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I

(Information)

COUNCIL

COMMON POSITION (EC) No 25/2005

adopted by the Council on 21 June 2005

with a view to adopting Regulation (EC) No …/2005 of the European Parliament and of the Council of … on certain fluorinated greenhouse gases

(2005/C 183 E/01)

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 and Article 95 thereof in relation to Articles 7, 8 and 9 of this Regulation,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([2]),

Whereas:

(1) The Sixth Community Environment Action Programme ([3]) identifies climate change as a priority for action. That Programme recognises that the Community is committed to achieving an 8 % reduction in emissions of greenhouse gases in the period from 2008 to 2012 compared to 1990 levels, and that, in the longer term, global emissions of greenhouse gases will need to be reduced by approximately 70 % compared to 1990 levels.

(2) The ultimate objective of the United Nations Framework Convention on Climate Change, which was approved by Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change ([4]), is to achieve stabilisation of greenhouse gas concentrations in the atmosphere at a level which prevents dangerous anthropogenic interference with the climate system.

(3) Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder ([5]), commits the Community and its Member States to reduce their aggregate anthropogenic emissions of greenhouse gases listed in Annex A to the Kyoto Protocol by 8 % compared to 1990 levels in the period from 2008 to 2012.

(4) Provision should be made for the prevention and minimisation of emissions of fluorinated greenhouse gases, without prejudice to Council Directive 75/442/EEC of 15 July 1975 on waste ([6]), Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control ([7]), Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles ([8]) and Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE) ([9]).

([1]) OJ C 108, 30.4.2004, p. 62.

([2]) Opinion of the European Parliament of 31 March 2004 (JO C 103 E, 29.4.2004, p. 600), Council Common Position of 21 June 2005 and Position of the European Parliament of … (not yet published in the Official Journal).

([3]) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme (OJ L 242, 10.9.2002, p. 1).

([4]) OJ L 33, 7.2.1994, p. 11.

([5]) OJ L 130, 15.5.2002, p. 1.

([6]) OJ L 194, 25.7.1975, p. 39. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

([7]) OJ L 257, 10.10.1996, p. 26. Directive as last amended by Regulation (EC) No 1882/2003.

([8]) OJ L 269, 21.10.2000, p. 34. Directive as amended by Commission Decision 2002/525/EC (OJ L 170, 29.6.2002, p. 81).

([9]) OJ L 37, 13.2.2003, p. 24. Directive as last amended by Council Decision 2004/486/EC (OJ L 162, 30.4.2004, p. 114).

(5) The primary objective of this Regulation is to reduce the emissions of fluorinated greenhouse gases covered by the Kyoto Protocol and thus protect the environment. The legal base should therefore be Article 175(1) of the Treaty.

(6) Nevertheless, it is appropriate to take measures at Community level on the basis of Article 95 of the Treaty to harmonise requirements on the use of fluorinated greenhouse gases and the marketing and labelling of products and equipment containing fluorinated greenhouse gases. Marketing and use restrictions for certain applications of fluorinated greenhouse gases are considered appropriate where viable alternatives are available and improvement of containment and recovery is not feasible. Voluntary initiatives by some industry sectors should also be taken into account, as well as the fact that the development of alternatives is still ongoing.

(7) The placing on the market of the products and equipment containing fluorinated greenhouse gases, as listed in Annex II, is detrimental to the objectives and commitments of the Community and its Member States with regard to climate change and it is therefore necessary to restrict the placing on the market of these products and equipment. This could also be the case concerning other applications containing fluorinated greenhouse gases and therefore the need for an extension of Annex II should be reviewed, taking account of the environmental benefits, the technical feasibility and cost effectiveness.

(8) In order to contribute to the fulfilment of the commitments of the Community and its Member States under the UN Framework Convention on Climate Change, the Kyoto Protocol and Decision 2002/358/EC, Directive 2005/…/EC of the European Parliament and of the Council [1] and this Regulation, which both contribute to prevention and minimisation of emissions of fluorinated greenhouse gases, should be adopted and published in the *Official Journal of the European Union* simultaneously.

(9) Provision should be made for the monitoring, evaluation and review of the provisions contained in this Regulation.

(10) Member States should lay down rules on penalties applicable to infringements of this Regulation and ensure that those rules are implemented. Those penalties must be effective, proportionate and dissuasive.

(11) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(12) Since the objectives of this Regulation, namely the containment and reporting of certain fluorinated greenhouse gases and the control of use and placing on the market of products and equipment containing certain fluorinated greenhouse gases, in order to protect the environment and to preserve the internal market, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale and effects of this Regulation be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(13) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [2],

HAVE ADOPTED THIS REGULATION:

Article 1

Scope

The objective of this Regulation is to reduce emissions of fluorinated greenhouse gases covered by the Kyoto Protocol. It shall apply to the fluorinated greenhouse gases listed in Annex A to that Protocol. Annex I to this Regulation contains a list of the fluorinated greenhouse gases currently covered by this Regulation, together with their global warming potentials. In the light of revisions provided for by Article 5(3) of the Kyoto Protocol and accepted by the Community and its Member States, Annex I may be reviewed and if appropriate may then be updated.

This Regulation addresses the containment, use, recovery and destruction of the fluorinated greenhouse gases listed in Annex I; the labelling and disposal of products and equipment containing those gases; the reporting of information on those gases; the uses referred to in Article 8 and the placing on the market of the products and equipment referred to in Article 9; and the training and certification of personnel involved in activities provided for by this Regulation.

[1] See page … of this Official Journal. (Reference to the Directive corresponding to this Regulation for simultaneous publication).

[2] OJ L 184, 17.7.1999, p. 23.

This Regulation shall apply without prejudice to Directives 75/442/EEC, 96/61/EC, 2000/53/EC and 2002/96/EC.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

1. 'fluorinated greenhouse gases' means hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF_6) as listed in Annex I and preparations containing those substances, but excludes substances controlled under Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer ([1]);

2. 'hydrofluorocarbon' means an organic compound consisting of carbon, hydrogen and fluorine, and where no more than six carbon atoms are contained in the molecule;

3. 'perfluorocarbon' means an organic compound consisting of carbon and fluorine only, and where no more than six carbon atoms are contained in the molecule;

4. 'global warming potential' means the climatic warming potential of a fluorinated greenhouse gas relative to that of carbon dioxide. The global warming potential (GWP) is calculated in terms of the 100 year warming potential of one kilogram of a gas relative to one kilogram of CO_2. The GWP figures listed in Annex I are those published in the third assessment report (TAR) adopted by the Intergovernmental Panel on Climate Change (2001 IPCC GWP values) ([2]);

5. 'preparation' means for the purposes of the obligations in this Regulation, excluding destruction, a mixture composed of two or more substances at least one of which is a fluorinated greenhouse gas, except where the total global warming potential of the preparation is less than 150. The total global warming potential ([3]) of the preparation shall be determined in accordance with part 2 of Annex I;

6. 'operator' means the natural or legal person exercising actual power over the technical functioning of the equipment and systems covered by this Regulation; a Member State may, in defined, specific situations, designate the owner as being responsible for the operator's obligations;

7. 'placing on the market' means the supplying of or making available to third persons, against payment or free of charge, products and equipment containing or whose functioning relies upon fluorinated greenhouse gases, by a producer or an importer for the first time in the European Union;

8. 'use' means the utilisation of fluorinated greenhouse gases in the production, refilling, servicing or maintenance of products and equipment covered by this Regulation;

9. 'heat pump' means a device or installation that extracts heat at low temperature from air, water or earth and supplies heat;

10. 'leakage detection system' means a calibrated mechanical, electrical or electronic device for detecting leakage of fluorinated greenhouse gases which, on detection, alerts the operator;

11. 'hermetically sealed system' means a system in which all refrigerant containing parts are made tight by welding, brazing or a similar permanent connection;

12. 'container' means a product which is designed primarily for transporting or storing fluorinated greenhouse gases;

13. 'a non-refillable container' means a container that is designed not to be refilled and is used in the servicing, maintenance or filling of refrigeration, air-conditioning or heat pump equipment, fire protection systems or high-voltage switchgear; or to store or transport fluorinated greenhouse gas based solvents;

14. 'recovery' means the collection and storage of fluorinated greenhouse gases from, for example, machinery, equipment and containers;

15. 'recycling' means the reuse of a recovered fluorinated greenhouse gas following a basic cleaning process;

([1]) OJ L 244, 29.9.2000, p. 1. Regulation as last amended by Commission Regulation (EC) No 2077/2004 (OJ L 359, 4.12.2004, p. 28).

([2]) IPCC Third Assessment Climate Change 2001. A Report of the Intergovernmental Panel on Climate Change (http://www.ipcc.ch/pub/reports.htm).

([3]) For the calculation of the GWP of non-fluorinated greenhouse gases in preparations, the values published in the First IPCC Assessment shall apply, see: Climate Change, The IPCC Scientific Assessment, J.T. Houghton, G.J. Jenkins, J.J. Ephraums (ed.), Cambridge University Press, Cambridge (UK) 1990.

16. 'reclamation' means the reprocessing of a recovered fluorinated greenhouse gas in order to meet a specified standard of performance;

17. 'destruction' means the process by which all or most of a fluorinated greenhouse gas is permanently transformed or decomposed into one or more stable substances which are not fluorinated greenhouse gases;

18. 'novelty aerosol' means those aerosol generators marketed and intended for sale to the general public for entertainment and decorative purposes as listed in the Annex to Directive 94/48/EC of the European Parliament and of the Council ([1]).

Article 3

Containment

1. Operators of the following stationary applications: refrigeration, air conditioning and heat pump equipment and fire protection systems, which contain fluorinated greenhouse gases listed in Annex I, shall, using all measures which are technically feasible and do not entail disproportionate cost:

(a) prevent leakage of these gases; and

(b) as soon as possible repair any detected leakage.

2. Operators of the applications referred to in paragraph 1 shall ensure that they are inspected for leakage by certified personnel who comply with the requirements of Article 5, according to the following schedule:

(a) applications containing 3 kg or more of fluorinated greenhouse gases shall be inspected at least once every 12 months; this shall not apply to equipment with hermetically sealed systems, which are labelled as such and contain less than 6 kg of fluorinated greenhouse gases;

(b) applications containing 30 kg or more of fluorinated greenhouse gases shall be inspected at least once every six months;

(c) applications containing 300 kg or more of fluorinated greenhouse gases shall be inspected at least once every three months.

The applications shall be inspected for leakage within one month after a leak has been repaired to ensure that the repair has been effective.

For the purposes of this paragraph, 'inspected for leakage' means that the equipment or system is examined primarily for leakage using direct or indirect measuring methods, focusing on those parts of the equipment or system most likely to leak.

3. Operators of the applications referred to in paragraph 1, containing 300 kg or more of fluorinated greenhouse gases, shall install leakage detection systems. These leakage detection systems shall be inspected at least once every 12 months to ensure their proper functioning.

4. Where a properly functioning appropriate leakage detection system is in place, the frequency of the inspections required under paragraph 2(b) and (c) shall be halved.

5. In the case of fire protection systems where there is an existing inspection regime in place to meet ISO 14520 standard, these inspections may also fulfil the obligations of this Regulation as long as those inspections are at least as frequent.

6. Operators of the applications referred to in paragraph 1, containing 3 kg or more of fluorinated greenhouse gases, shall maintain records on the quantity and type of fluorinated greenhouse gases installed, any quantities added and the quantity recovered during servicing, maintenance and final disposal. They shall also maintain records of other relevant information including the identification of the company or technician who performed the servicing or maintenance, as well as the dates and results of the inspections carried out under paragraphs 2, 3 and 4. The records shall be made available on request to the competent authority and to the Commission.

7. By … (*), the Commission shall establish, in accordance with the procedure referred to in Article 11(2), the standard inspection requirements for each of the applications referred to in paragraph 1 of this Article.

Article 4

Recovery

1. Operators of the following types of stationary equipment shall be responsible for putting in place arrangements for the proper recovery by certified personnel, who comply with the requirements of Article 5, of fluorinated greenhouse gases to ensure their recycling, reclamation or destruction:

(a) the cooling circuits of refrigeration, air-conditioning and heat pump equipment;

([1]) Directive 94/48/EC of the European Parliament and of the Council of 7 December 1994 amending for the 13th time Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (OJ L 331, 21.12.1994, p. 7).

(*) The date of entry into force of this Regulation.

(b) equipment containing fluorinated greenhouse gas-based solvents;

(c) fire protection systems and fire extinguishers; and

(d) high-voltage switchgear.

2. When a refillable or non-refillable fluorinated greenhouse gas container reaches the end of its life, the person utilising the container for transport or storage purposes shall be responsible for putting in place arrangements for the proper recovery of any residual gases it contains to ensure their recycling, reclamation or destruction.

3. The fluorinated greenhouse gases contained in other products and equipment, including mobile equipment unless it is serving military operations, shall, to the extent that it is technically feasible and does not entail disproportionate cost, be recovered by appropriately qualified personnel, to ensure their recycling, reclamation or destruction.

4. Recovery, for the purpose of recycling, reclamation or destruction of the fluorinated greenhouse gases, pursuant to paragraphs 1 to 3, shall take place before the final disposal of that equipment and, when appropriate, during its servicing and maintenance.

Article 5

Training and certification

1. By … (*), on the basis of information received from Member States and in consultation with the relevant sectors, the Commission shall establish, in accordance with the procedure referred to in Article 11(2), minimum requirements and the conditions for mutual recognition in respect of training programmes and certification for the relevant personnel and for the companies and their personnel involved in the activities provided for in Articles 3 and 4.

2. By … (**), Member States shall establish or adapt their own training and certification requirements, on the basis of the minimum requirements referred to in paragraph 1. Member States shall notify the Commission of their training and certification programmes. Member States shall give recognition to the certificates issued in another Member State and shall not restrict the freedom to provide services or the freedom of establishment for reasons relating to the certification issued in another Member State.

3. The operator of the relevant application shall ensure that the relevant personnel have obtained the necessary certification, referred to in paragraph 2, which implies appropriate knowledge of the applicable regulations and standards as well as the necessary competence in emission prevention and recovery of fluorinated greenhouse gases and handling safely the relevant type and size of equipment.

4. By … (***), Member States shall ensure that the companies involved in carrying out the activities provided for in Articles 3 and 4 shall only take delivery of fluorinated greenhouse gases where their relevant personnel hold the certificates mentioned in paragraph 2 of this Article.

5. By … (*), the Commission shall determine, in accordance with the procedure referred to in Article 11(2), the format of the notification referred to in paragraph 2 of this Article.

Article 6

Reporting

1. By 31 March each year, from the first calendar year following entry into force of this Regulation, each producer, importer and exporter of fluorinated greenhouse gases shall communicate to the Commission by way of a report, sending the same information to the competent authority of the Member State concerned, the following data in respect of the preceding calendar year:

(a) each producer who produces more than one tonne of fluorinated greenhouse gases per annum shall communicate:

— its total production of each fluorinated greenhouse gas in the Community, identifying the main categories of applications (e.g. mobile air-conditioning, refrigeration, air-conditioning, foams, aerosols, electrical equipment, semi-conductor manufacture) in which the substance is expected to be used,

— the quantities of each fluorinated greenhouse gas it has placed on the market in the Community,

— any quantities of each fluorinated greenhouse gas recycled, reclaimed or destroyed;

(*) The date of entry into force of this Regulation.
(**) One year after the date of entry into force of this Regulation.
(***) Two years after the date of entry into force of this Regulation.

(b) each importer who imports more than one tonne of fluorinated greenhouse gases per annum, including any producers who also import, shall communicate:

— the quantity of each fluorinated greenhouse gas it has imported or placed on the market in the Community, separately identifying the main categories of applications (e.g. mobile air-conditioning, refrigeration, air-conditioning, foams, aerosols, electrical equipment, semi-conductor manufacture) in which the substance is expected to be used,

— any quantities of each used fluorinated greenhouse gas it has imported for recycling, for reclamation or for destruction;

(c) each exporter who exports more than one tonne of fluorinated greenhouse gases per annum, including any producers who also export, shall communicate:

— the quantities of each fluorinated greenhouse gas it has exported from the Community,

— any quantities of each used fluorinated greenhouse gas it has exported for recycling, for reclamation or for destruction.

2. By … (*), the Commission shall determine, in accordance with the procedure referred to in Article 11(2), the format of the reports referred to in paragraph 1 of this Article.

3. The Commission shall take appropriate steps to protect the confidentiality of the information submitted to it.

4. Member States shall establish reporting systems for the relevant sectors referred to in this Regulation, with the objective of acquiring, to the extent possible, emission data.

Article 7

Labelling

1. Without prejudice to the provisions of Council Directive 67/548/EEC ([1]) and of Directive 1999/45/EC of the European Parliament and of the Council ([2]) in respect of the labelling of dangerous substances and preparations, the products and equipment, listed in paragraph 2, containing fluorinated greenhouse gases shall not be placed on the market unless the chemical name of the fluorinated greenhouse gases is identified by way of a label using the accepted industry nomenclature. Such label shall clearly indicate that the product or equipment contains fluorinated greenhouse gases, and this shall be clearly and indelibly stated on the product or equipment, adjacent to the service points for charging or recovering the fluorinated greenhouse gas, or on that part of the product or equipment which contains the fluorinated greenhouse gas. Hermetically sealed systems shall be labelled as such.

2. Paragraph 1 shall apply to the following types of products and equipment:

(a) refrigeration products and equipment which contain perfluorocarbons or preparations containing perfluorocarbons;

(b) refrigeration and air conditioning products and equipment (other than those contained in motor vehicles), heat pumps, fire protection systems and fire extinguishers, if the respective type of product or equipment contains hydrofluorocarbons or preparations containing hydrofluorocarbons;

(c) switchgear which contains sulphur hexafluoride or preparations containing sulphur hexafluoride; and

(d) all fluorinated greenhouse gas containers.

3. The Commission shall establish, in accordance with the procedure referred to in Article 11(2), the form of the label to be used.

Article 8

Control of use

1. The use of sulphur hexafluoride or preparations thereof in magnesium die-casting, except where the quantity of sulphur hexafluoride used is below 850 kg per year, shall be prohibited from 1 January 2008.

2. The use of sulphur hexafluoride or preparations thereof for the filling of vehicle tyres shall be prohibited from … (*).

(*) The date of entry into force of this Regulation.

([1]) Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 196, 16.8.1967, p. 1). Directive as last amended by Commission Directive 2004/73/EC (OJ L 152, 30.4.2004, p. 1).

([2]) Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations (OJ L 200, 30.7.1999, p. 1). Directive as last amended by Council Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

Article 9

Placing on the market

1. The placing on the market of products and equipment containing, or whose functioning relies upon, fluorinated greenhouse gases, as listed in Annex II shall be prohibited as specified in that Annex.

2. Paragraph 1 shall not apply to products and equipment shown to be manufactured before the date of entry into force of the relevant placing on the market prohibition.

Article 10

Review

1. On the basis of progress in potential containment or replacement of fluorinated greenhouse gases in air conditioning systems, other than those fitted to motor vehicles referred to in Council Directive 70/156/EEC of 6 February 1970 on the approximation of laws relating to the type-approval of motor vehicles and their trailers [1], and in refrigeration systems contained in modes of transport, the Commission shall review this Regulation and publish a report by 31 December 2007 at the latest. If appropriate, it shall present legislative proposals also with a view to applying the provisions of Article 3 to air conditioning systems, other than those fitted to motor vehicles referred to in Directive 70/156 EEC, and refrigeration systems contained in modes of transport.

2. By … (*), the Commission shall publish a report based on the experience of the application of this Regulation. In particular, the report shall:

(a) assess the impact of relevant provisions on emissions and projected emissions of fluorinated greenhouse gases and examine the cost-effectiveness of these provisions;

(b) in the light of future assessment reports of the IPCC, assess whether additional fluorinated greenhouse gases should be added to Annex I;

(c) evaluate the training and certification programmes established by Member States under Article 5(2);

(d) assess the need for European Community standards relating to the control of emissions of fluorinated greenhouse gases from products and equipment, in particular as regards foam, including technical requirements with respect to the design of products and equipment;

(e) evaluate the effectiveness of containment measures carried out by operators under Article 3 and assess whether maximum leakage rates for installations can be established;

(f) assess and, if appropriate, may propose a modification of the reporting requirements in Article 6(1), in particular the one tonne quantitative limit to improve the practical application of those reporting requirements;

(g) assess the need for the development and dissemination of notes describing best available techniques and best environmental practices concerning the prevention and minimisation of emissions of fluorinated greenhouse gases;

(h) include an overall summary of the development, both within the Community and at an international level, of the state of technology, in particular as regards foams, experience gained, environmental requirements and any impacts on the functioning of the internal market;

(i) assess whether the substitution of sulphur hexafluoride in sand casting, permanent mould casting and high-pressure die-casting is technically feasible and cost-effective and, if appropriate, propose a revision of Article 8(1) by 1 January 2009; it shall also review the exemption contained in Article 8(1) in the light of further assessment of the available alternatives by 1 January 2010;

(j) assess whether the inclusion of further products and equipment containing fluorinated greenhouse gases in Annex II is technically feasible and cost-effective and, if appropriate, make proposals to amend Annex II in order to include such further products and equipment;

(k) assess whether Community provisions concerning the global warming potential of fluorinated greenhouse gases should be amended; any changes should take account of technological and scientific developments and the need to respect industrial product planning timescales.

3. Where necessary, the Commission shall present appropriate proposals for revision of the relevant provisions of this Regulation.

[1] OJ L 42, 23.2.1970, p. 1. Directive as last amended by Commission Directive 2004/104/EC (OJ L 337, 13.11.2004, p. 13).

(*) Four years after the date of entry into force of this Regulation.

Article 11

Committee

1. The Commission shall be assisted by the Committee instituted by Article 18 of Regulation (EC) No 2037/2000.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its Rules of Procedure.

Article 12

Penalties

1. Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that such rules are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

2. Member States shall notify the rules on penalties to the Commission by … (*) and shall also notify it without delay of any subsequent amendment affecting those rules.

Article 13

Entry into force

This Regulation shall enter into force 12 months following the date of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, …

For the European Parliament
The President
…

For the Council
The President
…

(*) One year after the date of entry into force of this Regulation.

ANNEX I

PART 1

Fluorinated greenhouse gases referred to in Article 2(1)

Fluorinated greenhouse gas	Chemical Formula	Global Warming Potential
Sulphur hexafluoride	SF_6	22 200
Hydrofluorocarbons (HFCs):		
HFC-23	CHF_3	12 000
HFC-32	CH_2F_2	550
HFC-41	CH_3F	97
HFC-43-10mee	$C_5H_2F_{10}$	1 500
HFC-125	C_2HF_5	3 400
HFC-134	$C_2H_2F_4$	1 100
HFC-134a	CH_2FCF_3	1 300
HFC-152a	$C_2H_4F_2$	120
HFC-143	$C_2H_3F_3$	330
HFC-143a	$C_2H_3F_3$	4 300
HFC-227ea	C_3HF_7	3 500
HFC-236cb	$CH_2FCF_2CF_3$	1300
HFC-236ea	CHF_2CHFCF_3	1 200
HFC-236fa	$C_3H_2F_6$	9 400
HFC-245ca	$C_3H_3F_5$	640
HFC-245fa	$CHF_2CH_2CF_3$	950
HFC-365mfc	$CF_3CH_2CF_2CH_3$	890
Perfluorocarbons (PFCs):		
Perfluoromethane	CF_4	5 700
Perfluoroethane	C_2F_6	11 900
Perfluoropropane	C_3F_8	8 600
Perfluorobutane	C_4F_{10}	8 600
Perfluoropentane	C_5F_{12}	8 900
Perfluorohexane	C_6F_{14}	9 000
Perfluorocyclobutane	c-C_4F_8	10 000

PART 2

Method of calculating the total global warming potential (GWP) for a preparation

The total GWP for a preparation is a weighted average, derived from the sum of the weight fractions of the individual substances multiplied by their GWPs.

$\sum$ (Substance X % × GWP) + (Substance Y % × GWP) + … (Substance N % × GWP)

where % is the contribution by weight with a weight tolerance of +/- 1 %.

For example: applying the formula to a theoretical blend of gases consisting of 23 % HFC-32; 25 % HFC-125 and 52 % HFC-134a;

$\sum$ (23 % × 550) + (25 % × 3 400) + (52 % × 1 300)

$\Rightarrow$ Total GWP = 1 652,5

ANNEX II

Placing on the market prohibitions in accordance with Article 9

Fluorinated greenhouse gases	Products and equipment	Date of prohibition
Fluorinated greenhouse gases	Non-refillable containers	Date of entry into force
Hydrofluorocarbons and perfluorocarbons	Non-confined direct-evaporation systems containing refrigerants	Date of entry into force
Perfluorocarbons	Fire protection systems and fire extinguishers	Date of entry into force
Fluorinated greenhouse gases	Windows for domestic use	Date of entry into force
Fluorinated greenhouse gases	Other windows	One year after the date of entry into force
Fluorinated greenhouse gases	Footwear	1 July 2006
Fluorinated greenhouse gases	Tyres	Date of entry into force
Fluorinated greenhouse gases	One component foams, except when required to meet national safety standards	One year after the date of entry into force
Hydrofluorocarbons	Novelty aerosols	Two years after the date of entry into force

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 11 August 2003, the Commission presented to the Council its proposal for a Regulation of the European Parliament and of the Council on certain fluorinated greenhouse gases.

2. The European Parliament gave its opinion on 31 March 2004 (first reading).

   The Economic and Social Committee adopted its opinion on 28 January 2004.

3. On 21 June 2005, the Council adopted its common position in accordance with Article 251 of the Treaty.

II. OBJECTIVE

The objectives of the Commission's proposed Regulation were:

— to make a significant contribution towards the EC's current Kyoto Protocol target, and even greater reductions in the later periods, by introducing cost-effective control and mitigation measures and by encouraging more responsible use of fluorinated greenhouse gases in general, and in particular the more environmentally damaging gases, i.e. those with a high global warming potential, and

— to prevent distortion of the internal market that could result from differing national measures in place in, or being planned by, Member States to ensure compliance with their obligations under the EC burden-sharing agreement to achieve the EC Kyoto Protocol emission reduction target ([1]). The proposal includes bans on certain uses of the gases and prohibits the placing on the market of a limited number of applications which contain these gases.

III. ANALYSIS OF THE COMMON POSITION

1. General

The common position incorporates approximately two thirds of the amendments proposed by the European Parliament at first reading. The Council considers that the common position, while altering the approach proposed (see paragraph 3 below), does not alter the aims of the original Commission proposal and notes that the Commission also supports the common position as it stands.

2. European Parliament amendments

In its Plenary vote on 31 March 2004, the EP adopted 81 amendments to the proposal.

(a) 54 of these have been incorporated, either verbatim, in part or in principle, into the Council's common position, 44 in the Regulation and 10 in the Directive; and

(b) 27 amendments have not been incorporated.

The accepted amendments are listed below in the order of their inclusion in the two constituent part of the common position, first the Regulation then the Directive.

The Regulation

Amendment 3: accepted in recital 4 and this addition of the word 'greenhouse' has been accepted throughout the texts.

Amendment 8: accepted in principle. The original first paragraph of Article 1 has been redrafted in two paragraphs which now contain the content covered by this Amendment.

([1]) Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder (OJ L 130, 15.5.2002, p. 1).

Amendment 10: accepted in the most part, in Article 2(g), the placing on the market of the gases themselves is not included in the common position, the part relating to vehicles is not included as the Council proposes to deal with this part of the proposal in a separate vehicle type approval directive.

Amendment 12: accepted in part, in Article 2(n), the Council did not feel it was necessary to specify 'during their servicing or disposal', but instead kept the timing open.

Amendment 13: the Council agreed that there is a need for a definition of destruction but has not followed the text proposed by the Parliament, instead the common position contains the definition of destruction from the standard definition used in ozone layer reports, see Article 2(q).

Amendments 15, 16 and 17: all accepted in part, Article 2(a), (b) and (c), the Council did not feel that the last phrase was necessary and so in each case this is not included in the common position.

Amendment 18: accepted in principle, Article 2(d).

Amendment 23: accepted in principle, Article 3(1), after lengthy discussion of the terms 'operator' and 'owner', the Council decided to use 'operator' only but within the definition of operator (Art 2(f)) it is noted that Member States can, in specific situations, designate the owner as being responsible for the operator's role.

Amendment 107: accepted in part, the content of this amendment is covered by Article 3(2), apart from the need to inspect when the equipment is installed, see rejected amendment 24.

Amendments 26, 27 and 28: accepted in Article 3(2), except the first part of 26 which was not felt to be necessary.

Amendment 29: accepted in Article 3(2), in the common position this amendment has been applied to applications covered by paragraphs (b) and (c) as well.

Amendment 30: accepted in part, Article 3(4) as the frequency can indeed be halved, but on the basis of the installation of a leakage detection system.

Amendment 31: accepted in Article 3(5).

Amendments 110 and 32: accepted in part in Article 3(4) — see amendment 30

Amendment 33: accepted in part in Article 3(3), part on 'one circuit' rejected (see Amd 26) and last part rejected as common position uses words 'appropriate' leakage detection system.

Amendment 34: accepted in Article 3(6)(see amendment 23).

Amendment 35: accepted in Article 3(1).

Amendment 39: accepted in Article 4(4), however the Council felt that in practice it was more appropriate to say 'before', rather than 'during', the final disposal.

Amendments 41 and 42 and parts of 43 and 44: Article 5 has been substantially reworded, in principle the contents of amendments 41 and 42 have been included in paragraphs 1, 2 and 3, along with parts of 43 and 44.

Amendments 46, 47, part of 48 and 50: accepted in Article 6(1)(a).

Amendments 52, part of 53, 54 in principle and 55: accepted in Article 6(1)(b).

Amendments 59 and 60: accepted in Article 6(1)(c).

Amendments 62 and 63: accepted in principle in Article 6(4).

Amendment 78: accepted in principle through the new Article 6(b) on 'Labelling' contained in the common position.

Amendment 65: accepted in Article 7.

Amendment 67: accepted, almost verbatim in Article 8(1).

Amendment 79: accepted in part, Article 9(1) includes the word 'greenhouse' but not the deletion of 'contained in modes of transport'.

Amendment 105: accepted deletion in Article 11.

The Directive

Amendment 6: accepted, in principal, in recital 4.

Amendments 85 and 96: accepted.

Amendment 111: accepted in principle in Article 5(2), however the date is linked to the adoption of the harmonised leakage detection test and the limit values are already specified in the common position.

Amendment 71: accepted in Article 7(1) second indent.

Amendment 112: accepted in part in Article 5(4), however the GWP value used in the common position is 150, not 50.

Amendment 73: accepted in part in Article 5(5), however the date in the common position is 1 January 2017, not 1 January 2014 and the GWP value used in the common position is 150, not 50.

Amendment 76: accepted the deletion of the quota system.

Amendment 86: accepted in principle. The report to be provided under Article 8(1), five, not two, years after entry into force, shall examine whether amendments are required taking account of technological and scientific developments and the need to respect industrial product planning timescales.

Amendment 82: covered in principle by Article 8.

The 27 amendments that have been rejected have been listed in the order they would apply to the Commission's proposal, together with the reasons for their rejection:

Amendment 2: in the common position some of the measures required are to be taken on the basis of Article 95, so it may not be possible for Member States to maintain certain national measures.

Amendment 4: these gases use has been restricted, according to the bans contained in Article 7, following detailed consultation by the Commission. The use bans will be specifically reviewed under Article 9(2)(i) in 2009 and 2010 and the possible extension of the placing on the market prohibitions will be considered in the general review (Article 9(2)(j)).

Amendments 5 and 7: the Commission's proposed recital 7 and the Parliament's proposal for a Recital 9a are not included in the common position as the Council did not feel that it was necessary to explain each of the requirements. Instead more general recitals have been included to explain which parts of the Regulation are based on Article 175 and which on Article 95.

Amendment 9: the Council did not see a need to define producer.

Amendment 11: the Council preferred to retain the word 'container' rather than receptacle but has added the word 'primarily' to the Commission's proposed definition.

Amendment 108: the Council did not see a need to include the 50 GWP limit in the definition as this is dealt with later in the Articles.

Amendment 20: after lengthy debate the Council opted to retain the Commission's proposal to use 'novelty aerosol' as it did not feel sufficient research and consultation had been undertaken with respect to other aerosols.

Amendment 21: the Council did not see a need to include special provisions on small-scale manufacturers.

Amendment 22: Council felt this was too general the principle is covered in Article 3(1).

Amendment 24: Council felt that this is already normal procedure and the purpose of this Article was to ensure that leakage did not occur once the equipment is in service.

Amendment 25: Council did not, after detailed debate feel that it was appropriate to extend this obligation to mobile equipment at this time, however this will be reviewed by 31 December 2007 (See Article 9(1)).

Amendment 36: Council did not consider this registration requirement necessary.

Amendment 40: Council did not consider this register requirement necessary.

Amendments 49: this is covered in point Article 6(1)(b).

Amendments 57 and 61: Council did not feel that these requirements could be met in practice.

Amendment 64: in the common position an exception to the use ban in paragraph 1 is still included, however, this is to be reviewed by 1 January 2010, see Article 9(2)(i).

Amendments 69, 74, 75 and 77: Council did not want to include tax incentives in the common position text.

Amendment 80: Council considered this too broad, however paragraphs (i) and (j) have been added to the review in Article 9 and do address aspects of this amendment.

Amendment 81: Council felt that this was already covered by the general review paragraphs contained in Article 9(2), e.g. paras (a), (g) and (h).

Amendment 104: after lengthy discussion the Council agreed that the existing Ozone Depleting Substances Regulation Committee should be used, but under the regulatory, rather than management, procedure, see Article 10.

Amendment 83: it was not felt that a separate committee was necessary.

Amendment 84: the new form of vehicle type approval Directive in relation to air conditioning in vehicles means that this no longer appears in Annex II of the common position and on aerosols the Council preferred to retain 'novelty aerosols' as proposed by the Commission, see amendment 20.

3. **Most important innovations introduced by the Council**

— *Mobile air conditioning*

1. Quota system

The Council agreed with the Parliament's amendments considering that the proposed quota system was not the most practical way to achieve the aim of reducing emissions from these systems and, ultimately, changing the refrigerant in all new systems to a less environmentally damaging substance (i.e. a gas with a substantially lower GWP). Therefore the quota system has been deleted.

2. Type-approval Directive

The Council noted that the Parliament, particularly in amendments 82 and 112, intended to use the EC Type Approval system pursuant to Directive 70/156/EEC for the purpose of controlling the way in which vehicles would be equipped with environmentally friendly air conditioning systems.

The Council shares the Parliament's objective and has implemented it using the standard form of a vehicle type approval Directive, under the parent legislation contained in Directive 70/156/EEC.

— Legal base of the remaining parts of the Regulation

Having decided to remove the mobile air conditioning part of the proposal to a separate Directive, the Council gave very careful consideration to the appropriate legal base for the rest of the Regulation and, as reflected in the common position, decided that a dual legal base is the most appropriate solution. This means that the Regulation is based on Article 175(1). However, the Articles relating to the use-bans, the prohibition of placing on the market and labelling are all based on Article 95 of the Treaty. The insertion of the Article requiring specific labelling of products containing fluorinated greenhouse gases was a new addition from the Council and seems to fit, to some extent, with the Parliament amendment on information to consumers.

IV. **CONCLUSION**

Despite the fact that the Council is not able to accept all of the amendments adopted by the European Parliament, it considers that the common position coincides to a large extent with the concerns of the Parliament.

In relation to the mobile air conditioning aspect, the format in the common position is new. However, in substance the aim of creating a more workable solution than the quota proposal, based on type approval legislation, is a shared goal of both Parliament and Council. It should be underlined that although there are two elements, a Regulation and a Directive, the Council and the Commission are in agreement that there is still only one proposal.

COMMON POSITION (EC) No 26/2005

adopted by the Council on 21 June 2005

with a view to the adoption of Directive 2005/…/EC of the European Parliament and of the Council of … relating to emissions from air conditioning systems in motor vehicles and amending Council Directive 70/156/EEC

(2005/C 183 E/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee ([1]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([2]),

Whereas:

(1) The internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital must be ensured, and to that end a Community type-approval system for motor vehicles is in place. The technical requirements for the type-approval of motor vehicles with regard to air conditioning systems should be harmonised to avoid the adoption of requirements that differ from one Member State to another and to ensure the proper functioning of the internal market.

(2) A growing number of Member States intend to regulate the use of air conditioning systems in motor vehicles as a consequence of Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder ([3]). The Decision commits the Community and its Member States to reduce their aggregate anthropogenic emissions of greenhouse gases listed in Annex A to the Kyoto Protocol by 8 % compared to 1990 levels in the period from 2008 to 2012. The uncoordinated implementation of these commitments carries the risk of creating barriers to the free movement of motor vehicles in the Community. Therefore it is appropriate to lay down the requirements to be fulfilled by air conditioning systems fitted to vehicles in order to be allowed on the market and to prohibit from a certain date air conditioning systems designed to contain fluorinated greenhouse gases with a global warming potential higher than 150.

(3) Emissions of hydrofluorocarbon-134a (HFC-134a), which has a global warming potential of 1300, from air conditioning systems in motor vehicles are of growing concern because of their impact on climate change. Cost-effective and safe alternatives to hydrofluorocarbon-134a (HFC-134a) are expected to be available in the near future. A review should be carried out to establish, in the light of progress in potential containment of emissions from, or replacement of, fluorinated greenhouse gases in such systems, whether this Directive should be extended to other categories of motor vehicle and whether the provisions concerning the global warming potential of these gases should be amended, taking account of technological and scientific developments and the need to respect industrial product planning timescales.

(4) In order to ensure that the prohibition of certain fluorinated greenhouse gases is effective, there is a need to limit the possibility to retrofit motor vehicles with air conditioning systems designed to contain fluorinated greenhouse gases with a global warming potential higher than 150 and to prohibit filling air conditioning systems with such gases.

(5) In order to limit the emissions of certain fluorinated greenhouse gases from air conditioning systems in motor vehicles it is necessary to establish limit values for leakage rates and the test procedure for the assessment of leakage in air conditioning systems designed to contain fluorinated greenhouse gases with a global warming potential higher than 150 which are fitted to motor vehicles.

(6) In order to contribute to the fulfilment of the commitments of the Community and its Member States under the UN Framework Convention on Climate Change, the Kyoto Protocol and Decision 2002/358/EC, Regulation (EC) No …/2005 of the European Parliament and of the Council ([4]) and this Directive, which both contribute to the reduction of emissions of fluorinated greenhouse gases, should be adopted and published in the *Official Journal of the European Union* simultaneously.

([1]) OJ C 108, 30.4.2004, p. 62.

([2]) Opinion of the European Parliament of 31 March 2004 (OJ C 103 E, 29.4.2004, p. 600), Council Common Position of 21 June 2005 and Position of the European Parliament of … (not yet published in the Official Journal).

([3]) OJ L 130, 15.5.2002, p. 1.

([4]) See page … of the present Official Journal (reference to the Regulation corresponding to this Directive for simultaneous publication).

(7) Any manufacturer of vehicles should make available to the approval authority all relevant technical information regarding the installed air conditioning systems and the gases used in them. In the case of air conditioning systems designed to contain fluorinated greenhouse gases with a global warming potential higher than 150, the manufacturer should also make available the leakage rate of these systems.

(8) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ([1]).

(9) This Directive is one of the separate directives of the EC type-approval procedure which was established by Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers ([2]). Consequently, Directive 70/156/EEC should be amended accordingly.

(10) Since the objectives of this Directive, namely to control the leakage of the specific fluorinated greenhouse gases in the air conditioning systems fitted to vehicles and to prohibit from a certain date air conditioning systems designed to contain fluorinated greenhouse gases with a global warming potential higher than 150, cannot be sufficiently achieved by the Member States acting alone and can therefore, by reason of the scale and effects of this Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(11) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making ([3]), Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down the requirements for the EC type-approval or national type-approval of vehicles as regards emissions from, and the safe functioning of, air conditioning systems fitted to vehicles. It also lays down provisions on retrofitting and refilling of such systems.

Article 2

Scope

The Directive shall apply to motor vehicles of category M_1 and N_1 as defined in Annex II to Directive 70/156/EEC. For the purpose of this Directive, vehicles of category N_1 are limited to those of class I as described in the first table in point 5.3.1.4 of Annex I to Council Directive 70/220/EEC of 20 March 1970 on the approximation of the laws of the Member States relating to measures to be taken against air pollution by emissions from motor vehicles ([4]), as inserted by Directive 98/69/EC of the European Parliament and of the Council ([5]).

Article 3

Definitions

For the purposes of this Directive the following definitions shall apply:

1. 'vehicle' means any motor vehicle falling within the scope of this Directive;

2. 'vehicle type' means a type as defined in Section B of Annex II to Directive 70/156/EEC;

3. 'air conditioning system' means any system whose main purpose is to decrease the air temperature and humidity of the passenger compartment of a vehicle;

4. 'dual evaporator system' means a system where one evaporator is mounted in the engine compartment and the other in a different compartment of the vehicle; all other systems shall be considered 'single evaporator systems';

5. 'fluorinated greenhouse gases' means hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF_6) as referred to in Annex A to the Kyoto Protocol and preparations containing these substances, but excludes substances controlled under Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer ([6]);

([1]) OJ L 184, 17.7.1999, p. 23.
([2]) OJ L 42, 23.2.1970, p. 1. Directive as last amended by Commission Directive 2004/104/EC (OJ L 337, 13.11.2004, p. 13).
([3]) OJ C 321, 31.12.2003, p. 1.
([4]) OJ L 76, 6.4.1970, p. 1. Directive as last amended by Commission Directive 2003/76/EC (OJ L 206, 15.8.2003, p. 29).
([5]) OJ L 350, 28.12.1998, p. 1.
([6]) OJ L 244, 29.9.2000, p. 1. Regulation as last amended by Commission Regulation (EC) No 2077/2004 (OJ L 359, 4.12.2004, p. 28).

6. 'hydrofluorocarbon' means an organic compound consisting of carbon, hydrogen and fluorine, and where no more than six carbon atoms are contained in the molecule;

7. 'perfluorocarbon' means an organic compound consisting of carbon and fluorine only, and where no more than six carbon atoms are contained in the molecule;

8. 'global warming potential' means the climatic warming potential of a fluorinated greenhouse gas relative to that of carbon dioxide. The global warming potential (GWP) is calculated in terms of the 100 year warming potential of one kilogram of a gas relative to one kilogram of CO_2. The relevant GWP figures are those published in the third assessment report (TAR) adopted by the Intergovernmental Panel on Climate Change ('2001 IPCC GWP values') ([1]);

9. 'preparation' means a mixture composed of two or more substances at least one of which is a fluorinated greenhouse gas. The total global warming potential ([2]) of the preparation shall be determined in accordance with Part 2 of the Annex;

10. 'retrofitting' means installing an air conditioning system in a vehicle after it has been registered.

Article 4

Obligations of the Member States

1. Member States shall grant, as appropriate, EC type-approval or national type-approval, with regard to emissions from air conditioning systems, only to vehicle types that satisfy the requirements of this Directive.

2. For the purpose of granting whole vehicle type-approval pursuant to Article 4(1)(a) of Directive 70/156/EEC, Member States shall ensure that manufacturers supply information on the type of refrigerant used in air conditioning systems fitted to new motor vehicles.

3. For the purpose of type-approval of vehicles fitted with air conditioning systems designed to contain a fluorinated greenhouse gas with a global warming potential higher than 150, Member States shall ensure that, in accordance with the harmonised leakage detection test referred to in Article 7(1), the leakage rate of such gases shall not exceed the maximum permissible limits laid down in Article 5.

([1]) IPCC Third Assessment Climate Change 2001. A Report of the Intergovernmental Panel on Climate Change (http://www.ipcc.ch/pub/reports.htm).

([2]) For the calculation of the GWP of non-fluorinated greenhouse gases in preparations, the values published in the First IPCC Assessment shall apply, see: *Climate Change, The IPCC Scientific Assessment*, J.T. Houghton, G.J. Jenkins, J.J. Ephraums (ed.), Cambridge University Press, Cambridge (UK), 1990.

Article 5

Type-approval

1. With effect from six months from the date of adoption of a harmonised leakage detection test, Member States may not, on grounds relating to emissions from air conditioning systems:

(a) refuse, in respect of a new type of vehicle, to grant EC type-approval, or national type approval, or

(b) prohibit registration, sale or entry into service of new vehicles

if the vehicle fitted with an air conditioning system designed to contain fluorinated greenhouse gases with a global warming potential higher than 150 complies with the requirements of this Directive.

2. With effect from 12 months from the date of adoption of a harmonised leakage detection test or 1 January 2007, whichever is later, Member States shall no longer grant EC type-approval or national type-approval for a type of vehicle fitted with an air conditioning system designed to contain fluorinated greenhouse gases with a global warming potential higher than 150, unless the rate of leakage from that system does not exceed 40 grams of fluorinated greenhouse gases per year for a single evaporator system, or 60 grams of fluorinated greenhouse gases per year for a dual evaporator system.

3. With effect from 24 months from the date of adoption of a harmonised leakage detection test or 1 January 2008, whichever is later, in respect of new vehicles fitted with air conditioning systems designed to contain fluorinated greenhouse gases with a global warming potential higher than 150, unless the rate of leakage from that system does not exceed 40 grams of fluorinated greenhouse gases per year for a single evaporator system or 60 grams of fluorinated greenhouse gases per year for a dual evaporator system, Member States shall:

(a) consider certificates of conformity to be no longer valid for the purposes of Article 7(1) of Directive 70/156/EEC, and

(b) refuse registration and prohibit sale and entry into service.

4. With effect from 1 January 2011 Member States shall no longer grant EC type-approval or national type-approval for a type of vehicle fitted with an air conditioning system designed to contain fluorinated greenhouse gases with a global warming potential higher than 150.

5. With effect from 1 January 2017, in respect of new vehicles which are fitted with an air conditioning system designed to contain fluorinated greenhouse gases with a global warming potential higher than 150, Member States shall:

(a) consider certificates of conformity to be no longer valid for the purposes of Article 7(1) of Directive 70/156/EEC, and

(b) refuse registration and prohibit sale and entry into service.

Article 6

Retrofitting and refilling

1. With effect from 1 January 2011, air conditioning systems designed to contain fluorinated greenhouse gases with a global warming potential higher than 150 shall not be retrofitted to vehicles type-approved from that date. With effect from 1 January 2017, such air conditioning systems shall not be retrofitted to any vehicles.

2. Air conditioning systems fitted to vehicles type-approved on or after 1 January 2011 shall not be filled with fluorinated greenhouse gases with a global warming potential higher than 150. With effect from 1 January 2017 air conditioning systems in all vehicles shall not be filled with fluorinated greenhouse gases with a global warming potential higher than 150, with the exception of refilling of air conditioning systems containing those gases, which have been fitted to vehicles before that date.

3. Service providers offering service and repair for air conditioning systems shall not fill such equipment with fluorinated greenhouse gases if an abnormal amount of the refrigerant has leaked from the system, until the necessary repair has been completed.

Article 7

Implementing measures

1. By … (*) the Commission shall adopt the measures for the implementation of Article 4 and Article 5, and in particular:

(a) the administrative provisions for the EC type-approval of vehicles; and

(b) a harmonised leakage detection test for measuring the leakage rate of fluorinated greenhouse gases with a global warming potential higher than 150 from air conditioning systems.

2. The Commission shall adopt the measures in accordance with the procedure referred to in Article 13 of Directive 70/156/EEC.

3. The Commission shall publish these measures in the *Official Journal of the European Union*.

4. The procedure referred to in paragraph 2 shall apply to the adoption, where appropriate, of:

(a) measures needed to ensure the safe functioning and proper servicing of refrigerants in mobile air conditioning systems;

(b) measures relating to the retrofitting of in-use vehicles with air conditioning systems and the refilling of in-use air conditioning systems to the extent not covered by Article 6;

(c) the adaptation of the method for determining the relevant global warming potential of preparations.

Article 8

Review

1. On the basis of progress in potential containment of emissions from, or replacement of, fluorinated greenhouse gases in air conditioning systems fitted to motor vehicles, the Commission shall examine whether:

— the present legislation should be extended to other categories of vehicles, in particular categories M_2 and M_3 as well as classes II and III of category N_1; and

— Community provisions concerning the global warming potential of fluorinated greenhouse gases should be amended; any changes should take account of technological and scientific developments and the need to respect industrial product planning timescales,

and shall publish a report by … (**). Where necessary, it shall present appropriate legislative proposals.

(*) 12 months after the date of entry into force of this Directive.

(**) Five years after the date of entry into force of this Directive.

2. Where a fluorinated greenhouse gas with a global warming potential higher than 150, which is not yet covered by the IPCC report referred to in Article 3(8), is included in a future report of the IPCC, the Commission shall assess whether it is appropriate to amend this Directive in order to include that gas. If the Commission considers it necessary, it shall, in accordance with the procedure referred to in Article 13 of Directive 70/156/EEC:

— adopt the necessary measures; and

— define transition periods for the application of these measures.

In doing so the Commission shall strike a balance between the need for an appropriate lead time and the risk that the fluorinated greenhouse gas poses to the environment.

Article 9

Amendments to Directive 70/156/EEC

Directive 70/156/EEC is hereby amended in accordance with Part 1 of the Annex to this Directive.

Article 10

Transposition

1. Member States shall adopt and publish by … (*) the laws, regulations and administrative provisions necessary to comply with this Directive.

They shall apply those measures from … (**).

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 11

Entry into force

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

Article 12

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*
…	…

(*) 18 months after the entry into force of this Directive.

(**) 18 months and one day after the entry into force of this Directive.

ANNEX

PART 1

Directive 70/156/EEC is amended as follows:

1. in Annex IV, Part I, a new item numbered (61), and footnote, is inserted as follows:

"Subject	Directive No	Official Journal reference	Applicability									
			M_1	M_2	M_3	N_1	N_2	N_3	O_1	O_2	O_3	O_4
(61) Air conditioning system	2005/…/EC	L…, …, p. …	X			X (8)						

(8) Only for vehicles of category N_1, class I as described in the first table in point 5.3.1.4 of Annex I to Directive 70/220/EEC as inserted by Directive 98/69/EC."

2. Annex XI is amended as follows:

(a) in Appendix 1 a new item numbered (61) is inserted as follows:

'Item	Subject	Directive No	$M_1 \leq 2\,500$ (1) kg	$M_1 > 2\,500$ (1) kg	M_2	M_3
(61)	Air conditioning system	2005/…/EC	X	X'		

(b) in Appendix 2 a new item numbered (61) is inserted as follows:

'Item	Subject	Directive No	M_1	M_2	M_3	N_1	N_2	N_3	O_1	O_2	O_3	O_4
(61)	Air conditioning system	2005/…/EC	X			W'						

(c) in Appendix 3 a new item numbered (61) is inserted as follows:

'Item	Subject	Directive No	M_2	M_3	N_1	N_2	N_3	O_1	O_2	O_3	O_4
(61)	Air conditioning system	2005/…/EC			W'						

(d) in 'Meaning of letters' the following letter is added:

'W Only for vehicles of category N_1, class I as described in the first table in point 5.3.1.4. of Annex I to Directive 70/220/EEC as inserted by Directive 98/69/EC'.

PART 2

Method of calculating the total global warming potential (GWP) for a preparation

The total GWP for a preparation is a weighted average, derived from the sum of the weight fractions of the individual substances multiplied by their GWPs.

$\sum$ (Substance X % × GWP) + (Substance Y % × GWP) + … (Substance N % × GWP)

where % is the contribution by weight with a weight tolerance of +/- 1 %.

For example: applying the formula to a theoretical blend of gases consisting of 23 % HFC-32; 25 % HFC-125 and 52 % HFC-134a;

$\sum$ (23 % × 550) + (25 % × 3 400) + (52 % × 1 300)

$\Rightarrow$ Total GWP = 1 652,5.

STATEMENT OF THE COUNCIL'S REASONS ([1])

([1]) See p. 12 of this Official Journal.