

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 26 February 1988

Proposal for a

COUNCIL DECISION

concluding and implementing the Vienna Convention for the protection
of the ozone layer and the Montreal Protocol on substances that
deplete the ozone layer

Proposal for a

COUNCIL REGULATION (EEC)

laying down common rules applicable to certain products which
deplete the ozone layer

(submitted by the Commission)

EXPLANATORY MEMORANDUM

The proposed draft Decision and Regulation are a continuation of the Community policy for the protection of the ozone layer of the earth, which has been established since 1980. This policy is based on the two Council Decisions 80/372/EEC and 82/795/EEC. These two Decisions instituted the reduction by 30 % of the use of CFCs in aerosols and the freeze of Community production of these substances to 1980 levels.

The European Community signed in March 1985 the Vienna Convention on the Protection of the Ozone Layer. Nine Member States have by now also signed this Convention.

In September 1987 the European Community along with most of its Member States signed the Montreal Protocol that was established under the Vienna Convention. Both the Convention and the Protocol are international agreements achieved in the context of the United Nations Environment Program. They have as their goal the common action by all countries of the world for the protection of the ozone layer from a possible reduction that could entrain serious consequences for health and the environment.

Recent scientific reports on the depletion of the ozone layer over the Antarctica in Spring and other studies on the total ozone layer indicate that a reduction in the use of chlorofluorocarbons (CFCs) and halons is appropriate. The use of these substances is thought to be a probable cause for the depletion of the ozone layer.

The proposed Council Decision intends to result in a simultaneous ratification by the Community and the Member States of the Vienna Convention and of the Montreal Protocol in a timely manner since the Protocol is to enter into force on 1 January 1989.

The protocol can enter into force at this date if and only if the Vienna Convention comes into force by the same date. For this to happen twenty countries need to have ratified the Convention by 1 October 1988.

This deadline then gives the length of time available for the ratification of the Convention by the Community and its Member States. In case that the above conditions are not met the entry into force of the Protocol will be delayed to at least three months after 1 January 1989.

The proposed Regulation intends to institute on a Community basis the system of control of the production and consumption of CFCs and halons that is contained in the Protocol. The international scientific and political situation regarding this issue require both the speedy adoption of the Community policy outlined below.

The most important provisions of the Montreal Protocol deal with control of production and consumption of CFCs and halons. Article 2 imposes an obligation, with effect from 1st July 1989, not to allow either production or consumption of CFCs to rise above their respective levels in 1986. However, production is allowed to increase by up to 10 % above the level in 1986, provided that this increase is either for the purposes of industrial rationalisation or to satisfy the domestic needs of the developing countries to which Article 5 of the Protocol applies. There are parallel provisions (Article 2 (2)) for halons, but the standstill obligation applies only from 1st January 1992.

The proposed Regulation has been drafted so as to allow industrial rationalisation either within a Member State, between Member States, or between a producer in a Member State and a producer in a non-Member State. The Regulation would also permit the industrial rationalisation envisaged by Article 2 (5) of the Protocol. The Regulation has been drafted in such a way as to make it easy for Member States to ensure that their obligations under the Protocol are being carried out in conformity with Community law.

The Article on control of production also implements the reduction, to 80 % of 1986 levels, in CFC production, and the proposed 50 % reduction which (unless the Parties to the Protocol agree otherwise) is to take place by 1998.

In order to control consumption of CFCs and halons in the Community, it is necessary to control supply rather than demand. Supply can be controlled conveniently by regulating imports and by limiting the quantities, produced within the Community, which may be sold (or used by producers themselves) within the Community. There are relatively few producers of CFCs and halons in the Community. Restricting consumption through demand rather than supply would involve regulating use of the controlled substances by a much greater number of user companies, and would be administratively inefficient. Regulating consumption by limiting supply also has the advantage that it tends to increase the price, this putting pressure on users to seek alternatives which are less environmentally damaging. It is convenient to control supply and thereby control consumption without controlling exports or stocks (since there is no need to control either). It is not possible to control consumption in the Community through controls on production, because such a high proportion of total Community production is normally exported. Therefore it is necessary to limit the quantities which producers in the Community are permitted to sell within the Community, and to use themselves. The quantities which Community companies produce, in excess of the quantities which they are permitted to sell or use in the Community, will have to be exported or stocked.

Under the Articles on control of production and consumption, each producer will be able to calculate exactly how much he may produce and how much he may sell, or use himself, within the Community. In addition, he may be able to obtain the right to sell or use additional quantities, either because imports into the Community have been less than expected, or by buying the right to sell or use an additional quantity from another producer in the Community. In either case the individual producer concerned can be allowed to increase his sales (or his own use) without causing any net increase in total Community consumption.

The articles on the control of import and the sale or use in the Community of the controlled substances have as a practical result the strict compliance with the freeze to 1986 levels of the Community consumption in 1989 and its subsequent reduction by 20 % in 1992 and by 50 % in 1998 with respect to 1986 levels.

The remaining articles deal with possible penalties for non-compliance, the control mechanism for assuring that measures are being complied with and a management committee that will help the Commission with the administration of the control systems.

PROPOSAL FOR A DECISION
CONCLUDING AND IMPLEMENTING THE VIENNA CONVENTION
FOR THE PROTECTION OF THE OZONE LAYER AND THE MONTREAL PROTOCOL
ON SUBSTANCES THAT DEplete THE OZONE LAYER

THE COUNCIL OF EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 113, 116 and 130S thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

1. Whereas the Community has signed the Convention for the Protection of the Ozone Layer, on 22 March 1985 together with several of its Member States;

2. Whereas it is established that continued emissions of chlorofluorocarbons and Halons at current levels are likely to cause significant damage to the Ozone Layer; whereas there is international consensus that significant reductions in both production and consumption of all such substances are necessary: whereas the existing Council Decisions 80/372/EEC and 82/795/EEC provide controls which are of severely limited effect and which cover only two such substances (CFC 11 and CFC 12); whereas it is necessary for the protection, promotion and improvement of the environment to conclude the Vienna Convention and its Protocol, which is based on the principle of preventive action to avoid further damage to the ozone layer and is also based on available scientific and technical data; whereas it is necessary for the Community to become a Contracting Party of the Protocol because certain of its provisions can only be carried out if the Community and all its Member States become Parties;

3. Whereas in the context of its commercial policy the Community should establish a procedure for the control of quantitative quotas of importation of the controlled substances, so that the conditions for the consumption of these substances within the Community specified by the Montreal Protocol are met;

4. Whereas a Protocol to the Convention applying to substances that Deplete the Ozone Layer was negotiated and adopted on 16 September 1987; whereas the Protocol was signed on behalf of the Community and of several of its Member States;

5. Whereas the Community should approve the Vienna Convention on the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer;

6. Whereas certain provisions of the Protocol, in particular Article 2, paragraph 8, will apply in the Community only if all Member States become parties to the Protocol;

7. Whereas in order for all the obligations under the Convention and the Protocol to be appropriately carried out, it is necessary that all Member States should also become contracting parties;

8. Whereas all Member States should conclude as rapidly as possible their procedures for signature, accession and ratification of the Convention and the Protocol respectively, with a view to simultaneous ratification;

HAS DECIDED AS FOLLOWS:

ARTICLE 1

The Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on substances that Deplete the Ozone Layer are hereby approved on behalf of the Community.

The Texts of the Convention and of the Protocol are attached to this Decision.

ARTICLE 2

The President of the Council of the European Communities shall deposit the acts of approval on behalf of the European Economic Community with the Secretary General of the United Nations in accordance with Article 13 of the Vienna Convention, and Article 14 of the Montreal Protocol.

ARTICLE 3

1. Those Member States which have not signed the Vienna Convention shall proceed to signature as soon as possible. Those Member States which have signed but have not yet ratified the Convention shall determine before 15 September 1988 whether they will ratify the Convention, in order to permit simultaneous approval and ratification by the European Community and the Member States concerned.

2. Member States which have not yet signed the Montreal Protocol will proceed to signature as soon as possible. All Member States shall determine before 15 September 1988 whether they will ratify the Protocol, in order to permit simultaneous approval and ratification by the European Community and its Member States.

3. When all Member States have notified the Commission of their determination to ratify the Convention and the Protocol the Commission shall fix a date for simultaneous approval and ratification not later than 15 September 1988.

ARTICLE 4

This Decision is addressed to the Member States.

DRAFT

COUNCIL REGULATION (EEC) N°

of

laying down common rules applicable to
certain products which deplete the ozone layer

The COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 113 and 130 S thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

1. Whereas the Community has signed the Vienna Convention for the Protection of the Ozone Layer, on 22 March 1985 together with several of its Member States.
2. Whereas it is established that continued emissions of chlorofluorocarbons and halons at current levels are likely to cause significant damage to the Ozone Layer; whereas there is international consensus that significant reductions in both production and consumption of such substances are necessary : whereas the existing Council Decisions 80/372/EEC and 82/795/EEC provide controls which are of severely limited effect and which cover only two such substances (CFC 11 and CFC 12).
3. Whereas a protocol to the Convention applying to substances that deplete the Ozone Layer was negotiated and adopted on 16 September 1987; whereas the Protocol has been signed on behalf of the Community and of several of its Member States.
4. Whereas in view of the responsibilities of the Community for the environment and trade, the Community should approve the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on substances that deplete the Ozone Layer.
5. Whereas it is necessary for action to be taken at Community level by this regulation to carry out the Community's obligations under the Convention and the Protocol, in particular to control production and consumption within the Community of chlorofluorocarbons and halons.
6. Whereas bearing in mind the market structure for these products, it is appropriate to control consumption of these substances by controlling supply rather than demand. Supply can be controlled by limiting sales and use by producers in the Community, and by limiting imports.
7. Whereas the Protocol also requires certain restrictions to be imposed on trade with States which are not Parties to the Protocol, and requires certain data to be reported.

8. Whereas additional Community measures may be needed to carry out the Community's obligations under the Protocol in respect of research and development, and technical assistance.
9. Whereas the reductions in production and consumption visualised for the year 1st July 1998 to 30 June 1999 will be reconsidered in the light of any decision of the Parties in accordance with Article 2(4) of the Protocol.

HAS ADOPTED THIS REGULATION

Article 1

This regulation applies to the importation, exportation, production and consumption of the chlorofluorocarbons and halons referred to in Annex 1.

Article 2 Definitions

In this Regulation:

- "The Protocol" means The Montreal Protocol on substances that deplete the Ozone Layer;
- "Chlorofluorocarbons" means the substances listed in Group I of Annex I;
- "Halons" means the substances listed in Group II of Annex I;
- "Producer" means any natural or legal person producing or manufacturing chlorofluorocarbons or halons within the Community;
- "Ozone depleting potential" means the figure in Annex I representing the potential effect of each substance on the ozone layer;
- "Calculated level index" in relation to production or permitted sales or use, means a quantity determined by multiplying the quantity of each substance by the ozone depleting potential of that substance specified in Annex I and adding together, for each Group of substances in Annex I, the resulting figures.

Part I

Import regime

Article 3

1. The importation into the Community of chlorofluorocarbons and halons originating or produced in third countries shall be subject to quantitative limits with effect from 1st July 1989.
2. For this purpose the Community shall open the quotas set out in Annex II.
3. The Commission, according to the procedure set out in Article 10, may modify the quotas set out in Annex II.

Article 4

With effect from 1st January 1990, the importation into the Community of chlorofluorocarbons and halons originating or produced in third countries not parties to the Protocol is prohibited.

Article 5

The importation into the Community of products originating or produced in third countries which are not parties to the Protocol, containing chlorofluorocarbons or halons, is prohibited with effect from 1st January 1993.

The Council, on the proposal of the Commission, shall adopt before that date the list of these products in the light of the deliberations of the Parties to the Protocol. The Council shall act on the basis of qualified majority.

Article 6

In the light of the deliberations of the Parties to the Protocol, the Council on the proposal of the Commission, shall adopt rules applicable to the importation into the Community of products originating or produced in third countries which are not Parties to the Protocol, which are produced with chlorofluorocarbons or halons but which do not contain these substances.

The Council shall decide on the basis of qualified majority.

Article 7

The release into free circulation in the Community of a product which is subject to a quota is subject to presentation of a licence to import. This licence is issued by the Commission in accordance with the procedure set out in Article 10.

A request for a licence shall contain :

- (a) the name and address of the importer
- (b) the description of the product stating :
 - the commercial description
 - the position in the combined nomenclature
 - the country of origin
 - the country from which the product is imported
- (c) a statement of the quantity of the product in units used normally in trade
- (d) the place and date of the proposed importation.

PART II

Article 8 Control of production

1. Each producer shall, subject to the provisions of paragraph 3 of this Article, ensure that :
 - the calculated level index of its production of chlorofluorocarbons in the period 1st July 1989 to 30 June 1990, and in each 12 month period thereafter, does not exceed the calculated level index of its production in 1986;
 - the calculated level index of its production of chlorofluorocarbons in the period 1st July 1993 to 30 June 1994 and in each 12 month period thereafter, does not exceed eighty per cent of the calculated level index of its production in 1986;
 - the calculated level index of its production of chlorofluorocarbons in the period 1st July 1998 to 30 June 1999, and in each 12 month period thereafter, does not exceed fifty per cent of the calculated level index of its production in 1986.
2. Each producer shall, subject to the provisions of paragraph 3 of this Article, ensure that the calculated level index of its production of halons in the period 1st January to 31st December 1992, and in each 12 month period thereafter, does not exceed the calculated level index of its production of halons in 1986.
3. A producer may be authorised by the Commission to exceed the production levels set out in paragraph 1 and 2 for the purposes of industrial rationalisation or so as to satisfy the basic domestic needs of States operating under Article 5 of the Protocol, provided that the calculated levels of production of CFCs and of halons respectively of the Member States concerned do not exceed the levels permitted by Article 2 of the Protocol for the periods in question. The Commission shall act in accordance with the procedure set out in Article 10.
4. Where a producer begins production after 1986, the Commission will reallocate the total Community production of the controlled substances between all producers in accordance with the procedure set out in Article 10.

Article 9

Control on consumption through control of supply in the Community

1. This Article, together with the provisions in Part I of this Regulation regulates consumption of chlorofluorocarbons and halons in accordance with Article 2 of the Protocol.
2. Each producer may sell or use within the Community from quantities produced by it.

- in the period 1st July 1989 to 30 June 1990, and in each twelve month period thereafter, a quantity of chlorofluorocarbons having a calculated level index not exceeding the calculated level index of the quantity which it sold or used within the Community in 1986;
 - in the period 1st July 1993 to 30th June 1994, and in each twelve month period thereafter, a quantity of chlorofluorocarbons having a calculated level index not exceeding eighty per cent of the calculated level index of the quantity which it sold or used in 1986;
 - in the period 1st July 1998 to 30th June 1999, and in each twelve month period thereafter, a quantity of chlorofluorocarbons having a calculated level index not exceeding fifty per cent of the calculated level index of the quantity which it sold or used in 1986.
3. Each producer may sell or use within the Community, in the period 1st January 1992 to 31st December 1992, and in each twelve month period thereafter, a quantity of halons having a calculated level index not exceeding the calculated level index of the quantity which it sold or used within the Community in 1986.
 4. The quantities fixed by paragraphs 2 and 3 may be increased by the Commission if imports of chlorofluorocarbons or halons into the Community in any twelve month period to which paragraph 2 or paragraph 3 applies shall be less than the imports of chlorofluorocarbons or halons respectively in 1986.

Any imports permitted in accordance with Part I of this Regulation shall be in addition to the quantities which may be sold or used in accordance with this Article.

The Commission shall act in accordance with the procedure set out in Article 10.

5. Any producer having the right to sell or use may transfer its right in respect of all or any of the quantity fixed in accordance with this Article to any other producer within the Community. The producer acquiring the right shall immediately notify the Commission. A transfer of the right to sell does not imply additional right to produce.

PART III

Management, Data Reporting and Final provisions

Article 10

The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph.

Article 11

Data Reporting

Each producer, importer and exporter of chlorofluorocarbons and halons shall communicate to the Commission (before the 31st of July and the 31st January of every year) the figures of its:

- production
- sales within the Community
- imports
- exports, separately to countries Parties and non-Parties to the Montreal Protocol
- stocks

of each of the controlled substances of Annex I in respect of each six month period beginning on 1.1.89.

Each company which produced, imported or exported controlled substances in 1986 shall communicate to the Commission, by 30.11.88, the same details in respect of this year.

Producers shall also communicate to the Commission for each six month reporting period the data on amounts of the controlled substances destroyed by technologies to be approved by the Parties to the Montreal Protocol.

These reports are due to the Commission in the reporting period following the approval by the Parties to the Protocol of the above mentioned technologies.

The Commission will take the appropriate measures to protect the confidentiality of the submitted data.

Article 12

Inspection

1. In carrying out the duties assigned to it by this Regulation, the Commission may obtain all necessary information from the Governments and competent authorities of the Member States and from undertakings.
2. When sending a request for information to an undertaking the Commission shall at the same time forward a copy of the request to the competent authority of the Member State in whose territory the seat of the undertaking is situated.
3. At the request of the Commission, the competent authorities of the Member States shall undertake the investigations which the Commission considers to be necessary under this Regulation. The officials of the competent authorities of the Member States responsible for conducting these investigations shall exercise their powers upon production of an authorisation in writing issued by the competent authority of the Member State in whose territory the investigation is to be made. Such authorization shall specify the subject matter and purpose of the investigation.
4. If so requested by the Commission or by the competent authority of the Member State in whose territory the investigation is to be made, the officials of the Commission may assist the officials of such authority in carrying out their duties.

Article 13

If the Commission or the authorities of a Member State find that any natural or legal person has not complied with its obligations under this Regulation, the authorities of the Member State concerned shall take penal or administrative action against that person. In the case of any infringement of Articles 8 or 9 the subsequent rights under this Regulation of the said person shall be reduced by a quantity corresponding to the quantity involved in its infringement.

Article 14

This regulation shall come into force on 1st January 1989.

The present Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX I

CONTROLLED SUBSTANCES

Group	Substance	Ozone Depleting Potential*
Group I	CFCl ₃ (CFC-11)	1.0
	CF ₂ Cl ₂ (CFC-12)	1.0
	C ₂ F ₃ Cl ₃ (CFC-113)	0.8
	C ₂ F ₄ Cl ₂ (CFC-114)	1.0
	C ₂ F ₅ Cl (CFC-115)	0.6
Group II	CF ₂ BrCl (halon-1211)	3.0
	CF ₃ Br (halon-1301)	10.0
	C ₂ F ₄ Br ₂ (halon-2402)	(to be determined)

* These ozone depleting potentials are estimates based on existing knowledge and will be received and revised periodically.

ANNEX II

Quantitative Limits on Community Imports of Annex I substances from countries outside the Community

QUANTITATIVE LIMITS

Combined Nomenclature Heading	Combined Nomenclature Sub-headings	Description	Units	From 1st July 89 to 31 December 1989	For 12 month periods From 01.01.90 to 30.06.93	For 12 month periods From 01.07.93 to 30.06.98	For 12 month periods From 01.07.98 to 30.06.99
2903.40.00	(To be specified by DG XXI) (except CFC 115)	Group I of Annex I	Weighted tonnes*	791	1 582	1 266	791
		Group II of Annex I	Weighted tonnes*	For 12 month periods From 01.01.92 to 31.12.93 15 000			

NOTE : Weighted according to the Ozone depleting potentials specified in Annex I.
This is equivalent to the calculated levels mentioned in the Regulation.

Fiche d'impact de certains actes législatifs sur les PME et l'emploi

1. OBLIGATIONS ADMINISTRATIVES DECOULANT DE L'APPLICATION DE LA
LEGISLATION POUR LES ENTREPRISES
Soumission des statistiques de la production et de l'importation
à la Commission.

2. AVANTAGES POUR L'ENTREPRISE

- OUI/~~NON~~

- LESQUELLES

Augmentation probable du prix de ces produits.

3. INCONVENIENTS POUR L'ENTREPRISE
(coût supplémentaires)

- OUI/~~NON~~

- CONSEQUENCES

Augmentation possible du coût de ces substances pour les
entreprises qui les utilisent.

4. EFFETS SUR L'EMPLOI

Réduction des emplois possibles en 1998 quand la production
sera réduite de 50%.

5. Y A-T-IL EU CONCERTATION PREALABLE AVEC LES PARTENAIRES
SOCIAUX ?

- OUI/~~NON~~

- AVIS DES PARTENAIRES SOCIAUX

Majorité des avis favorables. Consultation du CEFIC.

6. Y A-T-IL UNE APPROCHE ALTERNATIVE MOINS CONTRAIGNANTE ?
NON