



Manual of European Environmental Policy

The following pages are a section from the Manual of European Environmental Policy written by the Institute for European Environmental Policy.

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Substances depleting the ozone layer

Formal references	
Regulation (EC) No 1005/2009 (OJ L286 31.10.2009)	Regulation on substances that deplete the ozone layer
Recasts and repeals	
Regulation (EC) No 2037/2000 (OJ L244 29.9.2000)	Regulation on substances that deplete the ozone layer
Proposed 15.9.1998 – COM(98)398	
Amended by	
Regulation (EC) No 2038/2000 (OJ L244 29.9.2000)	Regulation on substances that deplete the ozone layer, as regards metered dose inhalers and medical drug pumps
Regulation (EC) No 2039/2000 (OJ L244 29.9.2000)	Regulation on substances that deplete the ozone layer, as regards the base year for the allocation of quotas of hydrochlorofluorocarbons
2003/160/EC (OJ L65 8.3.2003)	Council Decision with regard to the use of halon 1301 and halon 1211 (notified under document number C(2003) 691)
Regulation (EC) No 1804/2003 (OJ L265 16.10.2003)	Regulation as regards the control of halon exported for critical uses, the export of products and equipment containing chlorofluorocarbons and controls on bromochloromethane
2004/232/EC (OJ L71 10.3.2004)	Commission Decision with regard to the use of halon 2402
Regulation (EC) No 2077/2004 (OJ L359 04.12.2004)	Regulation with regard to the use of processing agents.
Regulation (EC) No 29/2006 (OJ L6 11.1.2006)	Regulation with regard to customs codes for bromochloromethane
Regulation (EC) No 1366/2006/EC (OJ L264 25.9.2006)	Regulation regards the base year for the allocation of quotas of hydrochlorofluorocarbons with respect to the Member States that acceded to the European Union on 1 May 2004
Regulation (EC) No 1784/2006 (OJ L337 5.12.2006)	Regulation with regard to the use of processing agents
Regulation (EC) No 899/2007 (OJ L196 28.7.2007)	Regulation as regards the adjustment of CN codes for certain ozone-depleting substances and mixtures containing ozone-depleting substances to take account of amendments to the Combined nomenclature laid down in Council Regulation (EEC) No 2658/87
Regulation (EC) No 473/2008 (OJ L140 30.5.2008)	Regulation as regards the adjustment of CN codes for certain ozone-depleting substances and mixtures containing ozone-depleting substances
2009/51/EC (OJ L21	Commission Decision on the allocation of import quotas for

24.1.2009)	controlled substances for the period 1 January to 31 December 2009
2009/52/EC (OJ L21 24.1.2009)	Commission Decision on the allocation of quantities of controlled substances allowed for essential uses in the Community in 2009
Regulation (EU) No 291/2011 (OJ L79 24.3.2011)	Regulation on essential uses of controlled substances other than hydrochlorofluorocarbons for laboratory and analytical purposes
Regulation (EU) No 537/2011 (OJ 14 7 2.6.2011)	Regulation on the mechanism for the allocation of quantities of controlled substances allowed for laboratory and analytical uses
2011/873/EU (OJ L343/57 23.12.2011)	Implementing Commission Decision on the determination of quantities and the allocation of quotas for substances that deplete the ozone layer, for the period 1 January to 31 December 2012
Legal base	Article 192 TFEU (originally Article 175 TEC)
Entry into force	20 November 2009
Repeals Regulation (EC) No 2000/2037	1 January 2010
Production phase-out of hydrochlorofluorocarbons	31 December 2019

Purpose of the Regulation

After a review of Regulation (EC) No 2037/2000 on substances that deplete the ozone layer, the Commission presented a proposal on 1 August 2008, which recast and amended the earlier legislation. The main objectives of Regulation (EC) No 1005/2009 are to simplify the legislation in force while reducing any unnecessary administrative burden as well as being in line with the requirements of the Montreal Protocol, as adjusted in 2007. This recast Regulation (EC) No 1005/2009 lays down rules on the production, import, export, placing on the market, use, recovery, recycling, reclamation and destruction of substances that deplete the ozone layer, on the reporting of information related to those substances and on the import, export, placing on the market and use of products and equipment containing or relying on those substances.

Summary of the Regulations

Regulation (EC) No 2037/2000

Regulation (EC) No 2037/2000 has been substantially amended several times. It applies to the production, importation, exportation, placing on the market, use, recovery, recycling and reclamation and destruction of chlorofluorocarbons, other fully halogenated chlorofluorocarbons, halons, carbon tetrachloride, 1,1,1-trichloroethane, methyl bromide, hydrobromofluorocarbons (HBFC) and hydrochlorofluorocarbons (HCFC), to the reporting of information on these substances and to the importation, exportation, placing on the market and use of products and equipment containing those substances. The Regulation also applies to the production, importation, placing on the market and use of substances in Annex II.

The production, placing on the market and use of methyl bromide is not to exceed 75 per cent of 1991 levels in 1999. This level is to be reduced to 40 per cent from 2001 and 25 per cent from 2003, before the production, placing on the market and use of methyl bromide is phased out in 2004. As with other controlled substances, exemptions for critical uses are allowed.

The production of HCFCs is frozen at 1997 levels from 2000, and will then be gradually reduced from 2008 until finally being phased out by 2026 – four years earlier than required by the Montreal Protocol. The placing on the market and use of HCFCs is to be phased out by 2009, which is six years earlier than was specified in Regulation (EC) No [3093/94](#). Immediate bans are placed on the use of HCFCs in certain applications and their use in most new refrigeration and air conditioning equipment is prohibited from 1 January 2001.

The Regulation makes provisions for banning the production, release for free circulation and inward processing, placing on the market and use of new substances, which are listed in Annex II.

The import controls and licences for controlled substances introduced by Regulation (EC) No 3093/94 are retained, but further restrictions on exports are introduced. These include a ban on the export of controlled substances and equipment containing these substances; a ban on the export of methyl bromide and HCFCs to non-Parties; and the introduction of an authorization procedure for exports. In banning exports of controlled substances, the Commission has responded to the meeting of the Parties to the Protocol in September 1997, which urged developed countries to consider introducing such a ban.

Requirements with respect to recovery and leakage are generally in line with those of Regulation (EC) No 3093/94. However, the schemes established for training the personnel responsible in the respective competent authorities now have to be reported to the Commission, whereas formerly this was not required.

The management, reporting and inspection arrangements of Regulation (EC) No 3093/94 are retained. However, there is now a stronger statement with respect to penalties for infringements of the Regulation and associated national provisions as penalties should be ‘effective, proportionate and dissuasive’.

Regulation (EC) No 1005/2009

Regulation (EC) No 2037/2000 has been substantially amended several times and hence it has been recast by Regulation (EC) No 1005/2009 in the interest of clarity. However, the new Regulation also amends the earlier Regulation in many ways. It removes obsolete provisions and procedures, for example, on essential and critical uses of ozone-depleting substances (ODS) and streamlines certain reporting obligations. The proposal brings forward the production phase-out of hydrochlorofluorocarbons (HCFCs) from 2025 to 2020 in line with the recent Decision under the Montreal Protocol. It also introduces amendments to facilitate the enforcement and prevention of illegal trade or use of ozone-depleting substances in the EU. It also tightens current provisions on the recovery and destruction of ozone-depleting substances contained in products and equipment. The new provisions include a list of new substances in the Regulation for the first time and for which the reporting of volumes produced and imported is required. The provisions also lower the existing limit (cap) on the use of methyl bromide for quarantine and pre-shipment and ensures a complete phase-out of

such uses by 2015, while making the available recapture technologies mandatory in the meantime.

Development of the Regulation

The hypothesis was first advanced in 1974 that the release of CFCs could result in the depletion of the ozone layer¹. In October 1976 the United States began to place a ban on non-essential uses of CFCs in aerosol propellants, the ban becoming fully effective in 1979. This ban resulted in a significant cut in production but other uses were not regulated. The EC response was different. In 1980 by Decision [80/372/EEC](#) it placed a limit on production capacity of CFCs and required a 30 per cent cut in use in aerosols. However, production capacity was larger than production as aerosol manufacturers were voluntarily switching from CFCs, so that the Decision at that time only had symbolic value as a precautionary measure.

In 1977 the United Nations Environment Programme (UNEP) began a review of scientific aspects and in 1981 initiated negotiations for a global convention. The Council of the EC authorized the Commission to participate on behalf of the EC in these negotiations and in 1985 many countries, among them several EC Member States, as well as the EC Commission, signed the [Vienna Convention](#) for the Protection of the Ozone Layer. It is what is sometimes called a framework Convention since it covers such matters as cooperation on monitoring and research but does not itself place any obligation on the parties to take any specific measures to protect the ozone layer. These were to be laid down in separate protocols.

During the negotiations a dispute broke out between two groups of countries – the EC and what was called the Toronto Group (Canada, the United States, Finland, Norway and Sweden). Each group proposed that the first protocol to cover CFCs should embody the policies already adopted in their own group of countries. The Toronto Group's proposal was for a worldwide extension of a ban on uses of CFCs as aerosol propellants but involved no limit on other uses of CFCs. The EC, not surprisingly in view of the approach it had already adopted, proposed a production capacity limit. The Toronto Group advanced its proposal on the grounds that it was the quickest way of obtaining an immediate reduction in CFC releases. The EC maintained that an aerosol ban did nothing to prevent releases from growing non-aerosol uses and that, since it is the total amount of CFCs released that affects the ozone layer, the only effective action was to limit total production. As a result of this dispute, no protocol was adopted in 1985 and negotiations did not start again until 1986.

Before the new negotiations started, the US government changed its position. It dropped its proposed aerosol ban and proposed instead a freeze on CFC production by all countries followed by a series of reductions leading to a production ban. Effectively, the United States had conceded the merit of the EC production limit approach though reformulated and extended in a much more stringent form. Arguably, the log jam was broken when, first, US environmental organizations, and then industry, abandoned the US government's original negotiating position and embraced the EC approach. While the EC's 1980 Decision was largely symbolic it was original in being the first example of a production limit used as a precautionary tool for environmental protection, and it had defined an intellectually defensible approach which ultimately became incorporated into the Montreal Protocol.

Following the US proposal, the EC in March 1987 agreed negotiating guidelines for the Commission which included a freeze at 1986 levels on entry into force of the Protocol followed by a 20 per cent reduction four years later. This was not achieved without considerable initial resistance from some Member States under the influence of their industries. In subsequent negotiations, the EC agreed to a further cut amounting to a 50 per cent reduction by the turn of the century. This was embodied in the Montreal Protocol in September 1987. It was implemented in the EC by Regulation (EC) No [3322/88](#) and without this Regulation it is doubtful whether many Member States would have been able to ratify the Protocol by the end of 1988. In the event most Member States ratified simultaneously, thus enabling the Protocol to come into force on 1 January 1989.

The United States deserves the credit for creating the pressure in 1986 and 1987 for significant reductions in CFC production and US negotiators did not always conceal their irritation with the EC for what they saw as footdragging and the complications that EC involvement introduced². It is therefore worth speculating on what might have occurred had the EC not been involved. Presumably, a protocol along the lines of the Toronto Group's proposal would have been adopted in 1985 and several EC Member States would no doubt have become parties. This would have been a less satisfactory protocol, which would have needed complete revision after the ozone hole discovery, and several important countries might well have stayed outside at least initially. The lack of solidarity would have weakened the whole effort. In the event, the EC not only ensured that the Protocol had a better form but also delivered intact a bloc of 12 industrialized countries central to any successful global action since between them they produced more CFCs than the United States or Japan or the USSR. The result was a situation whereby several countries contributed solutions to a global issue and learned from one another during the process.

No sooner was the Protocol agreed than a consensus developed that the recently discovered 'hole' in the ozone layer over Antarctica was caused by CFCs and it became evident that the reductions in the Protocol were not enough³. Fortunately, the Protocol included a review mechanism, and at the 'Saving the Ozone Layer Conference' held by the British government in March 1989, 120 countries agreed that CFCs should be phased out. The holding of the conference, which was not formally a part of the review mechanism but a national initiative, signalled a significant shift in the UK government's position – only one year earlier in Parliament a Minister had rejected calls for a strengthening of the Montreal Protocol. The London Conference was followed by the First Meeting of Parties to the Protocol at Helsinki in May 1989, which led to the renegotiation of the Protocol culminating in the signing by over 60 countries in London in June 1990 of an amended Protocol that requires CFCs to be phased out by 2000. In December 1990 the EC agreed Regulation (EC) No [594/91](#) which went further than the revised Protocol.

In March 1992 the Council agreed in principle to a complete phase-out of CFCs and some other ozone-depleting substances in the EC by the end of 1995. This was in response to new scientific evidence of accelerated depletion of the ozone layer particularly in the Northern Hemisphere. This evidence also resulted in the Protocol being amended for a second time at a meeting in Copenhagen in November 1992 by advancing the dates for phase-out of some substances and including restrictions on HCFCs and methyl bromide. In December 1992 the Council adopted Regulation (EC) No [3952/92](#) which went further than the Copenhagen amendments in advancing the dates for phase-out in the EC of those substances already covered by Regulation (EC) No 594/91. The restrictions on controlled substances were consolidated in Regulation (EC) No 3093/94, which also included controls on methyl

bromide, HCFCs and HBFCs. In the light of further scientific evidence regarding the level of ozone depletion, a third amendment to the Montreal Protocol was adopted at the seventh Meeting of the Parties in Vienna in 1995 and a fourth in Montreal in 1997. These were adopted in the EU by Regulation (EC) No 2037/2000. The former excluded metered dose inhalers from the export restrictions of Article 11 of Regulation (EC) No 2037/2000, while the latter amended the base date for the calculation of allowable levels of HCFC that can be placed on the market and used in 2001.

On 1 August 2008, the Commission presented the Proposal for what became Regulation (EC) No 2037/2000, which recast and amended the previous legislation.

Implementation of the Regulation

The closely matching and mutually reinforcing international and EU policy framework has led to a near-complete phase out of production and consumption of the controlled ODS. According to the Impacts Assessment [SEC\(2008\)2366](#) of the proposed recast, ODS production and consumption in the EU have decreased by more than 99 per cent compared to baseline levels. A key feature of the success of the regulatory framework (both at international and EU level) is its focus on phasing out the tangible production and consumption of the ODS, rather than targeting emissions.

The survey conducted in support of the Impact Assessment showed a general stakeholder satisfaction with the effectiveness of Regulation. Likewise, stakeholders have generally appreciated the efficiency of the Regulation, notably the fact that it allowed markets to adapt whilst keeping the overall administrative burden under control.

The swift adoption of amending Regulations to implement – and go further than – amendments to the Montreal Protocol have ensured that all Member States have had a consistent policy.

Enforcement and court cases

The following court cases have been decided by the European Court of Justice:

- [C-522/06](#). This was a judgement against Belgium for failing to define the minimum qualification requirements for certain members of personnel working in recovery, recycling, reclamation and destruction of controlled substances in accordance with Article 16(5). In the Walloon Region it failed to take all precautionary measures practicable to prevent and minimize leakages of controlled substances and by failing to carry out annual checks to establish the presence of leakages in accordance with Article 17(1).
- [C-390/05](#). This was a judgement against Greece for failing to submit to the Commission, by 31 December 2001, a report with information on the facilities available and the quantities of used controlled substances recovered, recycled, reclaimed or destroyed in accordance with Article 16(5) and by failing to take all the preventive measures necessary to ensure that fixed equipment with a refrigerating fluid charge of more than 3 kg is checked annually for leakages according to Article 17(1).

According to the accompanying document of the 28th annual report on monitoring the application of Community law ([SEC\(2011\)1093](#)), no new infringement cases relating to this Regulation were launched during 2010. Four infringement cases (against Cyprus, Denmark, Greece and Italy) were closed regarding the failure to fulfil the obligations in relation to the decommissioning of halons used in fire extinguishers of ships. One case on this issue (against Malta) was further pursued and referred to the Court of Justice.

References

- 1 Molina, M J and Rowland, F S (1974) Stratospheric sink for chlorofluoromethanes, chlorine atom-catalysed destruction of ozone, *Nature* 249, pp 810–812.
- 2 Benedict, R E (1991) *Ozone diplomacy*. Harvard University Press.
- 3 Stratospheric Ozone Review Group (SORG) (1988) *2nd Report: Stratospheric ozone 1988*. HMSO, London.