Commission Implementing Regulation (EU) 2019/661

of 25 April 2019

ensuring the smooth functioning of the electronic registry for quotas for placing hydrofluorocarbons on the market

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006, and in particular Article 17(2) thereof,

Whereas:

(1) Article 17 of Regulation (EU) No 517/2014 provides for a central electronic registry to manage quotas, for the placing of hydrofluorocarbons on the market, and their reporting, including equipment placed on the market charged with hydrofluorocarbons (‘the registry’).

(2) Following the Kigali Amendment to the Montreal Protocol on substances that deplete the ozone layer, as from 1 January 2019 Union imports and exports of bulk quantities of hydrofluorocarbons fall under the licensing system set out in Article 4B of the Montreal Protocol. Valid registration of an undertaking acting as importer or exporter, as appropriate, in the registry under Regulation (EU) No 517/2014 is considered to constitute such a licence.

(3) In order to ensure the smooth functioning of the registry, it is important to specify the requirements for undertakings for which registration is compulsory. Those requirements should, inter alia, include a requirement to provide information related to the financial and legal status of those undertakings. Such information may be necessary in order to ensure an effective implementation of the quota allocation, avoid distortion of quota allocations and prevent circumvention and abuses of legislative requirements.

(4) The different situation of undertakings that have mandated an only representative in accordance with Regulation (EU) No 517/2014 should also be reflected in the registration requirements.

(5) In order to allow the quota mechanism for placing hydrofluorocarbons on the market to be implemented effectively by means of the registry it is important to provide safeguards aimed at ensuring that the allocation of quotas is carried out in a lawful and fair manner. The function of the registry is to facilitate effective implementation of the quota mechanism. The registry should therefore be organised and managed in a way that it allows it to be used as a tool to avoid any circumvention or abuse of the requirements for quota allocations. In particular, where the same beneficial owner(s) registers several undertakings with the aim of receiving a higher allocation of quotas than a single undertaking's share of the maximum quantity of hydrofluorocarbons that can be placed on the market in the Union in accordance with Article 15(1) of Regulation (EU) No 517/2014, such undertakings registered with the same beneficial owner(s) should be considered as one for the purposes of the quota allocation stipulated in Article 16(5) of the Regulation. Beneficial ownership can be related to any type of legal entity including for example small and medium-sized enterprises.

(6) Taking into account national laws and rules regulating the establishment and operation of undertakings, the Commission needs the assistance of Member States in order to assess the completeness and accuracy of information provided by undertakings for registration purposes. Member States should therefore be required to cooperate and exchange information with the Commission in order to ensure the smooth functioning of the registry.

(7) The Commission is required to ensure that personal data submitted pursuant to Article 17 of Regulation (EU) No 517/2014 are processed in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 24(1) of Regulation (EU) No 517/2014,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down general, operational requirements for registration in the registry established pursuant to Article 17(1) of Regulation (EU) No 517/2014.

Article 2

Definitions

‘Beneficial owner’ means a beneficial owner as defined in point 6 of Article 3 of Directive (EU) 2015/849 of the European Parliament and of the Council.

Article 3

Information requirements for registration in the registry

1. Undertakings established in Gibraltar shall provide the following information to the Minister for the purposes of becoming registered in the registry:

(a) name and legal form of the undertaking as it appears in relevant official documents in line with Gibraltar law and practices;

(b) the undertaking's full address, including street name and building number, postal code, name of city and country;

(c) the undertaking's telephone number, including the international dialling code;

(d) *Omitted*

(e) the undertaking's Economic Operators Registration and Identification (EORI) number, if applicable;

(f) the full name of one contact person who satisfies the conditions in points (i) and (ii), and an individual electronic address used for professional purposes by that person containing, if available, a clear link to the undertaking.:

(i) he or she is either a beneficial owner of, or is employed by, the undertaking;

(ii) he or she is authorised to perform all obligations and relevant activities relating to the registry on behalf of the undertaking such that they become legally binding on the undertaking;

(g) a description of the undertaking's business activities;

(h) written confirmation of the undertaking's intention to register in the registry signed by a beneficial owner or employee of the undertaking who is authorised to make legally binding statements on behalf of the undertaking;

(i) the undertaking's bank account details validated by means of a document signed by a bank representative or else an original official bank statement relating to a bank account in Gibraltar that is used by the undertaking for its business activities and covers a period within the last 3 months.

2. Undertakings established outside Gibraltar that have mandated an only representative as referred to in Article 16(5) of Regulation (EU) No 517/2014 shall provide the following information to the Minister for the purposes of becoming registered in the registry:

(a) the information listed in points (a), (b) and (c) of paragraph 1, but with respect to both the undertaking and the only representative, and accompanied, in the case of the information listed in point (a), a relevant official document on which the name and legal form appears in each case, together with a certified translation of that document in English;

(b) the information listed in points (d), (e) and (i) of paragraph 1, but with respect to the only representative rather than the undertaking;

(c) the full name of one contact who satisfies the conditions in points (i) and (ii), and an individual electronic address used for professional purposes by that person containing, if available, a clear link to the only representative:

(i) he or she is either a beneficial owner of, or is employed by, the only representative;

(ii) he or she is authorised to perform all obligations and relevant activities relating to the registry on behalf of the undertaking and the only representative such that they become legally binding on both the undertaking and the only representative;

(d) an electronic address for the only representative;

(e) a description of the undertaking's business activities;

(f) the written confirmation listed in point (h) of paragraph 1 but signed additionally by a beneficial owner or employee of the only representative who is authorised to make legally binding statements on behalf of the only representative;

3. In order to be eligible for submitting a declaration pursuant to Article 16(2) or 16(4) of Regulation (EU) No 517/2014 for a given year, the deadlines for submitting and for completing an application to register in the registry shall be as specified in the notice to be issued by the Minister under the third subparagraph of

Article 16(2) of that Regulation.

4. Undertakings already registered before the entering into force of this Regulation shall submit the information pursuant to paragraphs 1 or 2, whichever is applicable, within 3 months from entering into force of this Regulation, unless it has already been submitted in the registry.

Article 4

Additional information requirements for registration in the registry

1. The Minister may request an undertaking to provide information on the identity of the beneficial owner(s) of the undertaking, and, where applicable, of the undertaking's only representative, including information as to the type of beneficial ownership and the type and level of control that each such owner is entitled to exercise.

2. The Minister may also, where justified after a preliminary assessment of the information provided under Article 3 and, if applicable, under paragraph 1 of this Article request the undertaking to provide the following:

(a) additional information or supporting evidence to show the accuracy and completeness of the information provided under Article 3 or, as the case may be, paragraph 1 of this Article;

(b) the undertaking's financial statements of the previous year or, if not available, proof of sufficient funds to perform the future activities for which the undertaking wishes to register in the registry;

(c) the undertaking's business plan for future activities and an overview of previous business activities;

(d) a document providing proof of the management structure of the undertaking;

(e) information concerning any links, such as legal, economic or fiscal links, with other undertakings, or the beneficial owners of other undertakings, that have submitted a registration request or are already registered in the registry.

3. The Minister may request, where appropriate, that any additional information or supporting evidence requested under paragraph 2 from undertakings that have mandated an only representative be accompanied by a certified translation in English.

4. Undertakings shall submit any information or evidence requested under this Article within 10 working days following the date of the request or within such longer period as the Minister may agree following a duly justified request by the undertaking for an extension of time.

Article 5

Obligation to update information

Undertakings registered in the registry shall ensure that the information provided by or on behalf of them under this Regulation is kept up-to-date and shall provide the Minister with updated information as soon as any such information changes or ceases to be complete or accurate.

Article 6

Refusal, suspension and cancellation of registrations

1. The Minister may refuse to register an undertaking in the registry, or may suspend the registration of an undertaking, if the requirements of this Regulation in relation to that undertaking are not complied with or if

any information or evidence provided under this Regulation by or on behalf of the undertaking is inaccurate or incomplete. The concerned undertaking and the competent authority of the relevant Member State shall be informed, via the registry, of the reasons for refusal or suspension of registration.

2. Where an undertaking's registration is suspended under paragraph 1, the Minister shall lift the suspension and restore the registration in the event that the requirements of this Regulation in relation to the undertaking are subsequently complied with or, as applicable, the information or evidence provided under this Regulation by or on behalf of the undertaking is subsequently updated so that it is accurate and complete.

3. The Minister shall cancel the registration of undertakings in cases where deliberately false information is supplied or if an undertaking, following suspension, persistently fails to provide the required information or to update its information under this Regulation. The concerned undertaking and the competent authority of the relevant Member State shall be informed, via the registry, of the reasons for cancellation of registration.

Article 7

Undertakings with the same beneficial owner(s)

1. For the purpose of quota allocation for placing hydrofluorocarbons on the market pursuant to Article 16(5) of Regulation (EU) No 517/2014, all undertakings with the same beneficial owner(s) shall be considered as one single declarant in accordance with Article 16(2) and (4) of the Regulation. That single declarant shall be the undertaking that was registered first or, where appropriate, another registered undertaking indicated by the beneficial owner. For the purpose of recalculating reference values pursuant with Article 16(3) of Regulation (EU) No 517/2014, all undertakings with the same beneficial owner(s) shall be considered as one single importer or producer. That single importer or producer shall be the undertaking that was registered first or, where appropriate, another registered undertaking indicated by the beneficial owner.

2. For undertakings where paragraph 1 applies for two declaration periods, the Minister shall cancel the registration of the undertakings with the same beneficial owner(s) except for the undertaking that was registered first or, where appropriate, another registered undertaking indicated by the beneficial owner, unless there are other pending obligations in accordance with Regulation (EU) No 517/2014 that require registration to the registry.

Article 8

Exchange of information

Upon request, Member States shall cooperate and exchange information with the Minister when it is necessary for the assessment of the completeness and accuracy of information provided by undertakings for registration purposes under this Regulation, in particular where the information concerns Gibraltar law and practices.

Article 9

1. The personal data of an undertaking processed in the registry may be retained for a maximum period of 5 years after the cancellation of the registration in line with Article 6(3).

2. The Minister shall ensure by technical means the deletion of personal data in line with paragraph 1.

Article 10

Omitted