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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

Completing the phase-out of substances that deplete the ozone layer
Better regulation building on 20 years of success

PART 1

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1. INTRODUCTION

The stratospheric ozone layer shields life on earth from harmful ultraviolet radiation from the sun. In the early 1980s, scientists observed a significant decrease in the concentration of ozone in the stratosphere over the Antarctic, which became widely known as the "ozone hole". At its peak – during spring in the late 1990s – the ozone hole was most severe around the poles, although concentrations were significantly reduced in other places as well. Increased UV radiation has an adverse impact on human health, e.g. by increasing the incidence of skin cancers and cataracts, and on ecosystems.

As early as 1987, governments agreed on the Montreal Protocol on Substances that Deplete the Ozone Layer, thereby starting the phase-out of ozone-depleting substances (ODS) in all signatories following a set timetable. In 2007, the Parties (including the European Community) celebrated the twentieth anniversary of the Montreal Protocol, hailing it as one of the most successful of all international environmental agreements. By then, all 191 Parties had achieved a 95% reduction in consumption of ODS compared with the baselines set.[1] Reductions were highest (99.2%) in industrialised countries and somewhat lower (80%) in developing countries.[2]

In its latest report, released in 2007, the Scientific Assessment Panel (SAP) established under the Montreal Protocol confirmed that the ozone layer is slowly recovering thanks to the control measures introduced by the Protocol – albeit 10 to 15 years behind the projections in its earlier 2002 report. Average and Arctic ozone levels are now expected to recover by 2050 and the Antarctic ozone hole between 2060 and 2075.

According to UNEP, controls introduced under the Montreal Protocol will avoid millions of fatal skin cancers and tens of millions of non-fatal skin cancers and cataracts worldwide. Furthermore, these controls will help to avoid greenhouse gas emissions equivalent to more than 100 billion tonnes of CO_2 between 1990 and 2010.

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[1] Article 1 of the Montreal Protocol defines "Consumption" as production plus imports minus exports of controlled substances.

[2] Successful reductions in developing countries have been made possible by the Multilateral Fund which to date has channelled about US$2.4 billion into technology transfer and related capacity-building projects. Timetables for developing countries typically lag a few years behind those of industrialised countries.

By 2010, ODS emissions will account for less than 5% of global projected CO_2 emissions compared with nearly 50% in 1990.[3]

In its 2007 report, SAP warned the Parties that, despite the successes, continued vigilance was required to keep to the newly projected timetable for recovery of the ozone layer, also taking account of the remaining uncertainties, notably about the impact of climate change. Key remaining challenges are:

– Release of "banked" ODS/GHG emissions into the atmosphere – Because the Protocol has been focusing on banning ODS production, significant amounts of ODS remain stored or "banked" in products and equipment (e.g. in insulation foams, refrigerants and air-conditioning systems). Estimates suggest that by 2015 these global banks will add up to 2 million ozone-depleting potential (ODP) tonnes or 13.4 billion tonnes of CO_{2eq} – hence the need for further action.

– Exempted uses of ODS – The Protocol provides for a degree of flexibility on use of controlled ODS, e.g. where no technically or economically viable alternatives are yet available or for certain applications, such as use of methyl bromide for quarantine and pre-shipment purposes or feedstock. SAP warned the Parties that by 2015 such exempted uses need to be reduced significantly from their current levels of around 20 000 ODP tonnes per annum to avoid slipping a few more years behind the timetable for recovery of the ozone layer.

– New ODS – New scientific evidence has revealed that the ODP of certain chemical substances not currently controlled by the Protocol is substantially higher, whilst marketing of these substances is growing rapidly.

The SAP also expressed serious concerns about the faster growth of production of hydrochlorofluorocarbons (HCFCs) ahead of the full phase-out in 2040 in developing countries. However, the Parties acted swiftly by agreeing immediately, in 2007, on an adjustment to the Protocol on accelerated HCFC phase-out schedules to achieve reductions of up to 1 million ODP tonnes and 18 billion tonnes of CO_{2eq} globally.[4]

These global challenges (albeit not applying in full to the EU) set the background for this proposal by the Commission and its underlying analysis.

2. CURRENT SITUATION IN THE EU

Regulation (EC) No 2037/2000 on substances that deplete the ozone layer ("the Regulation") is the European Communities' main instrument for implementing the Montreal Protocol.[5] The closely matching and mutually reinforcing international and

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3 These big contributions to climate change are due to the very high global warming potential (GWP) of ozone-depleting substances (some of which are more than 14 000 times more potent than CO_2).

4 Cf. Decision XIX/6 of the 19th meeting of the Parties to the Protocol (2007, Montreal) to accelerate the phase-out of HCFCs. Note that the potential greenhouse gas (GHG) reductions depend on containment of emissions from present alternatives (e.g. for refrigerants) with relatively high GWP (such as HFCs) and/or introduction of alternatives with low GWP. These climate change considerations are embedded in the decisions taken by the Parties on this matter.

5 The Regulation also amends previous Regulations which have been in force for almost two decades.

EU policy frameworks have an impressive track record, showing an almost complete phase-out of consumption and production of the controlled ODS.

To date, the EC has phased out more than 99% of its baseline consumption of ODS. By 2010, the EC will have fully phased out controlled ODS consumption, save for a few hundred ODP tonnes per year, compared with baseline levels of 400 000 tonnes. ODS production in the EC for uses controlled by the Protocol and the Regulation is set to end by 2025 and is currently decreasing to around 4 000 ODP tonnes per year in 2010 compared with baseline levels of 700 000 tonnes. With the accelerated HCFC phase-out schedule adopted by Parties in 2007, the Regulation needs to be realigned to bring forward the production phase-out from 2025, as currently provided for in the Regulation, to 2020. In view of the upcoming phase-out of the use of "virgin" HCFCs, measures need to be strengthened to reduce the risk of illegal trade and use of ODS.

ODS banks in the EU could add up to approximately 700 000 ODP tonnes in 2010, equivalent to 5 billion tonnes of CO_2, although the current estimates are subject to a large degree of uncertainty. Annual emissions over the period 2005-15 could range up to 24 000 ODP tonnes per annum or up to 170 million tonnes of CO_{2eq}. The bans on use and the provisions on recycling and destruction contained in the Regulation and, most importantly, similar provisions in the EU Waste Framework Directive and the Waste from Electric and Electronic Equipment Directive could capture most of these emissions, even though current EU waste recycling and recovery rates are acknowledged to be very low.

Emissions of new ODS in the EU are currently estimated to total less than 300 ODP tonnes per year, albeit growing steadily. In the EU critical and essential uses of ODS have ceased in all but a few cases, whilst exempted uses of methyl bromide for quarantine and pre-shipment (QPS) activities are expected to remain stable at less than 300 ODP tonnes per year.

Administrative expenditure by all involved in implementing the Regulation has fallen significantly in line with the steady reduction in the number of exemption decisions required due to the continuous development and marketing of technically and economically viable alternatives. A stakeholder survey conducted to support this proposal confirmed the general satisfaction with the effectiveness and efficiency of the existing regulatory framework, even though it was commonly recognised as complex.

3. TOWARDS BETTER REGULATION

The European institutions' commitment to better regulation, combined with the EU's 20 years' experience in protecting the ozone layer, created a timely opportunity to review the Regulation on substances that deplete the ozone layer.[6]

The main objectives of this revision are: (1) to simplify and recast Regulation (EC) No 2037/2000 whilst at the same time reducing any unnecessary administrative

[6] This review is included in the 2008 Commission Legislative and Work Programme (CLWP) under the heading "Simplification".

burden in line with the Commission's commitment to better regulation; (2) to ensure compliance with the Montreal Protocol as adjusted in 2007; and (3) to make sure that the future challenges outlined above are addressed, in order to ensure the timely recovery of the ozone layer and to avoid adverse impacts on human health and ecosystems.

In the present context, at both global and EU level, a range of areas for improvement were discussed and assessed in detail during the review of the Regulation and the associated impact assessment.[7] As a result, the Commission proposes to simplify, streamline and enhance the Regulation to protect the ozone layer whilst taking a number of measures in parallel, including at international level.

3.1. Revising the existing legislation

The review identified ample opportunities for simplifying the text of the Regulation.[8] Some of the main amendments to simplify it consist of removing the now obsolete provisions and associated procedures for essential and critical uses of ODS and of streamlining reporting where possible, while taking due account of the EU's obligations stemming from the Protocol.

The review also served to align the Regulation with the recent Decision XIX/6 to accelerate the phase-out of HCFCs, as adopted by the Parties to the Protocol in 2007. The phase-out date for production of HCFCs will therefore be brought forward to beginning of 2020. The Commission also proposes some measured amendments to facilitate the complex task of enforcement, notably by customs authorities, to prevent illegal trade and use of ODS in the EU. Such measures include introducing selected labelling requirements and ending little-used exemptions which impose significant administrative costs on a small number of players for rapidly diminishing benefits.

To enable the EU to tackle the remaining challenges, some measured strengthening of the legislation was required, albeit at limited costs whilst often offering further administrative simplification.

To tackle the ODS banks, the Commission proposes tightening up the provision in the Regulation on recovery and destruction of ODS contained in products and equipment, yielding environmental benefits of up to 14 000 ODP tonnes (112 million tonnes of CO_{2eq}).

To avoid expanding markets that would have to be tackled later, the Commission proposes listing new ODS in the Regulation and requiring producers and importers to report the volumes traded. Furthermore, the Commission proposes lowering the existing cap on use of methyl bromide for quarantine and pre-shipment purposes from 600 ODP tonnes to current levels of 200 tonnes and to complete a full phase-out by 2015. Meanwhile, available recapture technologies will be made mandatory, also for protecting workers' health.

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7 See SEC(2008) xxx and SEC(2008) xxx.

8 The options of leaving the Regulation unchanged (business as usual) or even of withdrawing it were duly considered but rejected, *inter alia* on the grounds that they would put the EC in non-compliance with the Montreal Protocol and would not allow it to pursue its simplification objective.

3.2. Further action

In addition to the amendments outlined above, the Commission will take further action to achieve a complete phase-out of ODS, including at international level.

Follow-up action will focus, first and foremost, on improving the implementation and enforcement of the waste policy framework, notably the Waste from Electric and Electronic Equipment ('WEEE') directive, and recovery of ODS in the construction and demolition waste stream. Such actions will also focus on identifying appropriate incentives to significantly increase the amount of ODS contained in products and equipment presented for recovery, recycling or destruction in the EU.[9] These actions will be pursued in close cooperation with Member States and stakeholders in the areas of ozone-depleting substances, waste management (notably for construction and demolition waste) and climate change. These measures could potentially yield further environmental benefits of up to 80 000 ODP tonnes or 640 million tonnes of CO_{2eq}.

In parallel, the Commission will work at the international level with Member States and other Parties to the Protocol, including through bilateral meetings, to continue bringing down remaining uses and emissions of ODS also encouraging all Parties to fully sign up to the amendments of the Protocol. Priorities will notably include ensuring that the global phase-out of HCFCs leads to the introduction of climate-friendly alternatives, the tackling ODS banks in developing countries, reducing the use of methyl bromide for QPS activities, and monitoring global controls on new ODS adequately and, if necessary, stepping them up. The Commission will furthermore continue to promote technology and knowledge transfer through targeted workshops and knowledge sharing activities.

4. EXPECTED IMPACT

The resultant package will lead to a significantly simplified regulatory text whilst simultaneously offering guarantees for locking in and consolidating the progress made to date on the ODS phase-out. Building on past successes and opportunities for simplification, the overall reductions in administrative costs will total nearly €3 million over the period 2010-2020, with about €2 million accruing to industry, €0.7 million to Member State authorities and the remainder to the European Commission. The cumulative additional direct economic impact over the period 2010-2020 is expected to stay below €13 million, mainly related to measures to reduce methyl bromide use for QPS purposes[10]. Simplification is expected to be particularly beneficial to SMEs which have less access to specialist knowledge for implementing the Regulation.

The most tangible benefits from the package are related to policy action on QPS activities and on recovery and destruction of "banked" ODS. These could add up to a

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9 E.g. standards linked to offset or deposit systems, funding destruction from regional funds, etc.

10 Costs would be significantly lower if taking into account the likely decision to deregister Methyl Bromide on health grounds.

net gain of 16 000 ODP tonnes over the period 2010-2020 or the equivalent of 112 million tonnes of CO_2[11].

5. CONCLUSIONS

The Regulation has proven to be highly effective, ensuring that the EU was a leading contributor to the protection of the Ozone layer. The proposed policy options build on the strengths of the existing Regulation, and reflect a deep commitment to simpler and better regulation based on sound analysis. The new Regulation proposed will ensure that the EU continues to comply with the Montreal Protocol, whilst avoiding unnecessary administrative costs. Simultaneously, it will put the EU in a better position to continue playing a leading role in tackling the remaining challenges at global level, including illegal trade, therefore also meeting the concerns of *bona fide* traders and NGOs.

[11] In terms of global warming potential, this is equivalent to about 2% of greenhouse gas emissions in 1990. For comparison only, reductions are equivalent to 1/10th of the reductions necessary to achieve the 2020 objective of cutting greenhouse gas emissions by 20% under the climate and energy package.