

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 75 final - SYN 525
Brussels, 24.03.1994

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

Pursuant to Article 189 (A) paragraph (2) of the EC Treaty, the Commission submits an amended proposal for a Council Regulation on substances that deplete the ozone layer.

The amended proposal takes account of a number of amendments from the European Parliament, adopted at its February 1994 Plenary Session.

The Commission has accepted Parliaments' proposal to include "Parties to the Protocol" and the requirement to revise the essential uses list in Article 3 paragraphs (1), (2), (3), (4), (5) and (7) as per amendments 3, 4, 5, 6, 9 (partial) and 11.

The Commission has also accepted the requirement to revise the essential uses list in Article 4 paragraphs (1), (2), (3), (4), (5) and (7) as per amendments 16, 17, 18, 19, 22 (partial) and 24.

The Commission considers that an annual update of the essential uses lists for controlled substances will be an effective part of the monitoring process.

Parliament also proposed that the Commission should report on the implementation of Article 14, the recovery of controlled substances, to Council and Parliament before 31 December 1994. The Commission accepted this proposal, given in amendment 32.

The Commission decided not to accept those amendments which introduced earlier phase out commencement dates such as in Article 3 paragraph (5) and Article 4 paragraphs (5) and (8) by way of amendments 7, 8 and 9 (partial) and 20, 21, 22 (partial) and 34 respectively. The phase out schedules, which in some cases go further than the Montreal Protocol, have been based on the best estimates of industrial needs and to bring these dates forward may well lead to severe shortages for producers and users.

The amendments which propose to further reduce and control hydrochlorofluorocarbon production, such as amendments 1, 2, 25 and 33 dealing with recitals 5 and 7 and Article 4 paragraph (8) and Article 3 paragraph (7), could not be accepted by the Commission. Hydrochlorofluorocarbons are important substitutes for the more harmful chlorofluorocarbons and it is important that adequate supplies are available during the phase out period. The production cap on hydrochlorofluorocarbons is considered by the Commission and Industry to be as low as possible already.

Several amendments, either wholly or partially, propose restrictions on the production or use of methyl bromide, such as amendments 10, 23, 28 and 29 effecting Article 3 paragraph (6), Article 4 paragraph (6), Article 8 paragraph (2) and Article 9 paragraph (3). All of these proposed amendments are not accepted because methyl bromide is the subject of an UNEP technical appraisal to be completed in 1995 so it is considered any further restrictions within the European Union may be preemptive.

Amendment 13 proposes to delete Article 3 paragraph (8) which deals with the supply of controlled substances to Article 5, developing countries (under the Montreal Protocol). This is considered unacceptable because it is important that these countries are able to meet their domestic needs and are able to replace chlorofluorocarbons wherever possible.

Amendments 14 and 15 dealing with Article 3 paragraphs (10) and (11) propose to eliminate industrial rationalisations. This is considered to be unacceptable as it would prevent an orderly production phase down by industry.

Both amendments 60 and 61 propose to make technical additions to Articles 14 and 15. The Commission is unable to accept these because it is considered there would need to be an initial agreement by the experts from the Member States that these technical additions are practicable.

Amendments 27, 59 and 47 deal with specific matters relating to essential uses of hydrochlorofluorocarbons the former two under Article 5 paragraph 2 and the latter under Article 4 paragraph 1. The Commission's view is that the current essential uses list has been drawn up only after long discussions with the Member States and with an annual review proposed no further changes to this article are now necessary.

The proposal in amendment 26 to delete the second sub-paragraph of Article 4 paragraph (10) could not be accepted as the Commission considers it important to retain a measure of flexibility to deal with the possibility of changes and shortfalls in markets.

Amendment 30 proposes that Article 9 should apply by analogy to Article 10 for imports which are produced with controlled substances and which do not contain these substances. The Commission has rejected this proposal because it is not technically possible to test imported articles to determine if controlled substances were used to manufacture them.

Amendment 31 which proposes to delete the second sub-paragraph of Article 13 dealing with trade to territories not Parties to the Montreal Protocol is not considered acceptable because in this case the territory Taiwan does comply with the data reporting requirements of the Protocol.

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paragraph 2 of the EC-Treaty)

ORIGINAL TEXT

AMENDED TEXT

Article 3(1), third subparagraph

The Commission, in accordance with the procedure set out in Article 16, shall determine any essential uses of chlorofluorocarbons which may be permitted in the Community after 31 December 1994 and any quantities of chlorofluorocarbons which may be produced by each producer for this purpose. Such production shall be allowed only if adequate alternatives or recycled chlorofluorocarbons are not available.

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Article 3(2), second subparagraph

The Commission, in accordance with the procedure set out in Article 16, shall determine any essential uses of other fully halogenated chlorofluorocarbons which may be permitted in the Community after 31 December 1994 and any quantities of other fully halogenated chlorofluorocarbons which may be produced by each producer for this purpose. Such production shall be allowed only if adequate alternatives or recycled other fully halogenated chlorofluorocarbons are not available.

The Commission, in accordance with the procedure set out in Article 16, shall determine any essential uses of other fully halogenated chlorofluorocarbons which may be permitted in the Community after 31 December 1994 and any quantities of other fully halogenated chlorofluorocarbons which may be produced by each producer for this purpose. Such production shall be allowed only if adequate alternatives or recycled other fully halogenated chlorofluorocarbons are not available to any of the parties to the protocol. The list of essential uses shall be revised annually.

Article 3(3), second subparagraph

The Commission, in accordance with the procedure set out in Article 16, shall determine any essential uses of halons which may be permitted in the Community after 31 December 1993 and any quantities of halons which may be produced by each producer for this purpose. Such production shall be allowed only if adequate alternatives or recycled halons are not available.

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Article 3(4), second subparagraph

The Commission, in accordance with the procedure set out in Article 16, shall determine any essential uses of carbon tetrachloride which may be permitted in the Community after 31 December 1994 and any quantities of carbon tetrachloride which may be produced by each producer for this purpose. Such production shall be allowed only if adequate alternatives or recycled carbon tetrachloride are not available.

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Article 3(5), second subparagraph

The Commission, in accordance with the procedure set out in Article 16, shall determine any essential uses of 1,1,1-trichloroethane which may be permitted in the Community after 31 December 1995 and any quantities of 1,1,1-trichloroethane which may be produced by each producer for this purpose. Such production shall be allowed only if adequate alternatives or recycled 1,1,1-trichloroethane are not available.

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Article 3(7), second subparagraph

The Commission, in accordance with the procedure set out in Article 16, shall determine any essential uses of hydrobromofluorocarbons which may be permitted in the Community after 31 December 1995 and any quantities of hydrobromofluorocarbons which may be produced by each producer for this purpose. Such production shall be allowed only if adequate alternatives or recycled hydrobromofluorocarbons are not available.

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Article 4(1), second subparagraph

The Commission, in accordance with the procedure set out in Article 16, shall determine any quantities of chlorofluorocarbons that could be placed on the market or used for its own account by each producer after 31 December 1994 for the purpose of essential uses.

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Article 4(2), second subparagraph

The Commission, in accordance with the procedure set out in Article 16, shall determine any quantities of other fully halogenated chlorofluorocarbons that could be placed on the market or used for its own account by each producer after 31 December 1994 for the purpose of essential uses.

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Article 4(3), second subparagraph

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Article 4(4), second subparagraph

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Article 4(5), second subparagraph

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Article 4(7), second subparagraph

The Commission, in accordance with the procedure set out in Article 16, shall determine any quantities of hydrobromofluorocarbons placed on the market or used for its own account by each producer after 31 December 1995 for the purpose of essential uses.

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Article 14, third subparagraph a (new)

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.

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DOCUMENTS

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