

Environment: substances depleting the ozone layer. Recast

2008/0165(COD) - 16/09/2009 - Final act

PURPOSE: to revise and recast Regulation 2037/2000/EC on substances that deplete the ozone layer.

LEGISLATIVE ACT: Regulation (EC) No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer.

CONTENT: following a first reading agreement with the European Parliament, the Council adopted this regulation recasting, for the purposes of clarity and simplification, Regulation 2037/2000/EC on substances that deplete the ozone layer. The aim is to ensure the Community's compliance with its obligations regarding measures for the protection of the ozone layer which were adopted by the Parties to the Montreal Protocol and in particular to implement the accelerated phase out of hydrochlorofluorocarbons (HFC) with due consideration to the risks of phasing in alternatives with high global warming potential.

The new Regulation 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.

The Regulation will apply to controlled substances, to new substances and to products and equipment containing or relying on controlled substances.

The main elements of the recast of Regulation 2037/2000/EC are as follows :

- it is necessary to minimise and eliminate the production and use of ozone depleting substances wherever technically feasible alternatives with low global warming potentials are available;

- action must be taken at Community level to comply with the Community's obligations under the Montreal Protocol and in particular to implement the accelerated phase out of HFC with due consideration to the risks of phasing in alternatives with high global warming potential;

-the Parties to the Protocol in 2007 adopted a Decision providing for an **accelerated phase-out schedule for HFC**. Following that Decision the production phase-out date should be brought forward from 2025 to 2020. The Regulation states that HFC may be produced provided that each producer ensures the following:

- the calculated level of its production of HFC in the period from 1 January 2010 to 31 December 2010 and in each 12-month period thereafter until 31 December 2013 does not exceed 35 % of the calculated level of its production of HFC in 1997;
- the calculated level of its production of HFC in the period from 1 January 2014 to 31 December 2014 and in each 12-month period thereafter until 31 December 2016 does not exceed 14 % of the calculated level of its production of HFC in 1997;
- the calculated level of its production of HFC in the period from 1 January 2017 to 31 December 2017 and in each 12-month period thereafter until 31 December 2019 does not exceed 7 % of the calculated level of its production of HFC in 1997;
- it produces no HFC after 31 December 2019;

- in order to minimise the risk of illegal use of virgin HFC as recycled or reclaimed material, only reclaimed or recycled material should be used in servicing and maintenance operations while prohibiting the re-selling of recycled HFC, which should only be used when recovered from such equipment and only by the undertaking which carried out or mandated the recovery. For reasons of this exemption should also apply to heat pump equipment;

- in view of the wide availability of technologies and alternative substances for replacing ozone-depleting substances, it is appropriate in certain cases to provide for control measures which are stricter than those provided for in Regulation (EC) No 2037/2000 and stricter than those of the Protocol.

- under Regulation (EC) No 2037/2000 the production and placing on the market of chlorofluorocarbons, other fully halogenated chlorofluorocarbons, halons, carbon tetrachloride, 1,1,1-trichloroethane, hydrobromofluorocarbons, bromochloromethane and methyl bromide have been phased out and the placing on the market of those substances and of products and equipment containing those substances is thus prohibited. This new Regulation progressively generalises the ban on the use of those substances for the servicing or maintenance of such equipment;

- even after the phase-out of controlled substances the Commission should under certain conditions grant exemptions for essential laboratory and analytical uses. In particular Decision X/14 of the Parties to the Protocol establishes criteria for granting of exemptions for those uses;

- the exemption for critical uses of methyl bromide should cease completely whilst temporarily allowing the possibility of granting a derogation in emergency situations in the case of unexpected pests or disease outbreaks. The Regulation states that **until 18 March 2010 only**, methyl bromide may be placed on the market and used for quarantine and for pre-shipment applications for treatment of goods for export provided that the placing on the market and use of methyl bromide are allowed respectively under national legislation in accordance with Directive 91/414/EEC and Directive 98/8/EC;

- control measures regarding products and equipment containing controlled substances should be extended to products and equipment relying on those substances in order to prevent circumventions of the restrictions under the Regulation. By covering additionally products and equipment which require the presence of a controlled substance, a potential opportunity to place on the market, import or export products or equipment which do not contain controlled substances at that moment, but which would have to be refilled at a later date, is eliminated. Furthermore, exemptions for products and equipment manufactured before the entry into force of the control measures are removed as they are no longer relevant and might constitute a risk of illegal placing on the market and trade;

- it is provided that **controlled substances as well as products and equipment containing or relying on controlled substances from States not party to the Protocol must not be imported**. Furthermore, the export of products and equipment containing or relying on HFC after the entry into force of a ban on use of those products and equipment or of controlled substances for their maintenance and servicing in the Community is prohibited in order to avoid the building-up of banks of those substances in countries where sufficient destruction facilities are not available;

- the licensing system for controlled substances includes the authorisation of exports of controlled substances, in order to improve the monitoring of and control of trade in ozone-depleting substances and to allow for exchange of information between Parties. That licensing system is extended to products and equipment containing or relying on controlled substances ;

- in order **to improve the monitoring and control of trade**, the licensing will cover not only the entry of goods into the customs territory for release for free circulation in the Community but also the entry under other customs procedures or for customs-approved treatments and uses;

- before issuing import and export licences the Commission will be able to verify with the competent authorities of the third country concerned whether the intended transaction would comply with the requirements applicable in that country, in order to avoid illegal and unwanted trade;
- in order to **inform end users** and to facilitate the enforcement of this Regulation also products and equipment containing or relying on such substances will be so labelled during servicing and maintenance;
- to reduce the release of controlled substances in the atmosphere, provision should be made for the **recovery of used controlled substances** and the prevention of leakages of controlled substances;
- the Protocol requires reporting on trade in ozone-depleting substances. Annual reporting is therefore required from producers, importers and exporters of controlled substances. In order to enable the Commission to streamline the reporting procedures to comply with the Protocol and avoid duplications in the process, **destruction facilities** must also report directly to the Commission;
- Member States should carry out inspections on a **risk-based approach** in order to ensure compliance with all provisions of the Regulation thus targeting those activities representing the highest risk of illegal trade or emission of controlled substances;
- in view of the continuing innovation in the sectors covered by the Regulation, the Commission must regularly review the Regulation, in particular on the foreseen exemptions and derogations when technically and economically feasible alternatives to the use of controlled substances become available, to further strengthen the protection of the ozone layer and simultaneously reducing greenhouse gases emissions;
- the Commission is **empowered to do the following under the regulatory procedure with control** (comitology): i) the format and content of labels for controlled substances for feedstock process agent, laboratory and analytical uses, ii) amend Annex III on processes for which controlled substances may be used as process agents, iii) that may be used as process agents or emitted from process agents uses; (iv) to amend Annex V on conditions for placing on the market and further distribution of controlled substances for laboratory and analytical uses; (v) to adopt modifications and time frames for the phasing out of the critical uses of halons; (vi) to amend the list of items required to be stated in an application for a licence; (vii) to adopt additional monitoring measures on trade in controlled substances or new substances and of products and equipment containing or relying on controlled substances; (viii) to establish a list with products and equipment for which the recovery for destruction or destruction without prior recovery of controlled substances should be considered technically and economically feasible and therefore mandatory; (ix) to include new substances in Annex II and to amend reporting requirements for Member States and undertakings.
- a **flexible mechanism** introduces reporting obligations for substances identified as ozone depleting, to allow for assessing the magnitude of their environmental impact and to ensure that those new substances which have been identified as having a significant ozone-depleting potential are subject to control measures. In this context, special attention should be paid to the role of very short-lived substances;
- lastly, Member States must lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.

ENTRY INTO FORCE: 20/11/2009.

APPLICATION: from 01/01/2010.