



## EUROPEAN COMMISSION

*Brussels, 6.9.2022  
C(2022) 6517 final*

*Mr Miroslav Ivanov  
Interim President of the Narodno  
Sabranie  
2, Narodno Sabranie Square  
BG – 1169 SOFIA*

*Dear President,*

*The Commission would like to thank the Narodno Sabranie for its Reasoned Opinion on the proposal for a Regulation of the European Parliament and of the Council on fluorinated greenhouse gases, amending Directive (EU) 2019/1937 and repealing Regulation (EU) No 517/2014 {COM (2022) 150 final}.*

*This proposal complements the Fit for 55 package<sup>1</sup> and represents another important contribution to the European Union's objectives to avoid dangerous climate change and to reduce greenhouse gas emissions to at least 55% below 1990 levels by 2030, as well as to reach climate neutrality by 2050, as required by the European Climate Law<sup>2</sup>. Emissions of fluorinated greenhouse gases are included in the proposal to amend the Effort Sharing Regulation<sup>3</sup>. Additional emission savings in this area at European Union level can help Member States achieve their respective targets and improve the overall effectiveness of reaching the climate goals. The Regulation on fluorinated greenhouse gases is also the European Union's main instrument to ensure its compliance with the obligations of the Montreal Protocol on Substances that Deplete the Ozone Layer as regards hydrofluorocarbons, which are the most common fluorinated greenhouse gases.*

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<sup>1</sup> COM(2021) 550 final

<sup>2</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ L 243, 9.7.2021, p. 1.

<sup>3</sup> COM(2021) 555 final

*Besides raising the climate ambition and aligning with relevant international rules, the proposal aims to improve implementation and enforcement, most notably as regards illegal trade of fluorinated greenhouse gases, as well as having better and more efficient monitoring and reporting measures.*

*The Commission has carefully examined the concerns expressed in the Reasoned Opinion of the Narodno Sabranie and takes them very seriously. The main concerns are that the preferred option examined in the impact assessment accompanying the proposal increases administrative burden and may lead to more illegal activities while the potentials of Option 1 have allegedly not been clearly examined, and that certain aspects of the proposal are allegedly not compliant with the principles of subsidiarity and proportionality. The Commission is pleased to have this opportunity to provide a number of clarifications and hopes that these will allay the concerns raised in the Reasoned Opinion.*

*On the matter of ambition, Option 1 of the impact assessment accompanying the proposal is not achieving any emission savings and it is therefore not fully coherent with the European Climate Law objectives of achieving at least 55% reductions by 2030 and climate neutrality by 2050. Choosing this option would mean that the emission savings necessary to achieve these objectives would be considerably more difficult and costly to achieve at Member State level either by taking less effective, disparate measures in the fluorinated greenhouse gas sector and/or by taking additional, thus more costly, measures in other sectors to compensate for any European Union action on fluorinated greenhouse gases that was feasible and cost-effective but not taken under this option. For these reasons, Option 2 has been chosen as the preferred one since, following the analysis made, it is fully in line with the review objectives and the European Union's commitments to achieving emissions reductions while it avoids excessive costs and represents proportionate actions with regard to other areas of the economy.*

*Additionally, the proposal includes several new measures that strengthen the controls on imports and exports and ensure that authorities have the necessary tools to address infringements of the Regulation on fluorinated greenhouse gases and the possibility to impose effective penalties. In the Commission's view, these proposed measures will significantly help to ensure the correct enforcement of the Regulation and address illegal trade in hydrofluorocarbons.*

*On the matter of subsidiarity, the Commission notes that the proposal builds on European Union legislation and the existing Regulation (EU) No 517/2014 on fluorinated greenhouse gases that has existed at European Union level since 2006. Addressing climate change is a cross-border issue and the scale of the problem demands action worldwide.*

*The Regulation on fluorinated greenhouse gases in force, as well as the proposal, includes measures that prohibit or restrict the use or placing on the market of fluorinated greenhouse gases or fluorinated greenhouse gas products and equipment. Naturally, for the functioning of the European Union internal market and the free movement of goods, it is highly preferably if such measures are taken at European Union level. Furthermore,*

*the Montreal Protocol considers the European Union as a regional economic integration organisation, which must therefore comply with the Protocol's obligations at European Union level (e.g. reporting, licensing system, consumption phase-down). This requires relevant legislation at the same level; it would be very difficult, if not infeasible, to achieve compliance through 27 different national systems. The only exception to the regional economic integration organisation clause is the Protocol's hydrofluorocarbons production phase-down schedule, which requires compliance at Member States level. Still some Member States have requested that production is also regulated at European Union level as this would increase the flexibility for the companies concerned.*

*On the matter of proportionality, the proposal ensures that the new Regulation on fluorinated greenhouse gases, once adopted, will further reduce emissions from the targeted substances in line with the European Union's commitments and obligations under the European Green Deal and the European Climate Law, as well as guarantee the European Union's compliance with the Montreal Protocol.*

*The proposed measures are based on a thorough assessment of their cost-efficiency that shows that the marginal emission abatement costs for any sector are within the range that other sectors in the economy are expected to face to ensure the needed transition towards climate neutrality by 2050. Moreover, in the long term the mitigation measures will result in overall cost savings. Some measures will slightly increase the administrative burden on industry but some of them are essential for compliance with the Montreal Protocol and others are needed to facilitate appropriate enforcement of the rules as well as monitoring future threats. None of the latter measures involves high costs.*

*The level of benefits achieved by these measures could not have been achieved as cost efficiently for industry and Member States by introducing 27 different additional fluorinated greenhouse gas policies in Member States.*

*On the state of play of the legislative process, discussions between the Commission and the co-legislators concerning the proposal are underway. The relevant Council working group has started discussions on the proposal and the Commission presented it to the European Parliament's Committee on Environment, Public Health and Food Safety on 2 June 2022. It is hoped that an agreement may be found relatively quickly to allow the new rules to apply as from 2024.*

*The Reasoned Opinion has been made available to the Commission's representatives in the ongoing negotiations of the co-legislators, the European Parliament and the Council, and will inform these discussions.*

*In response to the more technical detailed comments in the Reasoned Opinion, the Commission would like to refer to the attached annex.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Narodno Sabranie and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
Executive Vice-President*

*Maroš Šefčovič  
Vice-President*

*The Commission has carefully considered the issues raised by the Narodno Sabranie in its Reasoned Opinion and would like to offer the following observations grouped by topic.*

### **1) Subsidiarity**

*The Reasoned Opinion raised concerns that the principle of subsidiarity is not respected with regard to (i) certain empowerments to adopt delegated acts, notably those included in Articles 16(3), 17(7), 24 and 25, (ii) the proposed prohibition to trade in hydrofluorocarbons with countries that have not ratified the Kigali Amendment to the Montreal Protocol and (iii) the lack of indicators that does not allow a full assessment of the proposed quota allocation price, the placing on the market prohibitions and the date of application of the Regulation.*

*On the matter of **delegated powers**, as rightly pointed out by the Reasoned Opinion, the empowerment given to the Commission is subject to strict limits, including that the essential elements of an area may not be subject to a delegation of power. The Commission considers that the proposal respects those rules.*

*In particular, the proposal ensures that the Commission is empowered to amend or complement the rules established in the Regulation in order to take into account scientific or technical developments that are formulated in decisions of the Parties to the Montreal Protocol. This is a typical example where delegated power is used in European Union legislation and it is an essential empowerment for ensuring swift alignment with new international rules and developments.*

*The proposal also ensures that the Commission is empowered to react where needed to prevent major market disruptions or guarantee that the quota allocation mechanism is working as intended, in line with the objectives of the Regulation. This necessary empowerment is strictly limited to adapting two non-essential elements of the quota allocation system, namely (i) the quota allocation price and (ii) the allocation of the remaining quota.*

*It should be noted that empowerments given to the Commission as regards the possibility to establish additional measures to strengthen the monitoring of fluorinated greenhouse gases under certain special customs procedures and the possibility to establish rules concerning the import and export of products from and to countries that have not ratified the Kigali Amendment of the Montreal Protocol are included in the current Regulation (EC) No 1005/2009.*

*Also allow us to recall that the Commission must consult experts from the European Union Member States before adopting delegated acts. Furthermore, either the European Parliament or the Council of the European Union may revoke the delegation of power to the Commission. In addition, a delegated act adopted by the Commission can only enter into force if no objection is raised by the Council or the Parliament, within the deadline set in the basic act, which is in this case two months.*

*On the **trade ban with third countries**, it should be noted that the Montreal Protocol prohibits trade of hydrofluorocarbons as from 1 January 2033 with all Parties that have not ratified the Kigali Amendment. This prohibition must be transposed in the Regulation on fluorinated greenhouse gases since this is the instrument that ensures that the European Union complies with its international obligations related to hydrofluorocarbons. The prohibition has been slightly advanced in the proposal (to 1 January 2028) in order to provide an incentive for timely ratification by the remaining Parties and to ensure that the global hydrofluorocarbons reduction measures of the Kigali Amendment provide the envisaged benefit to the climate.*

*On the matter of **qualitative and quantitative indicators**, the Commission notes that the benchmarks listed are intended to measure the overall success of the Regulation and the achievement of the five objectives for the review. For instance, the effects of the quota system and prohibitions are reflected in the benchmark for Objective A related to emission savings, whereas the effects of the quota price are mostly related to the benchmark for Objective C on improving implementation and enforcement of the phase-down. The Commission will publish a report by 1 January 2033 on the implementation of the Regulation. On that occasion, it will assess the effects of individual measures in more detail, as it was done in the evaluation of the current Regulation on fluorinated greenhouse gases.*

## **2) Proportionality**

*The Reasoned Opinion raised concerns that the principle of proportionality is not respected because the proposed obligation to use fluorinated greenhouse gases with a global warming potential of 2 500 or more for the maintenance or servicing of refrigeration equipment unless these gases are recycled or reclaimed will lead to a significant administrative and financial burden for small and medium sized companies in Bulgaria.*

*Allow us to underline that the proposed obligation already exists in the Regulation on fluorinated greenhouse gases in force as from 1 January 2020 for refrigeration equipment with a charge size of 40 tonnes of CO<sub>2</sub> equivalent or more. The proposal removes the 40 tonnes threshold, but it does not prohibit the use of such equipment, neither their servicing with fluorinated greenhouse gases; it merely ensures that such highly warming gases are not being produced for this purpose by requiring that the gases must be reclaimed or recycled (non-virgin). A basic cleaning process, which does not involve any significant costs, would suffice to meet the standard of recycling. Moreover, for that type of existing equipment it is normally possible to simply use a refrigerant with a global warming potential below 2 500.*

Maroš ŠEFČOVIČ  
Vice-President