

COMMISSION DECISION

of 13 December 2012

concerning national provisions notified by Austria on certain industrial greenhouse gases

(notified under document C(2012) 9256)

(Only the German text is authentic)

(2012/784/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114(6) thereof,

Whereas:

(1) By letter of 27 June 2012 and pursuant to Article 114(4) of the Treaty on the Functioning of the European Union (TFEU) Austria notified the Commission that Austria intends to maintain its national provisions on certain industrial greenhouse gases which are more stringent than Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases⁽¹⁾ beyond 31 December 2012, the end date of the authorisation by Commission Decision 2008/80/EC of 21 December 2007 concerning national provisions notified by the Republic of Austria on certain fluorinated greenhouse gases⁽²⁾, adopted in accordance with Article 95(6) of the Treaty establishing the European Community (TEC) (now Article 114(6) TFEU).

(2) Regulation (EC) No 842/2006 on certain fluorinated greenhouse gases (F-gases) aims at preventing and containing the emissions of certain F-gases (HFCs, PFCs and SF₆) covered by the Kyoto Protocol. It also contains a limited number of use bans and placing on the market prohibitions when alternatives were considered available and cost effective at Community level and where improvement of containment and recovery were regarded as not feasible.

(3) The Regulation has a double legal base, Article 175(1) TEC (now Article 192(1) TFEU) with respect to all provisions but Articles 7, 8 and 9, which are based on Article 95 TEC (now Article 114 TFEU) due to their implications in terms of free circulation of goods within the Union's single market.

(4) Austria has had national provisions on certain fluorinated greenhouse gases since 2002. On 29 June 2007, the Republic of Austria informed the Commission, pursuant to Article 9(3)(b) of Regulation (EC) No 842/2006 on certain fluorinated greenhouse gases, about these national measures (BGBl. II No 447/2002 — Ordinance of the Federal Minister for Agriculture, Forestry, Environment and Water Management on bans and restrictions for partly fluorinated and fully fluorinated hydrocarbons and sulphur hexafluoride, published in the Federal Law Gazette on 10 December 2002) as subsequently amended by Ordinance BGBl. II No 139/2007, 21.6.2007 (hereinafter 'the Ordinance').

(5) The Ordinance concerns greenhouse gases classified under the Kyoto Protocol, most of which have high global warming potentials: hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF₆), with a view of meeting Austria's emission reduction targets. On 21 December 2007 the Commission decided with reference to Article 95(6) TEC (now Article 114(6) TFEU) to authorise Austria to maintain the provisions until 31 December 2012.

(6) Since the adoption of Decision 2008/80/EC the circumstances justifying maintaining more stringent provisions, as laid out in that decision, persist. The national rules remain part of a broader strategy put in place by Austria in order to meet its emission reduction target under the Kyoto Protocol and the subsequent burden sharing agreement adopted at Union level. Under this arrangement, Austria has undertaken to reduce its greenhouse gas emissions by 13 % over the 2008-12 period compared to the base years, 1990 and 1985.

(7) In the decisions adopted jointly by the European Parliament and the Council on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020⁽³⁾, Austria has undertaken to further reduce emissions by 16 % in 2020 compared to 2005 levels.

⁽¹⁾ OJ L 161, 14.6.2006, p. 1.

⁽²⁾ OJ L 24, 29.1.2008, p. 45.

⁽³⁾ Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).

- (8) The notified measures are reported to have significantly contributed to the reduction of greenhouse gas emissions in Austria and avoided that an expected raise of those emissions have not materialised. The derogations provided for in the Ordinance, as well as the possibility to grant individual exemptions from the general ban, ensure the proportionality of the measure. Furthermore, it concerns only new equipment and allows the use of fluorinated greenhouse gases for the servicing and maintenance of existing equipment so that unnecessary abandonment of equipment is avoided.
- (9) While noting that the Ordinance has implications on the free circulation of goods within the Union, the provisions are general and apply to national and imported products alike. There is no evidence that the notified national provisions have been or will be used as a means of arbitrary discrimination between economic operators in the Union. In view of the risks for the environment resulting from the use of fluorinated greenhouse gases, the Commission confirms its assessment that the notified national provisions do not constitute a disproportionate obstacle to the functioning of the internal market in relation to the pursued objectives, in particular considering the conclusions of the recent assessment of the application, effects and adequacy of Regulation (EC) No 842/2006 ⁽¹⁾ that further measures for the reduction of fluorinated greenhouse gas emissions are necessary to reach the agreed Union wide greenhouse gas emission targets.
- (10) The Commission is of the opinion that the request by Austria, submitted on 27 June 2012, for maintaining its national legislation more stringent than Regulation (EC) No 842/2006 with respect to the placing on the market of products and equipment containing or relying on fluorinated greenhouse gases and to the use of such substances is admissible.
- (11) Moreover, the Commission confirms its Decision 2008/80/EC that the national provisions in the Ordinance:
- meet needs on grounds of the protection of the environment,
 - take into account the existence and technical and economic availability of alternatives to the banned applications in Austria,
 - are likely to result in limited economic impact,
 - are not a means of arbitrary discrimination,
 - do not constitute a disguised restriction on trade between Member States, and
 - are thus compatible with the Treaty.
- The Commission therefore considers that they can be approved.
- (12) The Commission may at any moment reassess whether the conditions for the approval continue to be fulfilled. This may, in particular, become relevant in the case of substantial changes to Regulation (EC) No 842/2006 or to Decision No 406/2009/EC. Considering this possibility and the long-term commitments of the EU and its Member States to reduce greenhouse gas emissions, a limitation of the duration of the approval to a specific date is not deemed necessary,
- HAS ADOPTED THIS DECISION:
- Article 1*
- The national provisions on certain fluorinated greenhouse gases, which Austria notified to the Commission by letter, dated 27 June 2012, and which are more stringent than Regulation (EC) No 842/2006 with respect to the placing on the market of products and equipment containing or relying on fluorinated greenhouse gases and to the use of such substances are hereby approved.
- Article 2*
- This Decision is addressed to the Republic of Austria.
- Done at Brussels, 13 December 2012.
- For the Commission*
Connie HEDEGAARD
Member of the Commission

⁽¹⁾ Report from the Commission on the application, effects and adequacy of Regulation on certain fluorinated greenhouse gases (Regulation (EC) No 842/2006), COM(2011) 581 final.