

Illegal HFC imports

*The chemical industry is concerned about illegal imports of hydrofluorocarbons (HFCs), i.e. imports without quota under the EU HFC phase-down measures. Such imports risk undermining their competitiveness. In June 2020, CEFIC announced that HFC illegal imports in 2018 could be up to 30% on top of the amounts allowed under the HFC phase-down. This number is often referred to as a 'precise estimate', as it represents a 'worst-case scenario', where all data discrepancies between Eurostat data, Chinese export data and increasing imports into neighbouring countries are assumed to be illegal trade into the EU. It is highly unlikely that this worst-case scenario is a reality. Since 2019, the Commission has stepped up action to prevent illegal HFC imports and **new data from 2019 (not yet published) indicate much smaller discrepancies***

According to OLAF, the biggest loophole regarding illegal imports is the abuse of the customs transit procedure¹ by rogue traders and it constitutes a systemic customs issue. While TAXUD is looking into the general transit aspects, it may be legally feasible to impose stricter transit rules specifically for HFCs in the F-gas Regulation review proposal planned for Q4 2021.

The Commission is currently consulting stakeholders on the review of the F-gas Regulation. One of the key objectives is to improve implementation and enforcement, and strengthening obligations of economic operators to prevent illegal trade.

Industry is very active on this issue, and activities to this extent include the engagement of private investigators and the establishment of a whistle-blower hotline by CEFIC. In addition, CEFIC has started a campaign where companies publicly pledge that they are not buying illegally imported HFCs. CEFIC further provides training to interested customs authorities to combat illegal trade.

Main messages

- The Commission fully recognises that an effective enforcement of EU rules is key. It remains a political priority, as any tonne of HFC imported illegally is one too much.
- Since 2019, targeted actions to prevent illegal imports have been taken. The Commission has in particular focused on:
 - Rapidly building the IT system '**EU Single Window for Customs**', which ensures controls become more effective.
 - Insisting clearly with Member States at all levels that good implementation is needed, including through **dissuasive penalties for illegal activities**;
 - Developing and **exchanging best practices** on how to step up enforcement and ensure dissuasive penalties for illegal activities.
- To tackle this issue it is essential that the Commission, in particular, DGs CLIMA, TAXUD, GROW and OLAF work together with Member States and industry.
- It is also clear that **your efforts to stop illegal imports are playing a significant role**. The Commission is supporting and will continue to support these activities as complementary to what is done on the authority's side.
- Our concerted actions appear to have been successful, as we see more and more illegal imports stopped at EU borders.

¹ This procedure is employed for goods that are not intended for the EU market but will pass the EU territory to be exported elsewhere, e.g. a good from China arriving in Rotterdam that is intended for the Serbian market. The circumvention happens when 'transit goods' are nevertheless being sold in the EU.

- However, we will not stop here. I am sure you have seen the stakeholder consultation documents for the **F-gas Regulation review**, which highlight that one of the key objectives is to improve enforcement.
- In particular, we are looking at options that can **strengthen customs and surveillance authorities**, and close existing loopholes as much as possible. We will also explore the possibility of **harmonised minimum penalties**, yet it remains to be seen if that is legally possible. We must keep in mind that Member States have different penalty systems. At the same time, it should be possible to at least require that certain infringements of the F-gas Regulation (including illegal imports) are also covered under national criminal legislation.
- Finally, I am happy to note that while some illegal trade is clearly happening, there are **clear signs that the F-gas Regulation's quota system – the “EU HFC phase-down” - is working and has significant impacts.**
- The most obvious sign is a rapid shift towards more climate-friendly technologies in all sectors using HFCs with high global warming potential in the EU. HFC prices also continue to increase in the EU compared to the world market, thus promoting green technologies.

Defensives

What actions has the Commission taken to prevent illegal imports?

Among the actions taken, the Commission:

- alerted ministers in the Council in 2019 to step up their enforcement and **completed pilot cases against two Member States** regarding their obligation to have penalties;
- funded a joint **customs/F-gas expert group**, which has developed best practice guidelines for customs on how to better control import of HFCs;
- made it a **priority action in the Commission's antifraud office, OLAF**, to focus on preventing illegal HFC imports;
- is building an IT system that will **connect customs all over the EU to DG CLIMA's “F-gas Portal & Licensing System”** and enable automatic, instead of manual, customs controls. The first countries will connect in 2021 and the Commission will propose to make this “Single Window Environment for Customs” mandatory for Member States this autumn.

Background

The impact of the “EU phase-down”

The EU HFC quota system creates scarcity by restricting the amounts of HFCs (measured as CO₂eq) that can be placed on the market. This led to **very high prices during 2018** (up to 10 times higher than world market). Prices have declined and are now relatively stable at ca. 3-4 times higher for highly warming HFCs (at gas distributor levels). As price increases are passed on to the end user, this is still a very significant increase that promotes a more climate-friendly choice. As a result, **highly warming HFCs have been replaced in equipment where possible.** Furthermore, higher HFC prices also provide an incentive for users of existing equipment to minimize leakage and recover gases from equipment.

Extent of illegal activities

Unfortunately, the **higher prices also incentivise illegal imports.** This mainly means imports without quota, often supplied in prohibited non-refillable containers. Illegal imports are evident, as shown by an increasing number of illegal shipments stopped at customs and by work done by OLAF as well as a detective agency hired by the chemical industry.

DG CLIMA has made its own data analysis, which indicated that illegal imports or fraud appear to mostly take place in the form of smuggling or false declarations.

Industry claims that **up to 30% of imported HFCs may be illegal**. Industry also claims that there are very high imports observed in neighbouring countries, which are subsequently smuggled into the EU.

However, making specific claims regarding the magnitude or scale of illegal trade is currently not possible given that no **reliable and consistent data exists**.

What is the Commission doing to remedy?

- Enforcement is the responsibility of the Member States and it is necessary that the customs authorities, market surveillance authorities and F-gas competent authorities cooperate closely. The Commission is taking measures to improve the enforcement of the F-Gas Regulation. In addition, the Commission (DG CLIMA) is building an IT system allowing automatic cross-checks of all declarations for HFC shipments at EU borders. This automated process will be instrumental in identifying non-authorized importers and those exceeding their quota. The national Member States customs systems will need to be interconnected end-to-end. **The rollout of the system in the Member States will gradually start in 2021**. It will become mandatory under the “Single Window Environment for Customs” initiative, where the Commission’s legal proposal will be adopted shortly.
- The Commission is also discussing with Member State how best to ensure that **penalties are dissuasive**, while respecting the differences in systems. So far, the Commission commenced two **infringements procedures due to lack of penalties (Italy, Romania)**. CEFIC has further provided an analysis of such penalties in Member States, which concluded that many cases were not dissuasive. DG CLIMA intends to analyse the penalties in more detail as this analysis is not complete.
- The Commission **will review the F-gas Regulation by the end of 2021** to (1) increase ambition in line with the European Green Deal and the Climate Law; (2) align rules with the HFC obligations under the Montreal Protocol; (3) improve implementation and enforcement and (4) provide clarifications.

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