Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (recast) (Text with EEA relevance)

REGULATION (EC) No 1005/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 September 2009

on substances that deplete the ozone layer

(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

After consulting the Committee of the Regions,

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

Whereas:

(1) Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer[(3)] has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) It is established that continued emissions of ozone-depleting substances (ODS) cause significant damage to the ozone layer. There is clear evidence of a decrease in the atmospheric burden of ODS and some early signs of stratospheric ozone recovery have been observed. However, the recovery of the ozone layer to the concentrations level existing before 1980 is not projected to take place before the middle of the 21st century. Increased UV-B radiation resulting from ozone depletion therefore persists as a significant threat to health and environment. At the same time, most of these substances have high global warming potential and are contributory factors towards increasing the temperature of the planet. Further efficient measures need therefore to be taken in order to protect human health and the environment against adverse effects resulting from such emissions and to avoid risking further delay in the recovery of the ozone layer.

(3) In view of its responsibilities for the environment and trade, the Community, pursuant to Council Decision 88/540/EEC[(4)], has become a Party to the Vienna Convention for

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the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer (hereinafter 'the Protocol').

(4) Many ODS are greenhouse gases but are not controlled under the United Nations Framework Convention for Climate Change and its Kyoto Protocol on the assumption that the Protocol will phase out ODS. Despite progress made by the Protocol, the task of phasing out ODS still needs to be completed in the European Union and globally, whilst bearing in mind that at present many alternatives to ODS have a high 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 potential are available.

(5) Additional measures for the protection of the ozone layer were adopted by the Parties to the Protocol, most recently at their meeting in Montreal in September 2007 and in Doha in November 2008. It is necessary for action to be taken at Community level to comply with the Community's obligations under the Protocol and in particular to implement the accelerated phase out of hydrochlorofluorocarbons with due consideration to the risks of phasing in alternatives with high global warming potential.

(6) Following the concerns stated in the 2006 Report of the Scientific Assessment Panel related to the accelerating growth of production and consumption of hydrochlorofluorocarbons in developing countries, the Parties to the Protocol in 2007 adopted Decision XIX/6 at their 19th Meeting providing for an accelerated phase-out schedule for hydrochlorofluorocarbons. Following that Decision the production phase-out date should be brought forward from 2025 to 2020.

(7) Under Regulation (EC) No 2037/2000, as from 2010, virgin hydrochlorofluorocarbons can no longer be used for the maintenance or servicing of refrigeration and air conditioning equipment. In order to minimise the risk of illegal use of virgin hydrochlorofluorocarbons as recycled or reclaimed material, only reclaimed or recycled material should be used in maintenance or servicing operations. The re-selling of recycled hydrochlorofluorocarbons should be prohibited, and recycled hydrochlorofluorocarbons should only be used when recovered from such equipment and only by the undertaking which carried out or mandated the recovery. For consistency this exemption should also apply to heat pump equipment.

(8) In view of the wide availability of technologies and alternative substances for replacing ODS, 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 in the Protocol.

(9) 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. It is now also appropriate to progressively generalise the ban on the use of those substances for the maintenance or servicing of such equipment.

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(10) 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 Commission should be empowered to establish conditions for essential laboratory and analytical uses. To avoid an increase in the quantities used for these purposes, producers and importers should not be allowed to significantly increase the quantities placed on the market. Specific conditions decided by the Parties for the placing on the market of substances for those uses should be integrated into this Regulation to ensure compliance with them.

(11) The availability of alternatives to methyl bromide has been reflected in more substantial reductions in its production and consumption compared to the Protocol, as well as in Commission Decision 2008/753/EC of 18 September 2008 concerning the non-inclusion of methyl bromide in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance[(5)] and in Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market[(6)]. The exemption for critical uses of methyl bromide should cease completely whilst temporarily allowing the possibility to grant a derogation in emergency situations in the case of unexpected pests or disease outbreaks where such emergency use is to be permitted under Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market[(7)] and Directive 98/8/EC. In such cases measures to minimise emissions, such as the use of virtually impermeable films for soil fumigation, should be specified.

(12) In view of Commission Regulation (EC) No 2032/2003 of 4 November 2003 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market[(8)], which banned the use of methyl bromide as a biocide by 1 September 2006, and Decision 2008/753/EC, which banned the use of methyl bromide as a plant protection product by 18 March 2010, the use of methyl bromide for quarantine and pre-shipment applications should also be banned by 18 March 2010.

(13) The Protocol, in Article 2F(7), requires the Parties to endeavour to ensure that the use of hydrochlorofluorocarbons is limited to those applications where more environmentally suitable alternative substances or technologies are not available. In view of the availability of alternative and substitute technologies, the placing on the market and use of hydrochlorofluorocarbons as well as of products and equipment containing or relying on hydrochlorofluorocarbons can be further limited. Decision VI/13 of the Parties to the Protocol provides that the evaluation of alternatives to hydrochlorofluorocarbons should take into account such factors as ozone-depleting potential, energy efficiency, potential flammability, toxicity, global warming potential and the potential impacts on the effective use and phase out of chlorofluorocarbons and halons. The Parties concluded in that decision that hydrochlorofluorocarbon controls under the Protocol should be considerably tightened to protect the ozone layer and to reflect the availability of alternatives.

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(14) 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 this Regulation. By covering additionally products and equipment for which the design, the use or the proper functioning requires 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 should be removed as they are no longer relevant and might constitute a risk of illegal placing on the market or trade.

(15) Controlled substances as well as products and equipment containing or relying on controlled substances from States not party to the Protocol should not be imported. Furthermore, the export of products and equipment containing or relying on hydrochlorofluorocarbons after the entry into force of a ban on use of those products and equipment or of controlled substances for their maintenance or servicing in the Community should be prohibited in order to avoid the building-up of banks of those substances in countries where sufficient destruction facilities are not available.

(16) 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 ODS and to allow for exchange of information between Parties. That licensing system should be extended to products and equipment containing or relying on controlled substances.

(17) To improve the monitoring and control of trade the licensing should 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. Transit through the customs territory of the Community, temporary storage, customs warehousing and the free zone procedure should still be possible without licensing in order to avoid unnecessary burdens on operators and customs authorities. Shipments to or from a territory of a Member State that is not part of the customs territory of the Community or not covered by this Regulation, but which is covered by the Member State's ratification of the Protocol should not create unnecessary burdens to Member States in relation to licensing and reporting provided that the obligations of this Regulation and the Protocol are complied with.

(18) Before issuing import and export licences the Commission should be enabled 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.

(19) 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[(9)], 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[(10)] and Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December

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2008 on classification, labelling and packaging of substances and mixtures[11] provide for the labelling of substances classified as ODS and the labelling of mixtures containing such substances. As ODS produced for feedstock, process agent, laboratory and analytical uses can be released for free circulation in the Community, they should be distinguished from those substances produced for other uses, in order to avoid any diversions of controlled substances intended for feedstock, as a process agent or for laboratory and analytical uses to other uses which are controlled under this Regulation. Furthermore, in order to inform end users and to facilitate the enforcement of this Regulation also products and equipment containing or relying on such substances should be so labelled during maintenance or servicing.

(20) To reduce the release of controlled substances into the atmosphere, provision should be made for the recovery of used controlled substances and the prevention of leakages of controlled substances.

(21) The Protocol requires reporting on trade in ODS. Annual reporting should therefore be 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 should also report directly to the Commission. To ensure compliance with reporting obligations under the Protocol and to improve their practical application the Commission should be empowered to modify the reporting requirements for Member States and undertakings. In view of the envisaged development of Internet-based reporting tools the Commission should, as appropriate, draft measures to adapt the reporting requirements as soon as the relevant reporting tools are in place.

(22) The protection of individuals with regard to the processing of personal data by the Member States is governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[12] and the protection of individuals with regard to the processing of personal data by the Commission is governed by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[13] in particular as regards the requirements of confidentiality and security of processing, the transfer of personal data from the Commission to the Member States, the lawfulness of processing, and the rights of data subjects to information, access to and rectification of their personal data.

(23) Member States should carry out inspections, taking a risk-based approach in order to ensure compliance with all provisions of this Regulation and thus targeting those activities representing the highest risk of illegal trade or emission of controlled substances. Recommendation 2001/331/EC of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States[14] should provide guidance for the carrying out of inspections by Member States.