



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.02.1999  
COM(1999) 67 final

98/0228 (SYN)

Amended proposal for a  
COUNCIL REGULATION (EC)  
on substances that deplete the ozone layer

(presented by the Commission pursuant to Article 189 a (2)  
of the EC-Treaty)

## EXPLANATORY MEMORANDUM

1. On 14 August 1998 the Commission adopted a proposal for a new Community regulation on substances that deplete the ozone layer. This new regulation is required to implement the adjustments and amendments to the Montreal Protocol agreed by the Parties at their seventh meeting in Vienna (1995) and their ninth meeting in Montreal (1997). The proposal also reflects progress in the development and market availability of alternatives to ozone-depleting substances, in particular hydrofluorocarbons (HFCs) and methyl bromide. Adoption of the Commission's proposal would, in due course, bring about the complete phaseout of all ozone-depleting substances in the European Community.

In several instances, the proposal goes further than the Montreal Protocol, thereby maintaining the Community's tradition of environmental leadership in the phaseout of ozone-depleting substances. In particular, a ban on the sale and use of CFCs, halons, carbon tetrachloride and 1,1,1 trichloroethane (except for essential and critical uses) is included in order to achieve the complete phaseout of these substances and to help reduce incentives for illegal trade. Additional measures to improve controls on and monitoring of trade are also proposed, including a new export authorisation requirement in line with the 1997 'Montreal' amendment to the Montreal Protocol.

The proposal takes forward the Community's policy, based on Article 2F (7) of the Montreal Protocol and already apparent in Regulation (EC) 3093/94, of phasing out HCFCs as soon as technically and economically feasible alternatives are available. Such alternatives are now available for many refrigeration, solvents and foam blowing applications and most remaining uses of HCFCs in these sectors can be eliminated during the next few years. With a few minor exceptions, the Commission proposal includes the phaseout of HCFCs as refrigerants in 2001, as solvents in 2003 and for foam blowing in 2004.

The Commission also proposes a phaseout of methyl bromide by the year 2001, with an exemption for critical uses. This reflects the high ozone-depletion potential and toxicity of methyl bromide and the availability of good alternatives to replace it in many of its current uses. The Commission recognises that there may be some uses of methyl bromide which cannot be replaced by 2001 for technical or economic reasons. The proposed exemption for these "critical uses" provides a means to ensure that the phaseout can proceed without damage to the profitability or competitiveness of Community agriculture.

2. The Economic and Social Committee adopted its opinion on 2 December 1998, which was broadly supportive of the Commission proposal while recalling that adopting an advanced 'environmental' position can run the risk of damaging the international competitiveness of Community industry.
3. At its plenary session on 17 December, the European Parliament approved the proposal from the Commission with a total of 27 amendments. The Commission accepts the amendments numbered 14, 21, 22, 23 and 24, which are included in the present modified proposal. They will provide an earlier phaseout of HCFCs in the production of certain insulating foams (as the Economic and Social Committee also requested), a ban on the supply of refrigerants and fire-protection gases in

disposable containers and more complete monitoring and checking of trade in controlled substances. For reasons of coherence, the Commission has placed amendment 21 in the body of Article 15 and amendment 24 in Article 19(5).

The Commission accepts in principle the amendments numbered 1, 2, 4, 19, 25, 26, and 30, which have been included in the present revised proposal after partial redrafting to ensure coherence with the Montreal Protocol and the rest of the regulation. These amendments include some useful additions to the recitals which clarify the scope and objectives of the Regulation and a provision to ensure that any exemptions to the HCFC use controls are time-limited and authorised transparently. Most importantly, they include a means to introduce bromochloromethane and other new ozone-depleting substances under the scope of the regulation, an aim which the Commission fully supports. The Commission has therefore included a new article 20a, a new annex IA and a definition of "new substances" in Article 2. However, for legal reasons, it will be more appropriate in future to add new substances, thereby extending the scope of the regulation, through a full legislative procedure rather than simply through a committee procedure.

The Commission cannot accept amendments 5, 32 and 33 on methyl bromide. The restrictions on critical use exemptions in amendment 5 would be incompatible with the Montreal Protocol. The critical use exemption proposed by the Commission would enable the continued use of methyl bromide after phaseout where necessary for climatic, soil, technical or economic reasons. An exemption for entire Member States on the basis of climate is unnecessary and risks exempting up to 80% of the Community's methyl bromide use, making it impossible to meet our obligations under the Montreal Protocol. The Protocol requires the complete phaseout of methyl bromide and contains no provision for continued exemptions because particular types of plastic sheet are used.

The Commission cannot accept amendments 6, 7, 8 and 9 to introduce cuts in HCFC production in the near future because it does not yet know whether they would be achievable in the international context. As the Community phases out HCFC production, we should ensure that producers in Japan and the USA do not take over the market, thereby neutralising any environmental gain. Should cuts in Community HCFC production before 2008 be possible, perhaps because they have been successfully negotiated into the Montreal Protocol, they can be introduced through the review procedure proposed by the Commission in Article 3 (3).

The Commission cannot accept amendments 12, 13 and 31 as these would advance the phase-out of HCFCs in certain uses beyond those dates which are technically and economically feasible for industry throughout the Community. The Commission cannot accept amendment 16 to ban the sale of used HCFC-containing equipment, as this would increase the probability of illegal dumping and venting to atmosphere. Nor can the Commission accept amendment 17 to put an early ban on the production of HCFC-containing products for export, even to those countries where their use remains legal. While the Commission shares the view that the Community should promote ozone-friendly technologies, it cannot overlook the risk that a Community export ban might lead to relocation of production elsewhere, resulting in loss of jobs and revenue for no global environmental benefit.

The Commission cannot accept amendment 10 to bring forward the phase-out date for sales and use of halons, as it would provide insufficient time for all Member States to put in place procedures and facilities safely to collect, store and destroy halons in non-critical uses. Nor can the Commission accept amendment 18, as it is incompatible with the exemption proposed in Article 5 (6). We also believe amendment 20 to be unnecessary, as Member States would be involved in decisions taken under the relevant articles through the Article 17 procedure and would receive copies of all licenses issued as a matter of normal procedure.

Table showing location in revised text of the accepted amendments

Amendment accepted	Place in revised text
Amendment 1	Added to middle of the text of the third recital
Amendment 2	Added at the beginning and end of recital number 9
Amendment 4	Added as new recital 11a
Amendment 14	Revision to Article 5, paragraph 1, subparagraph (d) (iii) and (iv)
Amendment 19	Added to the text of Article 5 para.6
Amendment 21	Added to the middle of Article 15
Amendment 22	Text deleted from end of Article 19 paragraph 2
Amendment 23	Added to end of Article 19, paragraph 3
Amendment 24	Added to the beginning of Article 19, paragraph 5
Amendments 25 and 26	Included as new article 20a, together with a new annex IA and a definition of "new substances" in Article 2
Amendment 30	Added as new recital 8a

**Amended proposal for a Council Regulation (EC)**

**on substances that deplete the ozone layer**

Original proposal <sup>1</sup>

Amended proposal

Recital 3

Whereas it is established that continued emissions of ozone-depleting substances at current levels continue to cause significant damage to the ozone layer; whereas it is therefore necessary to take further steps in order to ensure sufficient protection for human health and the environment;

Whereas it is established that continued emissions of ozone-depleting substances at current levels continue to cause significant damage to the ozone layer; whereas ozone depletion in the southern hemisphere reached unprecedented levels in 1998; whereas in three out of four recent springs severe ozone depletion has occurred in the Arctic region; whereas increased UV-B radiation resulting from ozone depletion poses a significant threat to health and environment; whereas it is therefore necessary to take further steps in order to ensure sufficient protection for human health and the environment;

Recital 9

Whereas the growing availability of alternatives to methyl bromide should be reflected in an accelerated phaseout of methyl bromide compared to the Montreal Protocol; whereas such an accelerated phaseout is also provided for by other Parties of the Protocol; whereas there might be specific critical agricultural uses and conditions for which the phasing out of methyl bromide would lead to severe technical or economic difficulties; whereas exemptions should be foreseen for those cases for which the production and placing on the market of methyl bromide may be permitted after phaseout;

Whereas the significant contribution of methyl bromide to ozone depletion, its high toxicity and the growing availability of alternatives to methyl bromide should be reflected in an accelerated phaseout of methyl bromide compared to the Montreal Protocol; whereas such an accelerated phaseout is also provided for by other Parties of the Protocol; whereas there might be specific critical agricultural uses and conditions for which the phasing out of methyl bromide would lead to severe technical or economic difficulties; whereas exemptions should be foreseen for those cases for which the production and placing on the market of methyl bromide may be permitted after phaseout; whereas, to ensure that exemptions are granted only for genuine critical uses, there should be a mechanism to enable the use of methyl bromide to be monitored on a Community-wide basis;

---

<sup>1</sup>COM (1998) 398 final

New Recital 8a

Whereas even after the phaseout of controlled substances the Commission may under certain conditions grant exemptions for essential uses; whereas care must be taken that exemptions are granted mainly for medical uses;

New Recital 11a

Whereas the phaseout of controlled substances requires conversions to new technologies or alternative products; whereas this could pose a burden to small and medium-sized undertakings (SMUs) in particular; whereas Member States should therefore consider providing appropriate forms of assistance specifically to enable SMUs to make the necessary changes;

Article 2, new definition

*Add after the definition of 'hydrochlorofluorocarbons', and preceding the definition of 'feedstock':*

- 'new substances' shall mean substances listed in Annex IA. This definition shall cover substances whether alone or in a mixture, and whether they are virgin, recovered, recycled or reclaimed. This definition shall not cover any substance which is in a manufactured product other than a container used for transportation or storage of that substance, or insignificant quantities of any new substance, originating from inadvertent or accidental production during a manufacturing process or from unreacted feedstock;

Article 5 (1) (d)

(iii) from the 1 January 2003, for the production of Polyurethane foams for appliances, of polyurethane flexible faced laminate foams and of polyurethane sandwich panels, except where these latter two are used for insulated transport,

(iv) from 1 January 2004, for the production of all foams;

Article 5 (6)

The Commission may, following a request of a competent authority of a Member State and in accordance with the procedure laid down in Article 17, authorise a temporary exemption to allow the use and placing on the market of hydrochlorofluorocarbons in derogation from paragraph 1 and Article 4 (3) where it is demonstrated that, for a particular use, technically and economically feasible alternative substances or technologies are not available or cannot be used.

(iii) from 1 January 2003, for the production of all foams;

The Commission may, following a request of a competent authority of a Member State and in accordance with the procedure laid down in Article 17, authorise a time-limited exemption to allow the use and placing on the market of hydrochlorofluorocarbons in derogation from paragraph 1 and Article 4 (3) where it is demonstrated that, for a particular use, technically and economically feasible alternative substances or technologies are not available or cannot be used.

Article 15

Chlorofluorocarbons, other fully halogenated chlorofluorocarbons, halons, carbon tetrachloride, 1,1,1-trichloroethane, hydrobromofluorocarbons and hydrochlorofluorocarbons contained in:

- Refrigeration equipment and air-conditioning equipment,
- Equipment containing solvents
- fire-protection systems and fire extinguishers, and
- rigid foams

shall be recovered if practicable for destruction by technologies approved by the Parties or by any other environmentally acceptable destruction technology, or for recycling or reclamation during the servicing and maintenance of equipment or before the dismantling or disposal of equipment.

Member States shall promote, as appropriate, the establishment of destruction, recycling and reclamation facilities. Member States shall define the minimum qualification requirements for the servicing personnel involved.

Member States shall report to the Commission by 31 December 2001 on the systems established to promote the recovery of used controlled substances, including the facilities available and the quantities of used controlled substances recovered, recycled, reclaimed or destroyed.

This provision shall be without prejudice to Council Directive 75/442/EEC<sup>2</sup> or to measures adopted following Article 2 (2) of that Directive.

Chlorofluorocarbons, other fully halogenated chlorofluorocarbons, halons, carbon tetrachloride, 1,1,1-trichloroethane, hydrobromofluorocarbons and hydrochlorofluorocarbons contained in:

- Refrigeration equipment and air-conditioning equipment,
- equipment containing solvents
- fire-protection systems and fire extinguishers, and
- rigid foams

shall be recovered if practicable for destruction by technologies approved by the Parties or by any other environmentally acceptable destruction technology, or for recycling or reclamation during the servicing and maintenance of equipment or before the dismantling or disposal of equipment.

Controlled substances for use as refrigerants and for fire-protection may not be placed on the market in disposable containers.

Member States shall promote, as appropriate, the establishment of destruction, recycling and reclamation facilities. Member States shall define the minimum qualification requirements for the servicing personnel involved.

Member States shall report to the Commission by 31 December 2001 on the systems established to promote the recovery of used controlled substances, including the facilities available and the quantities of used controlled substances recovered, recycled, reclaimed or destroyed.

This provision shall be without prejudice to Council Directive 75/442/EEC<sup>3</sup> or to measures adopted following Article 2 (2) of that Directive.

---

<sup>2</sup> OJ L 194, 25.7. 1975, p. 39

<sup>3</sup> OJ L 194, 25.7. 1975, p. 39

Article 19 (2)

When requesting information from an undertaking the Commission shall at the same time forward a copy of the request to the competent authority of the Member State within the territory of which the undertaking's seat is situated, together with a statement of the reasons why that information is required.

When requesting information from an undertaking the Commission shall at the same time forward a copy of the request to the competent authority of the Member State within the territory of which the undertaking's seat is situated.

Article 19 (3)

The competent authorities of the Member States shall carry out the investigations which the Commission considers necessary under this Regulation.

The competent authorities of the Member States shall carry out the investigations which the Commission considers necessary under this Regulation. The Member States shall also conduct random checks on imports of controlled substances, and communicate the schedules and results of those checks to the Commission.

Article 19 (5)

The Commission shall take appropriate steps to protect the confidentiality of information obtained under this Article.

The Commission shall take appropriate action to promote adequate exchange of information and co-operation between national authorities and between national authorities and the Commission. The Commission shall take appropriate steps to protect the confidentiality of information obtained under this Article.

New Article 20a

Chapter Va NEW SUBSTANCES

Article 20a

New substances

1. The production, release for free circulation in the Community and inward processing, placing on the market and use of substances in Annex IA are prohibited.

2. The Commission shall, as appropriate, make proposals to include in Annex IA any substances that are not controlled substances but that are found by the Scientific Assessment Panel under the Montreal Protocol to have significant ozone-depleting potential, including proposals on possible exemptions from paragraph 1 above.

New Annex IA

New substances

Bromochloromethane

ISSN 0254-1475

COM(99) 67 final

# DOCUMENTS

EN

06 14 12 15

---

Catalogue number : CB-CO-99-067-EN-C

---

Office for Official Publications of the European Communities

L-2985 Luxembourg

11