



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT

Common Position of the Council on the Proposal for a
Council Regulation on substances that deplete the ozone
layer

pursuant to the first subparagraph of Article 189 c (b) of the EC-Treaty

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substances that deplete the ozone layer

1. PROCEDURAL MATTERS

- The proposal for a Council Regulation on substances that deplete the ozone layer (COM (1998) 398 final – 98/0228 (SYN) was adopted by the Commission on 14 August 1998 and was published in the Official Journal C 286 on 15 September 1998.
- The Economic and Social Committee gave its opinion on 2 December 1998.
- The European Parliament gave its Opinion (first reading) at its sitting of 17 December 1998 (A4-0465/98).
- The Commission adopted the amended Proposal on 11 February 1999.
- The Council adopted a Common Position on [22 February 1999].

2. PURPOSE OF THE REGULATION

- The proposal will replace Council Regulation N° 3093/94 on substances that deplete the ozone layer. The new regulation is required to implement adjustments and amendments to the Montreal Protocol agreed by the Parties at their Seventh Meeting in Vienna (1995) and at their Ninth Meeting in Montreal (1997). It also reflects progress in the development and market availability of alternatives to ozone-depleting substances. Its adoption would, in due course, bring about the complete phase-out of all ozone-depleting substances in the Community.

3. COMMISSION COMMENTS

3.1 GENERAL COMMENTS ¹

The Commission accepted 12 of the 27 amendments proposed by the European Parliament in the first reading either totally, partially or in principle. The 12 amendments were incorporated in the amended Proposal.

7 of the amendments proposed by the European parliament in the first reading have been incorporated in the Common Position either entirely, in spirit or in part.

¹ The references to the Articles of the proposal correspond to the text of the Common Position. The reference to the Parliament amendments corresponds to OJ C containing the minutes of the vote on 17 December 1998.

The Commission considers that the Common Position contains important provisions to achieve the phase-out of ozone-depleting substances within the Community, beyond Council Regulation N° 3093/94. It introduces phase-out dates for the production, placing on the market and use of the ozone-depleting pesticide methyl bromide. It prohibits sales and use of those ozone-depleting substances for which production is already prohibited, i.e. chlorofluorocarbons (CFCs), halons and other fully halogenated controlled substances. In addition to new use-restrictions and a quicker reduction of the amounts of hydrochlorofluorocarbons (HCFCs) which may be placed on the market, the Common Position establishes a schedule for the reduction and, ultimately, phase-out of production, thus taking a leading role as compared to the Montreal Protocol. The Common Position addresses 'new' ozone-depleting substances, and reinforces obligations concerning the recovery of used controlled substances and leakage prevention/ control .

The Commission has made considerable efforts in order to achieve the best possible result when taking into account the specific situation in some Member States as regards in particular the market availability and applicability of alternatives to methyl bromide.

On methyl bromide, the Common Position provides for a less ambitious phase-out date as compared to the Commission proposal (2005 instead of 2001), however with a more restrictive procedure at Community level in relation to possible derogations for 'critical uses'. This would follow the Montreal Protocol, with the difference that the Common Position provides for a quantitative limitation on methyl bromide used for quarantine and pre-shipment applications. The interim cuts for 2001 and 2003 are more significant than those of the Montreal Protocol. As concerns provisions on HCFCs and on the use and sales of CFCs, halons etc., the Common Position overall keeps the same balance as the Commission proposal. There are additional or more detailed provisions in the Common position in relation to new ozone-depleting substances and related to recovery and leakage control.

3.2 DETAILED COMMENTS

3.2.1 Parliament amendments accepted by the Commission and incorporated in full or in part in the Common Position

Amendments 1, 30, 19, 21, 24, 25, 26 have been incorporated in full or in part in the Common Position.

The spirit of amendment 1 has been integrated into Recital 3 which refers to recent records in ozone depletion and to the threats to human health and the environment from the resulting increased UV-B radiation.

Part of amendment 30 has been taken up in form of a new Recital referring to the possibility to grant exemptions for essential uses even after the phase-out of ozone-depleting substances. The second part of this recital referring to exemptions for medical uses has not been taken up by the Council, as it would not have been wholly consistent with the enacting terms.

Amendment 19 has been taken up in spirit and in part, as it is now clarified in Article 5 (7) that exemptions authorised under this provision can only apply for a limited period ("time-limited").

The substance of amendment 21 has been taken up in Article 15 on recovery of used controlled substances. The formulation of the Common Position is even stricter, banning the placing on the market of controlled substances in disposable containers for all purposes, except for essential uses.

Amendment 24, which requests the Commission to take action to ensure information exchange between national authorities and between national authorities and the Commission, has been incorporated in Article 19 (5).

The spirit of amendments 25 and 26 on new substances has been taken up by introducing a definition of "new substances" in Article 2, a new Article 21 and a new Annex II containing the substance 'Bromochloromethane'. However, Article 21 foresees a full legislative procedure for adding to Annex II other substances that are found by the Montreal Protocol's Scientific Assessment Panel to have a significant ozone-depleting potential rather than a Committee procedure as proposed in the Amendment 25.

3.2.2 Parliament amendments accepted by the Commission in full or in part, but not included in the Common Position

Amendments 2, 4, 14, 22 and 23 were accepted by the Commission but are not included in the Common Position.

As concerns amendment 2, the Council did not consider appropriate to single out the role of methyl bromide as a toxic ozone-depleting substance, since this has not been specifically mentioned in Recitals relating to the other controlled substances. The second part of the amendment has become redundant, given that the substantial provisions on methyl bromide in the common position now provide for a procedure at Community level to decide upon derogations for essential uses.

While sharing the gist of amendment 4 to assist small and medium sized undertakings in the transition to non ozone-depleting substances, the Council chose not to introduce a Recital to this end. It referred to the fact that there were no corresponding enacting terms, and in general considered that the Regulation on ozone-depleting substances was not the appropriate instrument to address the issue.

As regards amendment 14 which would have advanced by one year the final phase-out date for HCFC use in foams (from 2004 to 2003), the Council preferred to remain with the original Commission proposal, as it considered that the ban in 2003 would be difficult for the uses concerned and in particular imply additional costs.

Concerning amendment 22 in relation to the possibility for the Commission to request information from an undertaking, the Council preferred, for reasons of transparency, to maintain the obligation to inform the Member State concerned of the reasons why that information is required.

Amendment 23 on systematic random checks by Member States of imports of controlled substances has been considered unnecessary, given that there is already an obligation to carry out the investigations which the Commission considers necessary.

3.2.3 Parliament amendments not accepted by the Commission, but partly included in the Common Position

The Commission had not accepted amendment 10 aiming to advance the use ban for halons in existing fire-protection installations from 31. December 2003 to 31 December 2000, given that this would not provide sufficient time for all Member States to put in place facilities safely to collect such halons. The Common Position now advances the ban to the 31 December 2002 and provides for the compulsory decommissioning, before 31 December 2003, of fire protection systems containing halons. This can be accepted by the Commission.

Amendment 31 advancing the ban on use of HCFCs as solvents in general to 1 January 2000 could not be accepted by the Commission as it would have led to significant additional financial burden on HCFC solvent users, many of them SMEs. However, the Common Position advanced the phaseout for this use 1 year ahead to 1 January 2002 which is acceptable to the Commission.

The Commission could not accept Amendment 17 which foresees a ban to use HCFC also for products for export, to enter into force three years after the respective use ban for the European market. The Common Position includes a ban on the use of HCFC in products for exports as of 31 December 2009, which is more in line with the date when use of HCFC in new products globally will have ceased. Thus, the risk of distortions for competitiveness is much smaller and this provision could be accepted by the Commission.

3.2.4 Changes made by the Council to the Commission proposal

The major changes adopted by the Council, apart from the ones mentioned above under 3.2.3, and included in the Common Position are as follows :

In relation to the production (Article 3 (2)) and placing on the market of methyl bromide (Article 4 (2)), the Common Position has changed the phase-out schedule. Instead of phase-out by 31 December 2000, the phase-out date is now the 31 December 2004. The interim reduction steps are of 60% in 2001 (as compared to 50% under the Montreal Protocol) and of 75% in 2003 (as compared to 70% under the Montreal Protocol). A specific clause has been introduced in relation to this last reduction step, according to which it can be adjusted, in the Management Committee procedure, to 70% for a particular Member State where it can be demonstrated that alternatives are not

sufficiently available. Methyl bromide used for quarantine and pre-shipment applications is now not included in this phase-out schedule, but there is a ceiling on its use corresponding to the average placed on the market for those applications in the years 1996, 1997 and 1998. Further reductions can be fixed in the Management Committee procedure, to reflect technical and developments under the Montreal Protocol. In addition, the sale and use of methyl bromide will now be prohibited after 31 December 2005. Along with these changes, the procedure for allowing the use of methyl bromide after phase-out to satisfy 'critical uses' has changed. These critical uses will no longer be fixed at national, but at Community level, applying the criteria established under the Montreal Protocol.

In relation to Article 3 (3) concerning the HCFC production phase-out, there has been a change to the review clause which will now also include the level of the production cuts proposed.

The reduction steps and the phase-out date for the placing on the market of HCFCs have also changed, reflecting changes in the HCFC use bans (Article 4(3)). Thus, according to the Common Position, HCFCs can no longer be placed on the market by producers and importers after 31 December 2009, as compared to 2014 proposed by the Commission.

Concerning the CFC sales and use ban, until 31 December 2000, the *use* ban shall not apply in relation to the maintenance or servicing of refrigeration or air-conditioning equipment or in fingerprinting processes (Article 4(4).)

On HCFC use bans in Article 5, the Common Position provides for a later phase-out for HCFC use in fixed air-conditioning equipment with a cooling capacity of less than 100 kW, i.e. 1 January 2003 instead of 2001 as proposed by the Commission. Refilling with virgin HCFCs of existing refrigeration and air-conditioning systems shall be prohibited from 1 January 2010 according to the Common Position, as compared to 2008 proposed by the Commission. In derogation to the Commission's proposal, Article 5 (3) of the Common Position provides for the possibility to allow the use of HCFCs in existing fire-protection systems when they replace halons in critical uses. These are a minor part of halon uses for which no alternatives exist at present and the exemption is assorted with a number of conditions.

The Common Position prohibits imports under the Inward Processing Regime of CFCs, halons and other fully halogenated controlled substances (Art. 6(1)).

The Council decided to prohibit exports of HCFCs to non-Parties to the Montreal Protocol only as from 1 January 2004, and not from entry into force of the Regulation as proposed by the Commission (Article 11 (3)).

In Article 15, recovery of controlled substances from certain applications has become mandatory under the Common Position, and no longer assorted with the qualification "if practicable" as proposed by the Commission.

In relation to leakage control, Article 16 now provides for the obligation for annual inspection of refrigeration equipment with a refrigerant charge of at least 3 kg.

4. CONCLUSION

The Commission supports the Common Position which received the unanimous support of all Member States.

The Common Position underlines the Community's leading international role in relation to the Montreal Protocol. On balance, the Common Position will achieve the objectives of ozone layer protection set out in the Commission proposal.