

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC (94) 1488, 16 September 1994

Communication from the Commission to the European Parliament pursuant to the first paragraph of Article 189 C (b) of the EC Treaty. Common Position of the Council on the proposal for a Council regulation on substances that deplete the ozone layer to amend Council Regulation (EEC) No 594/91 as amended by Council Regulation (EEC) No 3952/92.

1. PROCEDURAL ASPECTS

- Proposal COM(93) 202 final - ENV 240, was presented by the Commission to the Council on 9 June 1993, published in the Official Journal, (C232), on 28 August 1993 and was presented by the Council to Parliament on 7 September 1993.
- The Economic and Social Committee adopted its opinion on 21 December 1993.
- On 9 February 1994 the European Parliament delivered its opinion following the first reading.
- The Commission officially presented its amended proposal, COM(94) 75 final to the Council on 24 March 1994.
- The Council officially adopted its common position on 27 July 1994.

2. THE OBJECTIVES OF THE REGULATION

The purpose of the proposed Regulation is to consolidate the existing Regulations (EEC) No 594/91 and (EEC) No 3952/92 and to implement in the Community the controls made necessary by the Copenhagen Amendment to the Montreal Protocol. These additional controls were:

HCFCs:

In the Copenhagen Amendment a freeze or cap on the use of HCFCs to commence on 1 January 1996 was introduced. This cap was calculated as the quantity of HCFCs consumed in 1989 plus 3.1% of the quantity CFCs consumed in 1989. The gradual phase out of HCFC usage to be completed by 2030.

To prevent the use of HCFCs in applications where controlled substances under the Montreal Protocol were not previously used, or where environmentally suitable alternatives or technologies are available; and

Methyl Bromide:

At Copenhagen it was agreed to freeze production at 1991 levels by 1 January 1995.

Stricter controls than those introduced by the Copenhagen Amendment were proposed by the Commission, and were mostly agreed to by the Council, because, if not regulated promptly, the emissions of controlled substances will significantly add to the depletion of the ozone layer over the next 20 years, during which time the effects will be most severe. These controls are:

HCFCs:

The Council's common position introduces a cap made up of the 1989 quantity of HCFCs consumed plus 2.6% of the CFCs consumed in 1989. The cap to be introduced on 1 January 1995 with the phase-out completed by 2015.

Methyl Bromide:

The Council's common position introduces this measure and further aims to reduce production by 25% of 1991 levels on 1 January 1998.

The common position also introduces a restriction on the production of CFCs to only agreed essential uses from 1 January 1995. Under the Montreal Protocol, however, the production restriction to essential uses does not take effect until 1 January 1996. For HCFCs the common position contains detailed specific use controls. The Montreal Protocol is general in HCFC use bans such as only where other environmentally suitable alternatives are available. Finally, the common position completes current Community legislation by rendering the recovery of used ozone depleting substances mandatory in certain cases in line with a Decision by the Parties to the Protocol.

3. THE COMMISSION'S POSITION ON THE COMMON POSITION OF THE COUNCIL

3.1 GENERAL REMARKS

Following its first reading of the proposed Regulation in February 1994, Parliament adopted 37 amendments and the Commission accepted 13 of these.

Amendments Nos 3, 4, 5, 6, 9 (partial) and 11 have all been included in Article 3 of the amended proposal and been incorporated into the common position.

Amendments Nos 16, 17, 18, 19, 22 (partial) and 24 have all been included in Article 4 of the amended proposal by virtue of references there to Article 3 and these amendments have also been incorporated into the common position.

Amendment No. 32 was accepted in full and Article 14 has been amended accordingly and incorporated into the common position.

The Commission has accepted the amendments and modifications introduced by Council. Most were improvements to the wording of the text to make it clearer and in turn to make the implementation more straightforward.

3.2 SPECIFIC REMARKS

- (A) **Parliamentary amendments accepted by the Commission in the amended proposal and which have been incorporated, totally or partially, in the common position.**

Due to the process of redrafting, in some cases it is the spirit of the amendment and not its exact wording which has been retained in the common position.

1 Control of production of CFCs, (Art. 3.1 - Am. 3).

Parliament suggested the final two sentences of this Article 3.1 should read;

"Such production shall be allowed only if adequate alternatives or recycled chlorofluorocarbons are not available to any of the Parties to the Protocol. The list of essential uses shall be revised annually."

The underlined wording is that added by Parliament. Council agreed with the annual review of essential uses but modified "to any of the Parties" to "from any of the Parties".

2 Control of production of other fully halogenated CFCs, (Art 3.2 - Am 4).

As per 1 above.

3 Control of production of halons, (Art 3.3 - Am 5).

As per 1 above.

4 Control of production of carbon tetrachloride, (Art 3.4 - Am 6).

As per 1 above.

5 Control of production of 1,1,1-trichloroethane (Art 3.5 - Am 9 (partial)).

As per 1 above.

6 Control of production of hydrobromofluorocarbons, (Art 3.7 - Am 11).

As per 1 above.

7 The control of supply of CFCs. (Art 4.1 -Am 16).

Parliament suggested a final sentence should be added to Article 4.1;

"The list of essential uses to be revised annually". Council had made a separate modification to Article 4.1 referring back to Article 3.1, which already contains the requirement to review the essential uses list annually. Therefore it was not necessary to include this additional sentence in Article 4.1 as Parliament's proposed amendment had been adopted in Article 3.1.

8 The control of supply of other fully halogenated chlorofluorocarbons. (Art 4.2 -Am 17).

As per 7 above except "Article 4.1" and "Article 3.1" are replaced by "Article 4.2" and "Article 3.2".

9 The control of supply of halons. (Art 4.3 -Am 18).

As per 7 above except "Article 4.1" and "Article 3.1" are replaced by "Article 4.3" and "Article 3.3".

10 The control of supply of carbon tetrachloride (Art 4.4 - Am 19).

As per 7 above except "Article 4.1" and "Article 3.1" are replaced by "Article 4.4" and "Article 3.4".

11 The control of supply of 1,1,1-trichloroethane (Art 4.5 - Am 22 (partial)).

As per 7 above except "Article 4.1" and "Article 3.1" are replaced by "Article 4.5" and "Article 3.5".

12 The control of supply of hydrobromofluorocarbons (Art 4.7 - Am 24).

As per 7 above except "Article 4.1" and "Article 3.1" are replaced by "Article 4.7" and "Article 3.7".

13 Recovery of used controlled substances (Art 14 - Am32).

The addition suggested by Parliament to Article 14:

"The Commission shall, by 31 December 1994, submit to the Council and the European Parliament a report on the implementation of the provisions of this Article by the Member States";

was incorporated into the common position.

(B) Changes, (additions, modifications and deletions), in the common position introduced by the Council with respect to the amended proposal.

1 Deletion of the reference to Article 113 of the Treaty of Union

The Council considered that the main objective of the Regulation is the protection of the environment and so the only legal basis should be Article 130S, paragraph 1 of the Treaty. The Commission, however, felt that since there are consequences for the common commercial policy of the Community Article 113 should also form the legal basis of the Regulation.

2 New Recital 7 mentioning the periodic review of essential uses using Article 16 procedure

The Parliamentary amendments described above enhanced this review as an objective of the Regulation and so it was considered appropriate to refer to it in the preamble.

3 The addition to Recital 8 of a reference to the need to keep to a minimum the importation into the Community of controlled substances

Minimising these imports was thought to be a significant objective of the Member States and as such should be referred to in the preamble.

4 Recital 9 had the words "to promote the minimisation of" deleted and replaced by "take all practicable precautionary measures to avoid"

This rewording reflects more accurately the revised wording in the relevant Article 15.

5 In Article 3 (6) and Article 4 (6) exemptions to the quotas for methyl bromide have been introduced for quarantine and pre-shipment uses.

This modification was introduced to bring the Regulation into line with the Copenhagen Amendment to the Montreal Protocol.

6 The addition of a new paragraph 9 to Article 3 outlining how a producer may be authorised to manufacture controlled substances for essential uses.

It is necessary to mention how the production for essential uses is dependent on the extent permitted by the Montreal Protocol.

7 In the first indent of Article 4 (8) the quota on the total quantity of HCFCs which may be placed on the market or used for their own account now applies to importers as well as producers.

This modification is necessary to apply the consumption controls on HCFCs equally to producers and importers.

8 In Article 4 (8) in the calculation of the HCFC quota 2.5% of the quantity of CFCs placed on the market in 1989 has been changed to 2.6%.

9 An addition to the first indent of Article 4 (8) outlines a quota procedure which will be introduced for HCFC producers and importers.

This procedure has been added because the Council considers and the Commission agrees it will help to reduce unnecessary administration of the quotas during the early years of the HCFC phase-out calendar.

10 The phase-out calendar for HCFCs has itself been modified in Article 4 (8), as follows:

<u>Period</u>	<u>Percentage of initial quota</u>	
	<u>COM(93) 202 final</u>	<u>Common Position</u>
1.1.95-31.12.99	100	100
1.1.00-31.12.03	75	100
1.1.04-31.12.06	40	65
1.1.07-31.12.07	40	40
1.1.08-31.12.09	20	40
1.1.10-31.12.11	20	20
1.1.12-31.12.12	5	20
1.1.13-31.12.14	5	5
1.1.15-	0	0

11 In Article 5 (1) the third indent has had the types of plastic foams exempt from the production ban defined more precisely.

It was considered important to be more restrictive on the use of HCFCs in foam manufacturing, as substitutes are available, except for the specific foams now mentioned.

12 The fifth indent of Article 5 (1) "in the medical field" has been deleted.

This exception was too expansive and the Council considered it should be removed in favour of introducing specific medical exceptions if and when necessary under Article 5 (5).

13 The fifth indent of Article 5 (1) is now "as feedstock in the manufacture of other chemicals".

The feedstock use is non-dispersive, that is the controlled substance is totally consumed in the process, and so should be exempt from the ban.

14 A sixth indent to Article 5 (1) has been added "as carrier gas for sterilisation substances in closed systems".

This was the only known use related to the medical field and so was inserted when "the medical field" was deleted.

15 Article 5 (2) has been expanded into three separate paragraphs, Article 5 (2), (3) and (4).

The original Article 5 (2) was too general and it became clear a blanket ban from 1 January 1995 was too restrictive on industry as substitutes for HCFCs would not be available or practicable in all cases. The three new paragraphs give a much more detailed description of what uses are to be banned with more appropriate commencement dates.

16 A new paragraph has been added to Article 5 introducing bans on certain imports of products containing HCFCs

This additional paragraph is important as it applies the same HCFC use bans, which will apply to Community producers, also to importers.

17 The former Article 5 (3) is now Article 5 (6) modified to include the addition of the three new paragraphs.

18 The former Article 5 (4) has been deleted.

The Council considered it was not necessary for Member States to formally notify the Commission of how they intend to implement the HCFC use bans.

19 In Article 6 (1) "or inward processing" has been added to the first sentence.

This was necessary to cover the case where importers under inward processing relief could import controlled substances for re-export, after processing, without paying import duty or the need for an import licence. It was possible, however, that an importer could pay the duty after bringing the controlled substance into the Community under inward processing then put it on the market in the Community, thereby avoiding the need for a licence and the other controls.

20 In Article 6 (2) "recycling" has been replaced by "reclamation".

Reclamation was considered to be the more comprehensive term for this article using the Article 2 definitions.

21 A new paragraph Article 6 (3) has been added allowing the Commission to ask for a certificate on the nature of the controlled substances being imported.

The Council considered that this would be an important additional control the Commission could exercise on importers.

22 In Article 7 (1) "used, recycled" has been deleted from the exceptions to quantitative limits.

The Council felt imports of used and recycled controlled substances should be subject to limits to restrict the quantities of controlled substances entering the Community for dispersive uses.

23 Article 7 (1) now includes the exemptions from quotas for methyl bromide "quarantine or preshipment" and a reference to the quantitative limits being determined by Article 16 procedure.

This provision extends to imports the exemptions given to production for quarantine and preshipment purposes. It was also necessary to outline precisely what procedure will be used to establish the quantitative limits.

24 The former last sentence of Article 7 is now paragraph 7 (4) and has been modified to make it clearer that any quantities imported for essential uses are in addition to the quotas already calculated.

25 A new paragraph Article 7 (5) has been added to allow the Commission to authorise undertakings to import controlled substances regardless of their state or end-use

This is an important addition as the Commission will be in a position to control all legal imports through the licensing procedure.

26 Article 9 (4) has been modified to take account of the fact that the list previously referred to as yet to be established has now been prepared by UNEP and is now Annex V of the Regulation.

It is appropriate to include this list in the Regulation in order to implement the relevant Decision of the Parties to the Montreal Protocol.

27 Article 10 has been modified to indicate that only products which can be positively identified as being made with a controlled substance will be subject to import controls from States not Parties to the Protocol. The identification of such products to be the subject of periodic technical reviews.

This modification was important because it remains the case that it is not yet technically possible to detect these products at ports of entry.

28 A second sentence has been added to paragraph 1 of Article 14 enabling Member States to define the minimum qualifications personnel require to engage in the recovery of used substances.

This will encourage the use of as high a level of expertise as possible, within Member States, when it comes to recovering controlled substances.

- 29 Article 15 has had three new paragraphs added dealing with measures to avoid leakage of methyl bromide, controlled substances when used as feedstocks or when produced during another chemical process.

The original article was incomplete without these additions.

- 30 Article 17 on data reporting has in paragraph 1(a) a new second indent dealing with essential uses, a new subparagraph 1(b) dealing with HCFCs and a new paragraph 2 also dealing with essential uses.

These additions were considered to be necessary to have the Article completely cover all areas of production, importation and exportation of controlled substances.