

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 2037/2000 as regards the critical uses and export of halons, the export of products and equipment containing chlorofluorocarbons and controls on bromochloromethane

(2003/C 45 E/33)

(Text with EEA relevance)

COM(2002) 642 final — 2002/0268(COD)

(Submitted by the Commission on 21 November 2002)

EXPLANATORY MEMORANDUM

1. In applying Regulation (EC) No 2037/2000 of the European Parliament and of the Council on Substances that Deplete the Ozone Layer, a number of issues have emerged that need to be addressed through amendments to this Regulation. These issues relating to the effective and safe implementation of the Regulation have been discussed with the Member States in the Management Committee of the Regulation (EC) No 2037/2000 and most recognise that there is a need for these amendments to Regulation (EC) No 2037/2000. This proposal concerns four amendments to Regulation (EC) No 2037/2000.
2. The first issue concerns the controlled substance, halon. Under Article 4(4)(iv) of Regulation (EC) No 2037/2000 the Commission has to review each year the critical uses of halons listed in Annex VII of this Regulation. However, the Regulation does not provide in the context of these reviews for the establishment of timeframes for eventual phasing out of these critical uses in the light of the identification and use of adequate alternatives. The proposed amendment in Article 1 of this proposal establishes timeframes for reducing the use of halons for critical uses, where justified, when reviewing Annex VII. This will ensure that progress is made in reducing the scope of the use of halons for critical uses and thereby accelerating the improvement in the ozone layer.
3. The second issue concerns the export of halon. Regulation (EC) No 2037/2000 allows halon to be installed in fire fighting systems in the European Community until 31 December 2003. From 1 January 2004, only installations listed in Annex VII which are deemed 'critical' will be permitted to continue to use halon. Critical uses are those for which no technically and economically feasible alternative to halon exists. Any equipment containing halon that is not listed in Annex VII is deemed non-critical. All non-critical installations of halon must be decommissioned by 31 December 2003. Decommissioned halon can be stored for critical uses, exported for critical uses or destroyed. In regard to exports, Article 11(1)(d) of (EC) No 2037/2000 permits exports of products and equipment containing halon, provided they are exported to any country outside the European Community for the specific critical uses listed in Annex VII. Small cylinders of halon are part of the fire-fighting 'equipment' originally installed in a building. With the final date for decommissioning approaching, there is now a significant amount of halon becoming available with potential for export in these small cylinders. However, the industry has commented that such equipment is not approved for transport in many countries and significant movement of these small cylinders is considered unsafe. The proposed change to the regulation is not only consistent with the intent of the regulation of allowing halon to be exported for critical uses under Annex VII but also with its intent of allowing exports to be carried out safely. In addition, there is a real likelihood that, given that this bulk halon has little or no value, a considerable part of it could be vented in decommissioning. Exports of halon for critical uses listed in Annex VII would have value which would be an incentive for its recovery rather than venting it. Furthermore, it could be a substitute for the production of halon in developing countries. The Commission would be able to track whether halon exports were being used for critical uses in the importing country since halon, as a controlled substance, would require an Export Authorisation Number thus facilitating the task of the Commission in enforcement. Overall, this amendment would result in reduced production of halons globally, promotion of safe practices for the transport of halons for critical uses, mandatory monitoring of exports, confirmation that halons were being exported for critical uses, and so contribute to the recovery of the ozone layer.

4. The third issue concerns the export of controlled substances or products containing controlled substances. Article 11 of Regulation (EC) No 2037/2000 prohibits the export of controlled substances or products containing controlled substances. This ban will encourage the recovery and destruction of such controlled substances according to the provisions of Article 16 of Regulation (EC) No 2037/2000. The major focus of Article 11 is to stop the growing export trade in used refrigeration and air-conditioning equipment, in particular domestic refrigerators and freezers, containing CFCs to developing countries. Even if the CFCs are taken out of the compressors in such equipment before export there is still about twice as much CFC contained in the rigid insulating foam in these products. In the absence of destruction facilities in developing countries this CFC will ultimately leak to the atmosphere and cause damage to the ozone layer. In addition developing countries are now starting to phase out CFCs and many have indicated that they do not wish to be recipients of second hand products and equipment that contain CFCs.
5. However, as currently drafted Article 11 applies not just to refrigeration and air-conditioning equipment but to all products and equipment containing insulating foam or integral skin foam which was produced with CFCs. This could mean for instance that second hand aircraft and vehicles containing rigid insulating foam or integral skin foam blown with CFCs could not be exported from the EC. Since it was the intention of Regulation (EC) No 2037/2000 to restrict only the export of used refrigeration and air-conditioning equipment containing CFCs and not other products and equipment containing foam blown with CFCs an appropriate amendment is required.
6. The fourth issue concerns the provisions on new substances as set out in Article 22 and Annex II of Regulation (EC) No 2037/2000. As currently drafted Regulation (EC) No 2037/2000 does not provide the same level of control to the new substance listed in Annex II — bromochloromethane — as is applied to other controlled substances and thereby the European Community is not fully meeting all its obligations under the Montreal Protocol. In order to redress this situation, it is necessary that the provisions applying to controlled substances also applies to the new substance — bromochloromethane.
7. The proposed amendments to Regulation (EC) No 2037/2000 are fully in line with the environmental objective of the Regulation, safeguarding the ozone layer, while at the same time ensuring that the legal provisions of the regulation are clarified and amended where necessary.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) Under Article 4(4)(iv) of Regulation (EC) No 2037/2000 of the European Parliament and of the Council of substances that deplete the ozone layer⁽¹⁾ the Commission shall review each year the critical uses of halons listed in Annex VII of this Regulation. However, the Regulation does not provide in the context of these reviews for the

establishment of timeframes for eventual phasing out of these critical uses in the light of the identification and use of adequate alternatives. In order to ensure that progress is made in reducing the scope of the use of halons for critical uses and thereby accelerating the improvement in the ozone layer, provision should be made for the Commission, in accordance with the provisions of Article 18(2) for establishing agreed procedures, to establish timeframes for reducing the use of halons for critical uses, where justified, when reviewing Annex VII.

- (2) The export of products and equipment containing halon to satisfy critical uses listed in Annex VII is allowed under Regulation (EC) No 2037/2000 of the European Parliament and of the Council of substances that deplete the ozone layer but the export of recycled halon in bulk is not allowed. Currently, the regulation permits exports of small cylinders of halon for critical uses as these are considered as part of the fire-fighting equipment originally installed in a building. Such cylinders are not approved for transport in many countries and significant movement of these cylinders is considered unsafe. Given the phase-out of halon in the European Community, the export of recovered and recycled halon for critical uses should be allowed in

⁽¹⁾ OJ L 244, 29.9.2000, p. 1. Regulation as last amended by Regulation (EC) No 2039/2000 (OJ L 244, 29.9.2000, p. 26).

order to promote the environmental objectives of the European Community with respect to the ozone layer, in particular through the avoidance of the production of halon in developing countries, ensuring safe practices for the transport of halons for critical uses, mandatory monitoring of exports and confirmation that halons were being exported for critical uses.

- (3) Regulation (EC) No 2037/2000 and in particular, Article 11 is intended to put a stop to the growing export trade in old and used refrigeration and air-conditioning equipment, in particular domestic refrigerators and freezers, to developing countries. Even if the CFCs are taken out of the compressors before export there is still about twice as much CFC contained in the insulating foam in these products. In the absence of destruction facilities in developing countries the CFC in these products will ultimately leak to the atmosphere and cause damage to the ozone layer. In addition developing countries are now starting to phase out CFCs and many have indicated that they do not wish to be recipients of second hand products and equipment that contain CFCs.
- (4) However, as currently drafted Article 11 applies not just to refrigeration and air-conditioning equipment but to all products and equipment containing insulating foam or integral skin foam which was produced with CFCs. This could mean for instance that used aircraft and vehicles containing rigid insulating foam or integral skin foam blown with CFCs could not be exported from the EC. It was the intention of the Regulation to restrict only the export of refrigeration and air-conditioning equipment containing CFCs in the foam. As it stands aircraft containing CFCs in the foam insulation could not be exported. The refitting of such used aircraft would be very costly and not economically attractive given their age. There are other goods such as ships or rail transport wagons that would also be prohibited. In those circumstances it is necessary to amend Article 11 to have legal clarity.
- (5) The provisions on new substances as set out in Article 22 and Annex II of Regulation (EC) No 2037/2000 do not provide the same level of control as is applied to controlled substances. In order to allow the Community to fully meet its obligations in respect of bromochloromethane under the Montreal Protocol the provisions applying to controlled substances should also apply to bromochloromethane.
- (6) Regulation (EC) No 2037/2000 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2037/2000 is amended as follows:

1. In the fourth indent of Article 2, the word 'bromochloromethane' is added after 'hydrobromofluorocarbons'.
2. In Article 3(1) the following point (g) is added:
'(g) bromochloromethane'
3. Article 4 is amended as follows:
 - (a) In paragraph 1 the following point (g) is added:
'(g) bromochloromethane'
 - (b) In the last sentence of paragraph 4(iv) the words 'and where appropriate timeframes for phase-out' is added after 'modifications'.
 - (c) In paragraph 6, the word 'bromochloromethane' is added after 'hydrobromofluorocarbons'.
4. Article 11(1) is amended as follows:
 - (a) in the first sentence the words 'and bromochloromethane' are inserted after 'hydrobromofluorocarbons' and the word 'and' after '1,1,1-trichloroethane' is deleted.
 - (b) In point (d), the word 'halons,' is inserted at the beginning of the sentence.
 - (c) The following point (g) is added:
'(g) Products and equipment, other than refrigeration and air-conditioning equipment, that contain rigid insulating foam or integral skin foam which have been produced with chlorofluorocarbons'
5. In Annex I, Group III, in the column headed 'Substance' the words 'CH₂BrCl (halon 1011 bromochloromethane)' are inserted and in the column headed 'Ozone-depleting potential' the number '0,12' is inserted.
6. In Annex II the word 'bromochloromethane' is deleted.

Article 2

This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Communities*.