document refers to the EU Waste Framework Directive (2018/98/EC) (“WFD”) in that context. The WFD defines waste as “any substance or object which the holder discards or intends or is required to discard”. The WFD also provides a hierarchy where waste prevention is at the top.



Source: <https://ec.europa.eu/environment/waste/framework/>

Confiscated HFCs that are “Non-Waste Products”

One possible reason for confiscating HFCs is that the importer has no or insufficient F-Gas quota (in CO₂eqT) for placing the HFCs legally on the EU Market. In cases where the confiscated HFCs meet the technical standards¹ and are deemed “Non-Waste”, the confiscating authority has the option of auctioning off the confiscated HFCs to legitimate quota holders² and is not required to dispose of the material. Hence, auctioning would fall under the category of “Prevention”.

A special situation occurs if the confiscated HFCs are packaged in **non-refillable containers**, the placing on the market of which is prohibited under the EU F-Gas Regulation. In the context of the EU strategy toward resource efficiency, it is recommended to provide a temporary exemption to this prohibition under the conditions that 1) the HFCs meet the technical standards², 2) that any undertaking that acquires such HFCs in non-refillable containers agrees to consume an equivalent quantity of legitimate quota³, and 3) to re-package the HFCs into compliant containers as well as to provide for the proper disposal of the non-refillable containers. This situation still would qualify as “Prevention” and not as “Preparing for Re-use”, since the material has not been put to its intended use in the first place.

¹ The product quality of the confiscated HFCs needs to be confirmed by a full spec laboratory analysis.

² The purchasing of the HFCs at auction would be regarded as the purchaser placing the HFCs on the EU market by importing for free circulation and hence consume an equivalent quantity of their annual quota allocation. The purchaser would need to have enough quota at the time of auction to purchase the HFCs via auctions.

Confiscated HFCs that are “waste products”

If the confiscated material is found to be **contaminated**³, unable to be recycled, and unfit for its intended use, it would qualify as **“Waste”** and should be disposed of appropriately, falling under the WFD category of **“Disposal”**.

Specialist HFC recycling companies within the Member State where the material was confiscated should be used to recycle contaminated HFCs where this is possible.

It should also be noted that, with the exception of **“Disposal”**, the application of any of the other categories in the Waste Hierarchy to the confiscated HFCs would also require quota under the EU F-Gas Regulation.

Conclusion

As a general rule, confiscated HFCs should not be regarded as “Waste” under the EU WFD and can be acquired from the confiscating authorities via auction by undertakings that have legitimate quota under the EU F-Gas Regulation to be subsequently placed on the EU market. Only if the confiscated material is found to be contaminated, unable to be recycled or reclaimed and therefore unfit for its intended use, it would qualify as “Waste” and should be treated accordingly.

³ There are different forms of contamination. If the material is only contaminated with impurities like oil, moisture, inert gases and acids, it can be imported by the use of quota for reclamation. This is also the case for an HFC blend with an imbalanced mixing ratio or a mixture of different HFCs which can be reclaimed in a separation column.