

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation 2008/0165(COD)	Procedure completed
Environment: substances depleting the ozone layer. Recast Repealing Regulation (EC) No 2037/2000 1998/0228(COD) Repealed by 2022/0100(COD)	
Subject 3.70.03 Climate policy, climate change, ozone layer	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	ENVI Environment, Public Health and Food Safety	IND/DEM BLOKLAND Johannes	07/10/2008
Council of the European Union	Council configuration	Meeting	Date
	General Affairs	2957	27/07/2009
	Environment	2898	20/10/2008
European Commission	Commission DG Environment	Commissioner DIMAS Stavros	

Key events			
01/08/2008	Legislative proposal published	COM(2008)0505	Summary
23/09/2008	Committee referral announced in Parliament, 1st reading		
20/10/2008	Debate in Council	2898	
22/01/2009	Vote in committee, 1st reading		Summary
18/02/2009	Committee report tabled for plenary, 1st reading	A6-0045/2009	
24/03/2009	Debate in Parliament		
25/03/2009	Results of vote in Parliament		
25/03/2009	Decision by Parliament, 1st reading	T6-0172/2009	Summary
27/07/2009	Act adopted by Council after Parliament's 1st reading		
	Final act signed		

16/09/2009			
16/09/2009	End of procedure in Parliament		
31/10/2009	Final act published in Official Journal		

Technical information

Procedure reference	2008/0165(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Recast
Legislative instrument	Regulation
	Repealing Regulation (EC) No 2037/2000 1998/0228(COD) Repealed by 2022/0100(COD)
Legal basis	EC Treaty (after Amsterdam) EC 175-p1; EC Treaty (after Amsterdam) EC 133
Stage reached in procedure	Procedure completed
Committee dossier	ENVI/6/66017

Documentation gateway

Legislative proposal	COM(2008)0505	01/08/2008	EC	Summary
Document attached to the procedure	SEC(2008)2366	01/08/2008	EC	
Document attached to the procedure	SEC(2008)2367	01/08/2008	EC	
Economic and Social Committee: opinion, report	CES1673/2008	22/10/2008	ESC	
Committee draft report	PE415.331	20/11/2008	EP	
Amendments tabled in committee	PE416.362	23/12/2008	EP	
Committee report tabled for plenary, 1st reading/single reading	A6-0045/2009	18/02/2009	EP	
Text adopted by Parliament, 1st reading/single reading	T6-0172/2009	25/03/2009	EP	Summary
Commission response to text adopted in plenary	SP(2009)3060	04/06/2009	EC	
Draft final act	03622/2009/LEX	16/09/2009	CSL	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Regulation 2009/1005](#)
[OJ L 286 31.10.2009, p. 0001](#) Summary

Environment: substances depleting the ozone layer. Recast

PURPOSE: to revise and recast EU provisions on substances that deplete the ozone layer.

BACKGROUND: in 1987 the Montreal Protocol on Substances that Deplete the Ozone Layer was approved thereby starting the phase-out of ozone-depleting substances (ODS). The Protocol has been hailed as one of the most successful of all international environmental agreements. All 191 Parties to the Montreal Protocol have achieved a 95% reduction in the consumption of ODS compared to the baselines set in 1987. The ozone layer is slowly recovering thanks to the control measures introduced by the Protocol. Experts, however, warn Parties to the Convention (of which the Community is one) to be continuously vigilant and to take account of remaining uncertainties ? notably the impact of ODS on climate change.

The main Community instrument regulating ODS is Regulation (EC) No 2037/2000 implementing the Montreal Protocol. This has been amended fourteen times. During a review of the main Regulation in 2006, those questioned found the Regulation to work satisfactorily but commented specifically on the Regulation's complexity and a need for greater clarity.

CONTENT: the purpose of this proposal is to simplify, revise and consolidate Regulation (EC) No 2037/2000 in the form of a recast. Recasting makes it possible to combine, in a single text, the original unchanged provisions as well as new substantive amendments. In addition, the proposal seeks to tighten up or add certain provisions in order to ensure better implementation and enforcement of the legislation by national authorities with the aim of achieving a high level of environmental protection. Simplifications should also have the effect of reducing any unnecessary administrative burdens.

In brief, the Commission proposes to maintain the scope of Regulation (EC) 2037/2000 other than where products and equipments relying on controlled substances are to be extended. This is being proposed in order to align definitions with those in the Montreal Protocol and in order to close any loopholes for trade in products containing controlled substances. The Regulation will apply to substances listed in Annexes I and II. Annex II offers a certain amount of flexibility in terms of establishing monitoring measures for substances found to have ozone-depleting potential. Significant control measures have also been introduced.

In addition a new Chapter has been added on derogations from the ban on production, placing on the market and use. Previously these provisions have been spread out between requirements on phase-out schedules on controlled substances and products.

Environment: substances depleting the ozone layer. Recast

The Committee on the Environment, Public Health and Food Safety adopted the report drawn up by Johannes BLOKLAND (IND, NL) amending, under the first reading of the codecision procedure, the proposal for a regulation of the European Parliament and of the Council on substances that deplete the ozone layer (ODS).

MEPs believe that it is desirable to minimise and eliminate the production and use of ODS where technically feasible alternatives are available. The report stresses that it is now appropriate to prohibit progressively the use of ODS and of products and equipment containing such substances.

The main amendments adopted by the committee are as follows:

Definitions: Regulation (EC) No 2037/2000 used the Montreal Protocol's traditional definition of 'production', which deducted destruction when calculating 'production' levels. MEPs believe that this provision is no longer appropriate and propose that the definition of production should exclude destruction. MEPs also clarified the definition of 'placing on the market' and introduced a definition of 'products and equipment relying on controlled substances'.

Phase-out schedule: while the Commission is proposing that the deadline for the production of hydrochlorofluorocarbons (HCFCs) in Europe for export be brought forward (from 2025 to 2020), MEPs believe that the production of HCFCs should have stopped by the end of 2014.

A small production (under strict reporting and monitoring) of hydrochlorofluorocarbons in Europe for laboratory and analytical uses shall be allowed until 3 December 2019 (in accordance with the Montreal Protocol as amended in 2007). However, the calculated level of production is to be decreased from not exceeding 14% to not exceeding 3% of the calculated level of production of hydrochlorofluorocarbons in 1997.

Review of derogations: the regulation should provide for a regular review process in order to reduce and eliminate derogations in cases where feasible alternatives exist. These measures shall be adopted in accordance with the regulatory procedure with scrutiny.

Labelling: MEPs stress that the risk that ozone depleting substances produced for feedstock are used for other purposes applies also for laboratory and analytical uses. They therefore propose that these labelling requirements should also apply for laboratory and analytical uses, which would improve the prevention of illegal trade. The Commission may determine the form and content of the label to be used. The measures shall be adopted in accordance with the regulatory procedure with scrutiny.

MEPs also believe that it is preferable to register undertakings instead of persons using ODS for laboratory and analytical uses in order to avoid a disproportional administrative burden.

Maximum amounts: MEPs make the following clarifications: (i) the maximum amount of controlled substances that may be used as process agents within the Community shall not exceed 1 083 metric tonnes per year; (ii) the maximum amount of controlled substances that may be emitted from process agent uses within the Community shall not exceed 17 metric tonnes per year. Given that the list of process agents in Annex III is technically out-of-date in places, MEPs propose that this list should be updated.

Annual ceiling: under the initial proposal, the total quantity annually authorised under licences shall not exceed 130%. MEPs believe that the proposed ceiling of 130% does not reflect the need to move away from the use of ODS and should therefore be lowered to 100%.

Registers: according to MEPs, Member States shall maintain registers of companies that place reclaimed hydrochlorofluorocarbons on the market. Only companies listed on the registers shall be permitted to place reclaimed hydrochlorofluorocarbons on the market. By 1 January 2010, Member States shall notify the Commission of their registration programme. Member States shall make the register available to allow companies receiving reclaimed hydrochlorofluorocarbons to confirm the source of the substance.

Methyl bromide: following Commission Decision 2008/753/EC of 18 September 2008 concerning the non-inclusion of methyl bromide in Annex I of Directive 91/414/EEC, the authorisation of methyl bromide will expire on 18 March 2009. MEPs therefore propose that methyl bromide should be prohibited in the context of this Regulation. The use of methyl bromide for quarantine and pre-shipment applications should also be

banned by 18 March 2010.

Export: for ethical and environmental reasons, MEPs introduced amendments to limit the export of ozone depleting substances as far as possible, especially in the case of Halons and CFCs.

Recovery and destruction of controlled substances: MEPs believe that the recovery of blowing agents from foam in fridges should be stated clearly as a requirement. The Commission shall establish an Annex to this Regulation with performance standards which specify the level of recovery of ozone depleting substances in each category of product and equipment, and monitoring standards, reflecting best environmental practices. Those measures shall be adopted in accordance with the regulatory procedure with scrutiny. The Commission should formally call upon the experience and expertise of all interested parties in preparing the new Annex, including Member States, industry and NGOs.

MEPs also believe it is important to ensure that the banked compounds are re-captured. To ensure this, dates are added in relation to the implementation measures.

Containment: the report stresses that Article 3 of the F-gases Regulation (EC) No 842/2006 has more precise provisions in relation to leakages and emissions of controlled substances. For consistency reasons and for having more safeguards against emissions, MEPs believe that it is better to implement the same text in this regulation.

New substances: Decision IX/24 of the Montreal Protocol states that any Party may bring to the attention of the Secretariat the existence of new substances which it believes have the potential to deplete the ozone layer and have the likelihood of substantial production, but which are not listed as controlled substances under Article 2 of the Protocol. According to MEPs, these substances should be added to Annex II, Part B so that their production and use can be monitored appropriately.

Inspections: Member States shall ensure that inspections are performed in compliance with Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in the Member States. The results of those inspections shall be published on the internet.

Environment: substances depleting the ozone layer. Recast

The European Parliament adopted by 667 votes to 13, with 10 abstentions, a legislative resolution amending, under the first reading of the codecision procedure, the proposal for a regulation of the European Parliament and of the Council on substances that deplete the ozone layer (ODS).

The amendments adopted in plenary were the result of a compromise negotiated with the Council.

Minimising ODS: the compromise stresses that many ozone depleting substances (ODS) are greenhouse gases but are not controlled under the United Nations Framework Convention for Climate Change and its Kyoto Protocol. Given that, at present, many alternatives to ozone depleting substances have a high a global warming potential, it is therefore necessary to minimise and eliminate the production and use of ODS wherever technically feasible alternatives with low global warming potentials are available.

Definitions: "production" means the amount of controlled substances or new substances produced, including the amount produced, intentionally or inadvertently, as by-product unless this by-product is destroyed as part of the manufacturing process or following a documented procedure ensuring compliance with this Regulation and the legislation on waste. MEPs also clarified the definition of "placing on the market" and introduced a definition of "products and equipment relying on controlled substances".

Placing on the market and use of controlled substances: controlled substances shall not be placed on the market in non-refillable containers, except for laboratory and analytical uses.

Labelling: as of 1 July 2010 containers of controlled substances produced or placed on the market as process agents shall be labelled with a clear indication that those substances may only be used as process agents. Where such substances are required to be labelled in accordance with Directive 67/548/EEC and Directive 1999/45 EC or Regulation (EC) No 1272/2008, such indication shall be included in the label referred to in these Directives or in the supplemental information part of the label as referred to in the aforementioned Regulation.

Those labelling requirements shall also apply to controlled substances produced or placed on the market for essential laboratory and analytical uses.

The Commission may determine, in accordance with the regulatory procedure with scrutiny, the form and content of the label to be used.

Controlled substances as process agents: the maximum amount of controlled substances that may be used as process agents within the Community shall not exceed 1 083 metric tonnes per year. The maximum amount of controlled substances that may be emitted from process agent uses within the Community shall not exceed 17 metric tonnes per year.

Destruction and reclamation of controlled substances: controlled substances and products and equipment containing or relying on controlled substances may be placed on the market for destruction within the Community. Controlled substances may also be placed on the market for reclamation within the Community.

Essential laboratory and analytical uses of controlled substances other than hydrochlorofluorocarbons: the text provides that the Commission shall issue licences to producers and importers of the controlled substances, other than hydrochlorofluorocarbons, produced or imported for essential laboratory or analytical use. The quantity annually authorised under licences for individual producers and importers shall not exceed 130% of the annual average of the calculated level of controlled substances licensed for the respective producer or importer for essential laboratory or analytical use in the years 2007 to 2009.

Total quantity annually authorised under licences shall not exceed 110 ODP tonnes. Remaining quantities may be allocated to producers and importers who did not place on the market or use the controlled substances, for their own account for essential laboratory and analytical uses in the years 2007 to 2009.

The Commission shall determine, in accordance with the regulatory procedure with scrutiny, a mechanism for the allocation of quotas to producers and importers.

Phase-out schedule: hydrochlorofluorocarbons may be produced provided that each producer ensures the following:

- the calculated level of its production of hydrochlorofluorocarbons 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 hydrochlorofluorocarbons in 1997;
- the calculated level of its production of hydrochlorofluorocarbons 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 hydrochlorofluorocarbons in 1997;
- the calculated level of its production of hydrochlorofluorocarbons 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 hydrochlorofluorocarbons in 1997;
- it produces no hydrochlorofluorocarbons after 31 December 2019 (note that the committee responsible had mentioned the end of 2014 as the deadline).

Methyl bromide: until 18 March 2010, 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 Directive 91/414/EEC and Directive 98/8/EC as transposed by the Member State concerned.

Methyl bromide may only be used on approved sites and, if economically and technically feasible, under the condition that at least 80% of methyl bromide released from the consignment is recovered. The calculated level of methyl bromide which undertakings place on the market or use for their own account in the period from 1 January 2010 to 18 March 2010 shall not exceed 45 ODP tonnes.

Each undertaking shall ensure that the calculated level of methyl bromide does not exceed 21% of the average of the calculated level of methyl bromide which it placed on the market or used for its own account for quarantine and pre-shipment in the years 2005 to 2008.

Decommissioning of equipment containing halons: halons may only be placed on the market by undertakings authorised by the competent authority for storing halons for critical uses. Fire protection systems and fire extinguishers containing halons applied in critical uses shall be decommissioned by the end dates to be specified in Annex VI.

List of products and equipment: the Commission shall make available at the latest by 1 January 2010 a list of products and equipment which might contain or rely on controlled substances and of Combined Nomenclature codes for guidance of the Member States' customs authorities.

Leakages and emissions of controlled substances: undertakings operating refrigeration, air conditioning or heat pump equipment, or fire protection systems, including their circuits, which contain controlled substances, shall ensure that the stationary equipment or systems:

- with a fluid charge of 3kg or more of controlled substances are checked for leakage 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 6kg of controlled substances);
- with a fluid charge of 30kg or more of controlled substances are checked for leakage at least once every six months;
- with a fluid charge of 300kg or more of controlled substances are checked for leakage at least once every three months; and that any detected leakage is repaired as soon as possible and in any event within 14 days.

The equipment or system shall be checked for leakage within one month after a leak has been repaired to ensure that the repair has been effective. Undertakings shall maintain records on: (i) the quantity and type of controlled substances added and the quantity recovered during servicing, maintenance and final disposal of the equipment or system referred to above; (ii) 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 leakage checks carried out. These records shall be made available on request to the competent authority and to the Commission.

Reporting by undertakings: each producer shall communicate the following data: (i) any purchases from and sales to other producers in the Community; (ii) any quantity recycled, reclaimed or destroyed and the technology used for the destruction. Each undertaking using controlled substances as feedstock or process agents, shall communicate the following data: (i) any quantities of such substances used as feedstock or process agents; (ii) any stocks of such substances; (iii) processes and emissions involved.

Environment: substances depleting the ozone layer. Recast

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.