

Draft Bill

Federal Ministry for the Environment, Climate Action, Nature Conservation and Nuclear Safety

Draft Fifth Act amending the Chemicals Act

A. Problem and objective

The European provisions on fluorinated greenhouse gases, which were previously provided for by Regulation (EU) No 517/2014, have been substantially revised by Regulation (EU) 2024/573 (EU F-gas Regulation). In addition, Regulation (EU) 2024/590 introduced amendments to provisions on protection against ozone-depleting substances, which were previously provided for by Regulation (EC) No 1005/2009. As a result, there is a need to amend the provisions of the German Chemicals Act (Chemikaliengesetz – ChemG), which serve to implement these two regulations. For example, the prohibitions on the provision of products and equipment imported in violation of the quota requirement under the EU F-gas Regulation, hitherto provided for in the Chemicals Act, have now been incorporated into EU law, as has the prohibition on emptying or storing containers in violation of the quota requirement. The new EU law also requires, as a penalty for violations of the prohibition on provision, the imposition of a temporary prohibition on trade in F-gases or ozone-depleting substances, which must also be implemented in national legislation.

There is also a need for regulation to ensure that the marketability of products and equipment made available contrary to the quota system is subsequently established by the obligation to obtain a quota authorisation, and that they therefore remain marketable, i.e. in particular that they can be made available again and used again. In addition, the provisions prohibiting the deliberate release of F-gases and ozone-depleting substances could not be penalised in the Chemicals Sanctions Ordinance due to the requirements for legal certainty in criminal-offence definitions, which gives rise to a need for further regulation in the Chemicals Act. In addition, the reporting obligation in the supply chain under § 12j has given rise to a need for clarification, as the dispensing of the F-gas to the consumer for final use should not be covered. The basis of authorisation for the Chemicals Climate Protection Ordinance pursuant to § 17(1) to be subsequently amended in the context of the implementation of the EU F-gas Regulation is not sufficient for all situations that need to be provided for and is therefore to be extended.

There is also a need for minor amendments to the provisions on the notification obligations to the SCIP ('Substances of Concern in Products') database in § 16f of the Chemicals Act in order to adapt the data requirements referred to therein to the data actually requested by the European Chemicals Agency in the context of the notification.

This draft has been prepared in the context of the threat to the timely achievement of the objectives of the UN General Assembly resolution of 25 September 2015 'Transforming our world: the 2030 Agenda for Sustainable Development', and in particular contributes to the achievement of SDG 13.1 (climate action: reducing greenhouse gases).

B. Solution

Amendment to the Chemicals Act, by means of which the provisions of §§ 12i and 12j are adapted to the new EU F-gas Regulation by updating their references and revising their

content. The prohibitions in § 12i(1), which were previously only provided for at a national level and have now been enshrined at EU level with the same content, shall be deleted. In addition, the national labelling obligation under § 12i(6) can be deleted. Further accompanying provisions required by the new EU F-gas Regulation, such as suspension of transport of F-gases and ozone-depleting substances, are to be added to the Chemicals Act. In addition, a provision is to be included under which, for equipment and products pre-charged with F-gases that have been placed on the market in violation of the quota system of the EU F-gas Regulation, a quota authorisation must be procured retroactively before further dispensing in order to establish the marketability of the gases already in circulation and enable their legal use.

C. Alternatives

None. The amendment of the directly applicable EU F-gas Regulation and Regulation (EU) 2024/590 creates an urgent need for a legislative adaptation to the Chemicals Act.

D. Budgetary expenditure without compliance costs

None.

E. Compliance costs

E.1 Compliance costs for citizens

None.

E.2 Compliance costs for businesses

There are no additional compliance costs for businesses.

Administrative costs under this heading arising from information obligations

Not applicable.

E.3 Administrative compliance costs

The administration shall not incur any additional compliance costs.

F. Other costs

The exercise of prosecution and criminal justice by courts and prosecutors' offices in the application of this Act will not incur any measurable additional costs. This is because only a few new criminal offences are created by this Act. No impact is expected on individual prices or price levels, in particular consumer price levels.

Draft Bill of the Federal Ministry for the Environment, Climate Action, Nature Conservation and Nuclear Safety

Draft Fifth Act amending the Chemicals Act¹⁾⁾²⁾⁾

Dated ...

The Federal Parliament has adopted the following Act:

Artikel 1

Amendments to the Chemicals Act

The Chemicals Act, as amended by the promulgation of 28 August 2013 (BGBl. [Federal Law Gazette] I p. 3498, 3991), as last amended by Article 1 of the Act of 16 November 2023 (BGBl. 2023 I, No 313), is amended as follows:

1. The table of contents is amended as follows:

a) The wording relating to Section 2b is replaced by the following wording:

‘Section 2b

Implementation of Regulation (EU) 2024/573’.

b) The wording relating to §§ 12i to 12l is replaced by the following wording:

‘§ 12i Additional obligations to Chapter III of Regulation (EU) 2024/573

§ 12j Additional obligations to Chapter IV of Regulation (EU) 2024/573

§ 12k Additional obligations for pre-charged equipment and products

§ 12l Powers to issue statutory instruments’.

c) The following wording is inserted after the wording relating to § 23:

‘§ 23a Temporary prohibitions’.

2. Sentence 1 of § 3 is amended as follows:

a) Points (7) and (8) are replaced by the following Points (7) and (8):

¹)This Act serves to implement Regulation (EU) 2024/573 of the European Parliament and of the Council of 7 February 2024 on fluorinated greenhouse gases, amending Directive (EU) 2019/1937 and repealing Regulation (EU) No 517/2014 (OJ L 2024/573, 20.2.2024) and

Regulation (EU) 2024/590 of the European Parliament and of the Council on substances that deplete the ozone layer, and repealing Regulation (EC) No 1005/2009 (OJ L 2024/590, 20.2.2024).

²)Notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241 of 17 September 2015, p. 1).

7. 'Manufacturer' means a natural or legal person or any other association of persons who produces or manufactures a substance, mixture, product or equipment;
8. 'Importer' means a natural or legal person, or any other association of persons, who introduces a substance, mixture, product or equipment into the scope of this Act; a person shall not be deemed to be an importer if they merely carry out transit operations under customs control, provided that no treatment or processing takes place;'

‘§ 12j

Additional obligations to Chapter IV of Regulation (EU) 2024/573’.

- b) Paragraph 1(1) is replaced by the following sentence:

‘The provision of, transfer to third parties of, or acquisition of hydrofluorocarbons as referred to in Group 1 of Annex I to Regulation (EU) 2024/573, as amended on 7 February 2024, which are placed on the market in violation of the requirements of Article 16(1)(2) of Regulation (EU) 2024/573, as amended on 7 February 2024, shall be prohibited.’

- c) Paragraph 2 is amended as follows:

a%6) In the wording before Point (1), the wording ‘as defined in Article 2(2) of Regulation (EU) No 517/2014’ is replaced by the wording ‘as defined in Group 1 of Annex I to Regulation (EU) 2024/573’;

b%6) Point (2) is amended as follows:

a%7%7) Under letter (a), the wording ‘Article 16 or 18 of Regulation (EU) No 517/2014’ is replaced by ‘Article 17 or 21 of Regulation (EU) 2024/573’;

b%7%7) Letter (b) is replaced by the following letter (b):

‘b) that, for the substances or mixtures, there is a specific exception to the quota obligation for placing on the market, in accordance with Article 16(2) or (4) of Regulation (EU) 2024/573 or’.

- d) Paragraph 3(1) is replaced by the following sentence:

‘Any person who obtains hydrofluorocarbons according to Group 1 of Annex I to Regulation (EU) 2024/573 for use or supply to third parties from a supplier from another Member State of the European Union without receiving a declaration from that supplier in accordance with Paragraph 2 shall ascertain the information referred to in Paragraph 2.’;

- e) Paragraph 5 is amended as follows:

a%6) In the sentence 1, the wording ‘Article 12(6) of Regulation (EU) No 517/2014’ is replaced by the wording ‘Article 12(7) of Regulation (EU) 2024/573’;

b%6) In the sentence 2(2), the wording ‘Article 12(6) of Regulation (EU) No 517/2014’ is replaced by the wording ‘Article 12(7) of Regulation (EU) 2024/573’;

- f) In Paragraph 7(2), the wording ‘Article 15(1)(2) of Regulation (EU) No 517/2014’ is replaced by the wording ‘Article 16(1)(2) of Regulation (EU) 2024/573’;

- g) The following Paragraph 8 is inserted after Paragraph 7:

‘(8) Paragraph 2, Paragraph 3(2) and Paragraph 4 shall not apply to dispensing by filling a product or a device for final use as intended.’

- h) After § 12j, the following § 12k is inserted:

‘§ 12k

Additional obligations for pre-charged equipment and products

Any person who makes available on the market pre-charged products and equipment with hydrofluorocarbons referred to in Group 1 of Annex I to Regulation (EU) 2024/573, as amended on 7 February 2024, and placed on the market in violation of Article 19(1) of Regulation (EU) 2024/573, as amended on 7 February 2024, shall ensure that they have an authorisation to use quotas for the corresponding amount of hydrofluorocarbons supplied in accordance with Article 21(2)(1) or (3)(1) of Regulation (EU) 2024/573, as amended on 7 February 2024. Sentence 1 does not apply to products or equipment that are already covered by a quota authorisation.’

- i) The previous § 12k becomes § 12l and is amended as follows:

a%6) In Point (2), the wording ‘müssen,’ [must] in the German text is replaced by the wording ‘müssen.’.

b%6) Point (3) is deleted.

5. § 16f(1)(1) is amended as follows:

a) Point (2) is deleted.

b) Points (3) to (10) become Points (2) to (9).

6. § 17(1) is amended as follows:

a) Point 1(c) is replaced by the following (c):

‘(c) may only be offered, sold, supplied or purchased under certain conditions or may only be offered to certain persons, sold or supplied only to certain persons or may only be acquired by certain persons,’.

b) Point (2)(d) is replaced by the following letter (d):

‘(d) demonstrate the necessary skills and knowledge and refresh them by participating in training courses, including in particular rules on:

a%6) the procedure;

b%6) the requirements for issuing certificates;

c%6) competence;

d%6) the possibility of delegating responsibilities and tasks to other bodies governed by public law and legal persons governed by civil law or associations of persons; and

e%6) the period of validity of evidence’.

7. § 21 is amended as follows:

a) In Paragraph 4(1), in the wording before Point (1), the wording ‘, also jointly with the expert appointed by them,’ is inserted after the wording ‘persons’.

- b) In Paragraph 6a, the wording 'and products' is replaced by the wording ', products and equipment'.
- 8. In § 21a(1)(1) and (2)(2), the wording 'and products' is replaced by the wording ', products and equipment'.
- 9. § 23(2) is amended as follows:
 - a) Sentence 1 is amended as follows:
 - a%6) The wording 'may release or contain' is replaced by the wording 'may release or contain, or a piece of equipment'.
 - b%6) The wording 'or the product' shall be replaced by the wording ', the product or the equipment'.
 - b) In Sentence 3, the wording 'or a mixture' is replaced by the wording ', a mixture, a product or a piece of equipment'.
- 10. After § 23, the following § 23a is inserted:

'§ 23a

Temporary prohibitions

- (1) The competent authority may temporarily prohibit any person who repeatedly or seriously infringes Regulation (EU) 2024/573 from using, producing, importing, exporting or placing on the market the following greenhouse gases, products or equipment for a period of up to 36 months:
 - 1. fluorinated greenhouse gases referred to under letter (a) of Article 2 of Regulation (EU) 2024/573; or
 - 2. products or equipment containing, or whose functioning relies upon, fluorinated greenhouse gases.
- (2) The competent authority may temporarily prohibit any person who repeatedly or seriously infringes Regulation (EU) 2024/590 from using, producing, importing, exporting or placing on the market the following products, equipment or ozone-depleting substances for a period of up to 36 months:
 - 1. ozone-depleting substances referred to under Article 2(a) of Regulation (EU) 2024/590; or
 - 2. products or equipment containing, or whose functioning relies upon, ozone-depleting substances.'
- 11. In § 24(2), the wording 'and products' is replaced by the wording ', products and equipment'.
- 12. § 26 is amended as follows:
 - a) Paragraph 1 is amended as follows:
 - a%6) Points (4a) and (4b) are deleted.

b%6) Point (4e) is replaced by the following Point (4e):

‘4e. contrary to § 12j(1)(1), makes available, supplies or acquires hydrofluorocarbons;’.

c%6) The following Point (4g) is inserted after Point (4f):

‘4g. contrary to § 12k, does not ensure that they have the authorisation referred to therein;’.

d%6) In Point (10)(b), the wording ‘concerning the production of, placing on the market of or use of substances, mixtures or products’ is deleted.

b) In Paragraph 2(3)(e), the wording ‘to service, to collect’ is inserted after the wording ‘to reprocess,’.

13. In § 27c, the wording ‘or the product’ is replaced by the wording ‘, the product or the equipment’.

Artikel 2

Entry into force

This Act shall enter into force on the day after promulgation.

EU legal acts:

1. Regulation (EU) 2024/573 of the European Parliament and of the Council of 7 February 2024 on fluorinated greenhouse gases, amending Directive (EU) 2019/1937 and repealing Regulation (EU) No 517/2014 (OJ L 2024/573, 20.2.2024)
2. Regulation (EU) 2024/590 of the European Parliament and of the Council on substances that deplete the ozone layer, and repealing Regulation (EC) No 1005/2009 (OJ L 2024/590, 20.2.2024)

Justification

A. General part

I. Objective of and need for the provisions

The European provisions on fluorinated greenhouse gases, which were previously provided for by Regulation (EU) No 517/2014, have been substantially revised by Regulation (EU) 2024/573 (EU F-gas Regulation). In addition, Regulation (EU) 2024/590 introduced amendments to provisions on protection against ozone-depleting substances, which were previously provided for by Regulation (EC) No 1005/2009. As a result, there is a need to amend the provisions of the German Chemicals Act (Chemikaliengesetz – ChemG), which serve to implement these two regulations. For example, the prohibitions on the provision of products and equipment imported in violation of the quota requirement under the EU F-gas Regulation, hitherto provided for in the Chemicals Act, have now been incorporated into EU law, as has the prohibition on emptying or storing containers in violation of the quota requirement. The new EU law also requires, as a penalty for violations of the prohibition on provision, the imposition of a temporary prohibition on trade in F-gases or ozone-depleting substances, which must also be implemented in national legislation.

There is also a need for regulation to ensure that products and equipment made available contrary to the quota system become marketable, i.e. can continue to be made available and used, by applying for a quota authorisation retroactively. For that reason, an obligation to retroactively apply for the necessary quota authorisation retroactively is introduced. In addition, the provisions prohibiting the deliberate release of F-gases and ozone-depleting substances could not be penalised in the Chemicals Sanctions Ordinance due to the requirements for legal certainty in criminal-offence definitions, which gives rise to a need for further regulation in the Chemicals Act. In addition, the reporting obligation in the supply chain under § 12j has given rise to a need for clarification, as the dispensing of the F-gas to the consumer for final use should not be covered. The basis of authorisation for the Chemicals Climate Protection Ordinance pursuant to § 17(1) to be subsequently amended in the context of the implementation of the EU F-gas Regulation is not sufficient for all situations that need to be provided for and is therefore to be extended.

There is also a need for minor amendments to the provisions on the notification obligations to the SCIP ('Substances of Concern in Products') database in § 16f of the Chemicals Act in order to adapt the data requirements referred to therein to the data actually requested by the European Chemicals Agency in the context of the notification.

Main content of the draft

Amendment to the Chemicals Act, by means of which the provisions of §§ 12i and 12j are adapted to the new EU F-gas Regulation by updating their references and revising their content. The prohibitions in § 12i(1), which were previously only provided for at a national level and have now been enshrined at EU level with the same content, shall be deleted. In addition, the national labelling obligation under § 12i(6) can be deleted. Further accompanying provisions required by the new EU F-gas Regulation, such as suspension of transport of F-gases and ozone-depleting substances, are to be added to the Chemicals Act. In addition, a provision is to be included under which, for equipment and products pre-charged with F-gases that have been placed on the market in violation of the quota system of the EU F-gas Regulation, a quota authorisation must be applied for retroactively before further supply in order to ensure the marketability of the gases already in circulation.

The deliberate release of F-gases and ozone-depleting substances shall be included as new criminal offences, since they cannot be provided for in the Chemicals Sanctions Ordinance due to the requirements for the specificity of criminal offences.

This draft has been prepared in the context of the threat to the timely achievement of the objectives of the UN General Assembly resolution of 25 September 2015 'Transforming our world: the 2030 Agenda for Sustainable Development', and in particular contributes to the achievement of SDG 13.1 (climate action: reducing greenhouse gases).

II. Executive footprint

Interest representatives or mandated third parties have not contributed to the content of the Draft Bill.

III. Alternatives

None. The amendment of the directly applicable EU F-gas Regulation and Regulation (EU) 2024/590 creates an urgent need for a legislative adaptation to the Chemicals Act.

IV. Legislative powers

The amendments to the Chemicals Act in Points (1) to (10) are based on the legislative powers under Article 74(1) of the Basic Law ('Business Law'). A regulation under federal law is needed to preserve legal and economic unity in the national interest. These are regulations that largely ensure the implementation of EU law in Germany. A nationally uniform regulation is essential in order to create uniform conditions of competition in Germany.

The amendments in Points (11) and (12) of Article 1 are based on Article 74(1)(1) ('criminal law'). Legislative powers also include the law on administrative offences.

V. Compatibility with European Union law and international treaties

The amendments in Points (1) to (10) of Article 1 serve to bring the provisions in line with the new EU F-gas Regulation. Duplication of provisions is avoided by repealing the prohibitions on market placement now provided for at EU level (Article 1(3)(b)) and only retaining the accompanying documentation requirements (see justification for Article 1(3)(c)). The amendments to Article 1(12)(h) serve to implement the new EU F-gas Regulation and Regulation (EU) 590/2024, each of which requires that a sanction include a temporary prohibition on the trade in F-gases and ozone-depleting substances.

VI. Impact of the legislation

The Draft Bill provides legal certainty for the economic operators concerned by adapting national law to the new EU F-gas Regulation and Regulation (EU) 2024/590 by adapting §§ 12i and 12j. The clarification in § 12j(8) and the deletion in § 16f also serve to provide legal certainty for the operators concerned.

1. Legal and administrative simplification

The provisions that are now provided for on EU level are repealed. Thus, the provision in § 12i(1), according to which the transfer of products, equipment and containers is

prohibited if they were made available on the market in violation of the quota system of the EU F-gas Regulation, is deleted, as it is now directly contained in the EU F-gas Regulation.

2. Sustainability aspects

The Draft Bill is relevant to Target 13.1 (climate protection: reducing greenhouse gases). The provisions on fluorinated greenhouse gases aim to reduce gases with a high global warming potential (GWP). These are subject, inter alia, to a quota system. The provisions of the Draft Bill accompany the provisions of the EU F-gas Regulation by means of documentation and evidence obligations that serve to monitor compliance with the quota system.

The Draft Bill contributes to achieving the objectives of Transformation Area No 6, 'Pollutant-free Environment', of the German Sustainability Strategy. The further development of the provisions on F-gases and ozone-depleting substances will improve the implementation of the EU F-gas Regulation and Regulation (EU) 2024/590 in Germany, which serve to reduce the release of climate-damaging and ozone-depleting gases, among other things. There are no conflicts with other sustainability goals.

3. Budgetary expenditure without compliance costs

There is no budgetary expenditure without compliance costs. The adjustments made are purely technical. No additional budgetary tasks arise for the Federal States, the municipalities or the Federal Government.

4. Compliance costs

4.1. Compliance costs for citizens

There are no compliance costs for citizens. Where the Draft Bill contains individual new requirements, such as those in § 12k, these are aimed exclusively at commercial enterprises.

4.2. Compliance costs for businesses

There are no compliance costs for businesses. The new obligation introduced in § 12k, according to which a corresponding quota must be obtained for pre-charged equipment and products placed on the market without a quota, does not constitute an additional burden, since the equipment and products made available in violation of the quota obligation are not marketable anyway. In this respect, the purpose of the provision is to retroactively legalise an unlawful state of affairs that creates a better situation for the party addressed by the legislation. This is because, without the regulation, the F-gases contained would have had to be destroyed.

4.3. Administrative compliance costs

There will be no measurable additional administrative compliance costs. The ordering and enforcement of the additional prohibition in § 23a of the Chemicals Act is unlikely to have a measurable impact on the administrative compliance costs, as only a few cases are expected nationwide each year.

5. Other costs

The exercise of criminal prosecution and criminal justice by courts and prosecutors' offices in the application of this Act will not incur any measurable additional costs, as only

minor adjustments will be made to the provisions on fines. No impact is expected on individual prices or price levels, in particular consumer price levels.

6. Other legal consequences

The implications for equal opportunities policy were analysed in accordance with § 2 of the Gender Equality Act within the Federal administration and in Federal courts and in accordance with § 2 of the Joint Rules of Procedure of the Federal Ministries using the guideline of the interministerial working group titled 'Gender mainstreaming in the preparation of legislation'. The audit found that women and men are not affected differently, either directly or indirectly, by the Act.

VII. Timescales; evaluation

It does not seem appropriate to set timescales or conduct an evaluation, as the provisions are adaptations to EU law and the necessary purely technical adaptations are being made.

B. Special Part

Re Article 1 (Amendment to the Chemicals Act)

Re Point (1)

The amendments serve to align the table of contents in line with the amendments made to the text of the Act.

Re Point (2)

The insertions in § 3(7) and (8) serve to clarify that the definitions of manufacturers and importers can always also refer to equipment. The extension in § 3(10) to include release makes it clear that release is covered by the concept of 'use'. Thus the release of F-gases and ozone-depleting gases in particular is also included in the definition of 'use'.

Re Point (3)

Re (a)

The amendment serves to update the citation of the EU F-gas Regulation.

Re (b)

§ 12i(1) shall be deleted, as the prohibitions are now derive directly from the new EU F-gas Regulation. The prohibitions under Point (1) are largely set out in Article 11(1)(3)(1), which prohibits the use, supply, provision, whether for a fee or free of charge, and export of products and equipment that have been unlawfully placed on the market. It is true that the new prohibitions under EU law do not contain a prohibition on acquisition. However, it is not appropriate to maintain the prohibition on acquisition under the previous § 12i(1)(1), as the new EU F-gas Regulation instead targets and prohibits subsequent acts such as use. The prohibitions under Point (2) are largely set out in Article 11(3), which prohibits the import, subsequent supply, whether for a fee or free of charge, provision to third parties within the Union, as well as the use and export of non-refillable containers for F-gases listed in Annex I and Annex II, Group 1. These containers may only be stored or transported for later disposal. It is true that Article 11(3) does not contain an explicit

prohibition on emptying. Emptying will, however, be regarded as a deliberate release prohibited by Article 4(1) and punishable under the new § 27c(1) inserted by this Act.

Re (c)

The documentation and transmission obligation of § 12i(2) is maintained, but updated by reference to the new EU F-gas Regulation. In the future, this national obligation will substantiate and supplement the obligation to furnish proof laid down in Article 11(1)(5) of the new F-gas Regulation, according to which the supply or provision of products or equipment one year after the prohibition date set out in Annex IV must be accompanied by proof that the product or equipment was placed on the market before that prohibition date. This is because this obligation to furnish proof under EU law does not lay down any detailed provisions as to what information the proof must contain. It also applies only one year after the prohibition date in Annex IV, even though the prohibitions in Article 11(1)(3) apply immediately after the prohibition date in Annex IV. In order to facilitate enforcement of the documentation and transmission obligation under § 12i(2), the retention obligation under § 12i(4) and the legal presumption under § 12i(5) are also maintained. The exception laid down in § 12i(3) to the documentation and transmission obligation is also maintained, as it is not justified to impose this burden if it is clear from the design, condition or labelling of the products or equipment that they were placed on the market for the first time before the respective prohibition date in Annex IV, and that the proof required under Article 11(1)(5) can be provided in such cases by means of the design, condition or labelling.

Re (d)

This is a consequential amendment to letter (c).

Re (e)

The amendments update the references to the new EU F-gas Regulation.

Re (f)

§ 12i(6) shall be deleted, as there is no separate scope for the labelling obligation, which has hitherto been provided for purely at a national level. According to Article 12(1) of the new EU F-gas Regulation, the labelling obligation will in future apply not only to the date of placing on the market, but also to the later dates of delivery and provision to third parties.

Re Point (4)

Re (a) and (b)

The amendments merely update the references to the new EU F-gas Regulation. The prohibitions in § 12j(1) are maintained.

Re (c)

The amendments serve to update the references to the new EU F-gas Regulation.

Re (bb)

Re (bbb)

Re (d)

The references to the new EU F-gas Regulation are updated. In addition, the deletion of the term 'own' before use clarifies that it does not matter whether the importer uses the F-gases themselves or on behalf of third parties. This is because it is also conceivable that a service provider imports F-gases and uses them in a third party's equipment. Because the documentation and information disclosure obligations, now clarified in Paragraph 8, do not apply to filling the equipment for the final use of the gas, an unintended regulatory gap would arise where the gas is imported for the importer's own use.

Re (e) and (f)

The amendments serve to update the references to the new EU F-gas Regulation.

Re (g)

The purpose of the addition is to clarify that the provisions of Paragraphs 2, 3(2) and 3(4) do not apply to dispensing a product or equipment by filling it with the gases for their final use as intended. Such a use would be, for example, the filling of a motor vehicle air-conditioning system. The Third Act amending the Chemicals Act, which introduced the transmission obligation, aimed to combat the illegal trade in fluorinated greenhouse gases by strengthening the control of traders. Transmission of the declaration to the operators of stationary and mobile equipment was not intended. This is because a transmission obligation on the part of the supplier, along with the associated retention obligation on the part of the purchaser under § 21j(6), seems disproportionate, in particular for operators of mobile equipment, such as vehicle owners. The same applies to operators of smaller stationary equipment. In the case of larger stationary equipment, the enforcement authorities can inspect the operators' records kept under Article 7 of the EU F-gas Regulation and, on that basis, identify and monitor the servicing firm that carried out the refill with hydrofluorocarbons.

Re (h)

The purpose of the newly inserted provision is to ensure that pre-charged products and equipment placed on the Union market contrary to Article 19(1) of the EU F-gas Regulation can subsequently be authorised for use of quotas under Article 21 of the EU F-gas Regulation when they are made available again for the corresponding amount in CO₂ equivalents. The prohibition on placing pre-charged products and equipment on the market without a quota authorisation applies only to the placing on the market and therefore the initial provision on the Union market of these products and equipment. Under Union law, there is neither a prohibition on further provision nor an obligation to apply for quota authorisations retroactively for products and equipment already on the market. In order to close this loophole, the provision stipulates that the person making the equipment available again must ensure that a quota authorisation is in place. This ensures that the infringement of the quota system is retroactively remedied and that the equipment is compliant with the requirements of the EU F-gas Regulation.

Re (i)

The renumbering is a consequential amendment. Furthermore, Point (3) of the former § 12k is deleted because compliance with the reduction obligations of the Montreal Protocol for the production of hydrofluorocarbons is ensured by Articles 14 and 15 of the new EU F-gas Regulation.

Re Point (5)

Point (2) of § 16f is to be deleted, as the reason for listing as referred to in Article 59(1) of Regulation (EC) No 1907/2006 does not actually have to be provided by the notifier when notifying to the European Chemicals Agency in the context of the SCIP database.

Re Point (6)

Re (a)

The power to issue statutory instruments by virtue of § 17(1)(1)(c) supplements rules on the sale and purchase of certain substances, mixtures, products and equipment, both individually and with regard to certain persons, in order to take into account all regulatory needs, in particular for the implementation of the EU F-gas Regulation and Regulation (EU) 2024/590. In order to improve readability, the provision is also redrafted.

Re (b)

In addition, § 17(1)(2)(c) is redrafted to better reflect the various regulatory scenarios with regard to competence requirements. In particular, under the EU F-gas Regulation and Regulation (EU) 2024/590, provision must also be made for the possibility of delegating the issuance of certificates of competence in order to relieve the burden on the competent authorities.

Re Point (7)

The purpose of the insertion is to clarify that the entry rights also apply to experts consulted by the competent authority. However, they can only exercise their right of entry together with the authority employees responsible for monitoring.

Re Point (8)

The term 'equipment' is added for reasons of consistency. In particular, under the EU F-gas Regulation and Regulation (EU) 2024/590, the provisions also cover equipment which the general provisions of the Chemicals Act also have to apply to.

Re Point (9)

See justification for Point (8).

Re Point (10)

The provision serves to implement Article 27(3)(c) of Regulation (EU) 2024/590 and Article 31(3)(c) of the EU F-gas Regulation. Both provisions provide that in the event of repeated or serious infringements of the above-mentioned Regulations, temporary prohibitions may be imposed on the use, manufacture, import, export and placing on the market of ozone-depleting substances or F-gases. The implementation in § 23a constitutes an administrative sanction of its own kind, which can be ascertained by the respective competent authority independently of completed criminal or fine proceedings. It is not a criminal sanction for infringements of the above-mentioned regulations, but a temporary suspension from trade in F-gases or ozone-depleting substances in order to prevent further infringements. Consequently, an allegation of criminal guilt is not a determining factor. On the factual side, there must be a repeated or serious infringement. The severity of an infringement is primarily based on the quantity of gases placed on the market or used in violation of the above-mentioned Regulations and their impact on the environment. For example, the deliberate release of and unlawful trade in F-gases in small quantities will be considered a serious infringement. A quantity that exceeds a threshold above which the risk to the environment is considered to be significant is to be

regarded as a not being a small quantity. In the case of F-gases, this can generally be assumed for a quantity exceeding 10 tonnes of CO₂ equivalents. In the EU F-gas Regulation, a larger quantity is generally considered to be significant, which is evident, for example, from the exemption limit for pre-charged equipment.

As regards legal consequences, the standard grants discretion. The authority can therefore determine the duration of the prohibition depending on the seriousness of the infringements and choose the type of prohibition to be imposed on the person concerned.

Re Point (11)

See justification for Point (8).

Re Point (12)

These are consequential amendments to the changes in Section 2b.

Re (a)

Re (aa)

This is a consequential amendment to Point (3)(b).

Re (bb)

The sanction previously contained in § 26(1)(4a) is retained and only being moved to comply with the chronological order. In terms of content, the sanction in § 12j(1)(1) is still necessary. This also applies even though § 12j(1)(1) refers exclusively to substances placed on the market in violation of Article 16(1)(2) EU F-gas Regulation, which is already punishable under § 12(10) Chemical Sanctions Ordinance. In this respect, reference is made throughout § 12j(1)(1) to substances that are the subject of a criminal offence and can be confiscated under § 27d ChemG. However, in the present case, there is a separate need for the imposition of a fine, because the criminally punishable infringement, in the form of placing on the Union market, may also have been committed in other European countries, and a conviction under German criminal law and subsequent confiscation would therefore be precluded. Furthermore, if the gases are passed on further down the supply chain, the criminally punishable infringement may already lie longer in the past, with the result that proof of the offence is likely to be significantly more difficult. In order to effectively prevent the further dispensing of gases illegally placed on the Union market, provision should therefore be made for the imposition of a fine under § 12j(1)(1).

Re (cc)

With regard to the imposition of a fine under § 12k, a sanction is also needed, although the gases could also be confiscated as a secondary consequence of the criminally punishable placing on the market as objects of the offence under § 27d ChemG. For details, see the justification for (bb).

Re (dd)

The deletion in § 26(10)(b) serves to adapt to the reinforcement technique now established in ancillary criminal law.

Re Point (13)

The additions serve to clarify that the acts in the penal provision may also relate to equipment. This synchronises with § 17(1), which also relates to equipment.

Re Article 2 (Entry into force)

This provision provides for the Act's entry into force.