

March 2013

F-gas regulation should be proportionate and in line with the Single Market

Introduction

The American Chamber of Commerce to the European Union (AmCham EU) welcomes the European Commission's proposal for a new Regulation on fluorinated gases (F-gases) aimed at reducing F-gas emissions. F-gases are used in a wide range of applications, including heat pumps and air conditioners, refrigeration, low temperature geothermal power systems, fire suppression systems, semiconductor production. However, they are greenhouse gases and impact the climate if released into the atmosphere.

AmCham EU members are working to minimise the environmental impact of the processes and products. We support the existing F-gas regulation and policies that encourage the development and deployment of products using alternatives with lower global warming potential (GWP). Moreover, we emphasise the importance of ensuring that the energy efficiency of products using F-gases is not adversely impacted by any future restriction. In many cases alternatives have or are being developed, but the technical situation varies greatly across applications, product sectors and climate zones within the EU.

We support a policy framework that is cost-effective and proportionate, by fully taking this sectoral variation into account, while preserving a single market for F-gases and products containing them in the EU. Our points below focus on preserving the single market, creating an effective 'phase down' mechanism to reduce F-gas emissions, avoiding the costly creation of stranded assets that may occur in transitioning to alternative gases, and ensuring legal certainty for certain 'critical use' applications of F-gases.

The European Commission has proposed a new F-gas regulation and we look to the European Parliament and the Council to support the Regulation's alignment with single market principles of free movement of products and services. We urge the institutions to base any adaptation of the Regulation on a thorough cost benefit analysis and to ensure that this piece of climate change legislation reflects these principles.

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Single Market

A great benefit of the existing F-gas regulation is that it establishes a single EU-wide regulatory framework regarding placing on the market, restrictions of use, and their labelling. At the same time, it allows for flexibility in application of rules governing training and certification of workers and record keeping. This dual aim is reflected in the dual legal base, single market and environmental, of the existing regulation, and we are very concerned that the proposal has a single, environmental legal base.

The Commission has not explained why it is proposing such a fundamental change to the regulation. Experience in environmental product regulation has shown that differences in national legislation has at best complicated and increased the costs of compliance, and at worst undermined the effectiveness of EU environmental legislation.

Legislation on hazardous substances in products (RoHS) and eco-design rules and automotive standards (note that the scope of the proposal now extends beyond stationary equipment to transport applications, such as refrigerated trucks) are based on single market legislation, and have been strengthened because of this.

We urge EU decision makers to adopt a dual legal base in the proposal, or at least include a robust pre-notification and assessment procedure of national measures that could impact the placing on the market of products, use restrictions and labelling. AmCham EU believes that this is a critical point in ensuring that the proposal is cost effective while also strengthening the legal certainty in the marketplace.

AmCham EU proposal: Adopt a dual legal base in the proposal as it has done in the existing F-gas regulation or include a robust pre-notification and assessment procedure of national measures

Phase down monitoring and pre-charge ban

We support the principle of a phase down policy proposed by the Commission, but would like to highlight some points of concern.

- Exporters of equipment containing F-gases should be able to earn credits/quota rights by registering the amount of F-gases contained in exported equipment. This would strengthen the integrity of the phase down process.
- Importers of equipment containing F-gases should report the amount of F-gases contained in their equipment being placed on the EU market. This is already a requirement of the proposed

article 17.3 aimed at ensuring that the phase down is applied correctly and we agree that it is critical that the phase down is thorough. However, we disagree strongly that the monitoring of the phase down would be strengthened by banning the pre-charging of non-hermetically-sealed HVAC equipment in article 12. Such a technically-prescriptive rule is unnecessary in achieving effective monitoring of the phase down and will cause economic harm and higher administrative costs.

- As the phase down progresses, it is likely that the value of quotas will increase. The Commission states that it wants companies to be able to transfer quotas to other companies, establishing a ‘quota market’, but does not propose any market monitoring. Markets need oversight and the Commission needs to take an active role.

AmCham EU proposal: delete Article 12 and oblige the Commission to report regularly on the quota market.

Avoiding Stranded Assets

From an economic and resource-efficiency standpoint, it is important that F-gas restrictions apply to future products, not existing ones. However, the ban of the use of certain F-gases in the servicing and maintenance of refrigeration equipment from 2020 in article 11.3 introduces a de facto product ban. If bans are introduced, they should follow the established pattern of Montreal Protocol policy – setting a date of use restriction, then at a later date banning the use of ‘virgin’ gas in service maintenance (actively encouraging recycling and reuse of gases) before setting a final date prohibiting its use in service and maintenance.

AmCham EU proposal: delete Article 11.3

Recovery

The responsible use of F-gases includes end-of-life management, which entails the recycling, reclamation or destruction of these greenhouses gases before the final disposal of the equipment. Measures to improve the integrity of the recovery process will assist the EU in reducing F-gas emissions further, and enhance resource efficiency. Attention to the recovery process is essential to managing the venting of F-gases into the atmosphere beyond what the current revision proposes. Due to the lack of upfront investment at many service centres offering end-of-life management, there is a threat that such facilities may not properly recover the F-gases. Going beyond training and certification of persons responsible, the physical process of recovering should include active techniques that essentially eliminate emissions.

AmCham EU proposal: insert new article 7.5 ‘During the final disposal of a fluorinated greenhouse gas container, the best available techniques shall be used in the process of recycling, reclamation, or destruction of the gases’.

Critical uses and future review

Combining a phase down process with the introduction of new restrictions of placing on the market means that it is also important for the Commission to be able to adapt the Regulation. Adaptation could be required for technical changes and it may be worthwhile to identify exemptions for critical uses, allowing market operators to have a degree of regulatory certainty. However, this empowerment for the Commission to act must be balanced, so that significant changes to the legislation, such as those that could impact the phase down process, go through a formal review process, rather than through delegated acts as proposed.

AmCham EU proposal: Supporting the proposed empowerment of the Commission to take action via delegated acts to exempt specific uses from the quota system where F-gases are necessary for health or safety reasons as per Article 13.4;

Combined with:

An obligation on the Commission to carry out a thorough review of the Regulation before the end of 2025 set out in Article 19 and that any significant alteration of the Regulation be carried out by appropriate proposals presented to the Council and European Parliament.

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AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate U.S. investment in Europe totaled €1.7 trillion in 2010 and directly supports more than 4.2 million jobs in Europe.

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