



COMMISSION OF THE EUROPEAN COMMUNITIES

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OPINION OF THE COMMISSION

**pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposals for a**

**REGULATION OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

on certain fluorinated greenhouse gases

**DIRECTIVE OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

**relating to emissions from air-conditioning systems in motor vehicles and amending
Council Directive 70/156/EEC**

**AMENDING THE PROPOSAL OF THE COMMISSION pursuant to Article 250 (2) of the
EC Treaty**

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1. INTRODUCTION

Article 251(2), third subparagraph, point (c) of the EC Treaty provides that the Commission is to deliver an opinion on the amendments proposed by the European Parliament at second reading. The Commission sets out its opinion below on the amendments proposed by Parliament.

2. BACKGROUND

The proposal COM (2003) 492 final was transmitted to the European Parliament and the Council in accordance with the co-decision procedure of the EC Treaty on 11 August 2003.

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

The European Parliament gave its opinion at first reading on 31 March 2004.

Following the opinion of the European Parliament and pursuant to Article 251(2) of the EC Treaty, the Council adopted the Common Position formally on 21 June 2005. The Commission's Communication on the Common Position was adopted on 1 July 2005 and the European Parliament adopted its position at second reading on 26 October 2005.

3. PURPOSE OF THE PROPOSALS

The proposed Regulation and Directive put in place:

- (i) a legislative framework that will contribute to the reduction of emissions of fluorinated greenhouse gases covered by the Kyoto Protocol and so make a contribution to meeting the EU's and Member States' Kyoto targets and beyond.
- (ii) a legal framework that also facilitates the internal market.

4. OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT

On 26 October 2005, the European Parliament with respect to the **Regulation** adopted 26 of the 45 amendments that were tabled. Out of the 26 amendments adopted, the Commission can accept 4 amendments in full, 7 amendments in part and a further 8 amendments in principle. 7 of the adopted amendments are not acceptable to the Commission. As regards the **Directive** the European Parliament adopted 1 amendment that the Commission cannot accept.

4.1 The Regulation

4.1.1 Amendments accepted by the Commission

4.1.1.1 Amendments Accepted in Full

Amendment **10** introduces the element of “preventing” emissions as well as reducing emissions of fluorinated greenhouse gases which is already used in relation to leaks in Article 3. Amendment **13** further develops the definition of hermetically sealed systems and improves clarity. Amendment **24** is just a reference to amendment 23 which the Commission accepts in principle. Amendment **29** includes energy efficiency as an element to take into account in assessing whether new products and equipment containing these gases should be prohibited. The Commission considers that these amendments are in line with and improve the current text and will facilitate the implementation and contribute to the effectiveness of the Regulation. The Commission can thus accept them.

4.1.1.2 Amendments Accepted in Part

Amendment **2** (a recital) specifies that individual Member States because they have different targets under the burden sharing agreement under the Kyoto Protocol should be able to take individual measures to meet their targets. However, it is not indicated that such measures must be compatible with the Treaty and the Regulation. The new recital 3(a) is only acceptable if it reads as follows:

“3(a) Annex II of Decision 2002/358/EC lays down different reduction targets for individual Member States. The Member States are therefore required to take measures to meet their Kyoto targets provided that these are compatible with the Treaty.”

Amendment **11** introduces in Article 1 (scope) a number of clarifications. Most of these changes can be accepted but it would be preferable to preserve the word inspection rather than “control on use” as suggested. A text related to this last issue is proposed in relation to amendment 17.

Amendment **16** changes the word inspection to “checked” and substitutes “circuits” for equipment in relation to hermetically sealed systems. The second part is acceptable but the Commission would wish to maintain “inspection” rather than “checked”. The text proposed in relation to amendment 17 might provide a solution to this definition problem.

Amendment 17 changes the words “inspected for leakage” with “checked for leakage” and specifies language with respect to indirect methods. The Commission cannot accept the first element. As regards the second part it would be possible to accept with some redrafting and the text could possibly meet the concerns with regard to the use of the word “inspection”.

“For the purposes of this paragraph, “inspected for leakage” means that the equipment or system is examined primarily for leakage using direct, focusing on those parts of the equipment or system most likely to leak or indirect measuring methods focusing on the operating parameters that indicate fluorinated greenhouse gas loss. This inspection for leakage can be carried out by the operator subject to the provisions of Article 5.”

Amendment 21 adds in the reporting provision “solvents and fire protection systems” to the main category of applications that will guide producers and importers in their reporting. The Commission could accept the inclusion of fire protection systems but not solvent users since there are many small users and producers and importers would have considerable difficulty in collecting data.

Amendment 25 introduces a number of changes with respect to the labelling provisions, notably indication of global warming potential. Commission could accept the principle but believes this could be best done in comitology. A text is suggested below:

“The Commission shall evaluate how best to label equipment and products containing fluorinated greenhouse gases in order to provide full environmental disclosure, including through life-cycle analysis, to consumers of such products and equipment. Two years after the entry into force of this Regulation, if appropriate the Commission shall establish labels to be used on such products and equipment in accordance with procedure referred to in Article 11(2)”

In Amendment 44, paragraph 1 specifies that Member States should promote alternatives, taking into account gases with a high GWP and that the Commission should be notified by the Member States of bans. The Commission could accept the first part of paragraph 1 with some rewording but does not believe the notification is necessary. Listing the applications which are covered in paragraph 2 is not necessary and should, therefore, be dropped.

“Without prejudice to the Treaty and in particular Article 87 thereof, Member States shall endeavour to promote the placing on the market of equipment containing fluorinated greenhouse gases that are more environmentally friendly taking into account the energy efficiency benefits of certain gases in certain applications.”

4.1.1.3. Amendments Accepted in Principle

Amendment 3 is a new recital about the high global warming potential of fluorinated greenhouse gases. This is in line with what is indicated in Annex I of the Regulation but some of the language needs correction and a text that would be appropriate is as follows:

“3(b) Some fluorinated greenhouse gases, controlled under the Kyoto Protocol and this Regulation, have high GWPs and long atmospheric lives.”

Amendment 6 is a new recital that specifies that application and enforcement of this Regulation should spur technological innovation. This amendment can be accepted with some slight redrafting of the text with the focus on technological innovation as below:

“(6a) The application and enforcement of this Regulation should encourage technological innovation by the continued development of alternative technologies that are more environmentally friendly.”

Amendment 7 is a new recital that specifies that the regulation should not prevent Member States from maintaining or introducing stricter protective measures. This amendment is similar to amendment 2 and the text proposed for this amendment would be acceptable for amendment 7.

Amendment 15 adds the term circuits to equipment. Circuit would cover all the elements in equipment where the fluorinated greenhouse gas is used and is the standard term in standards documents. In this context it might be useful to add **“in particular”** before circuits.

Amendment 20 requires that companies and their personnel involved in the maintenance and the installation of equipment covered by the Regulation should also be covered by the certification and training requirements. The Commission can agree in principle with the aim of covering “installation” but believes that this is disproportionate for the small plug in items. Maintenance is a wide concept and the relevant operations would be covered by the term “servicing”. A suggested text would be

For both the companies and for the relevant personnel involved in installing the non-plug in equipment referred to in Articles 3 and 4 as well as for those involved in servicing or carrying out controls of this equipment for the

Amendment 22 requires each owner of stationary applications referred to in Article 3, paragraph 2 (b) and (c) to obtain a registration number from the relevant competent authority for each system installed. It would be useful to indicate that this number should be used in all the record keeping provided for under Article 3 (6).

*“Each owner of stationary applications referred to in Article 3(2) (b) and (c) shall obtain a registration number from the relevant competent authority for each system installed. **This number shall be used in the record keeping provided for under Article 3(6)**”*

Amendment 23 requires the Member States’ competent authorities to review every 2 years a representative sample of the records referred to in Article 3. The Commission could accept if period is increased to **three** years.

Amendment 43 provides for some delay in the fitting of leakage detectors to fire protection systems. The Commission could accept this with a delay of **two** years and without the inclusion of safety and insurance provisions since these are implicitly covered and it does not wish to see such factors delaying even further the implementation of the Regulation.

4.1.2. Amendments rejected by the Commission

Amendment 12 provides another definition of “placing on the market” by replacing producer by manufacturer. The existing definition does not lack of clarity or ambiguity and so it could be maintained.

Amendment 14 introduces a definition of "stationary" applications. The Commission believes that the wording of this amendment could lead to confusion and should be rejected.

Amendment 18 changes the word “inspections” to “control measures”. The rejection of this amendment is in line with the position taken on the same issue in amendments 16 and 17.

Amendment 19 specifies that Member States shall facilitate the cross-border transport of recovered fluorinated greenhouse gases for destruction or reclamation. This amendment is acceptable in principle but since the cross border shipment of F-Gases will be covered by the new proposed Regulation on “Waste Shipment”. The Commission believes that it is not necessary to include it in this Regulation.

Amendment 27 requires the Commission to present legislative proposal by the 31 December 2008 with respect to mobile air-conditioning systems (MACs) in vehicles other than cars and refrigeration systems in transport. The Commission cannot accept this since it would have to produce proposals by a certain data irrespective of what emerges from its technical and economic evaluations and this could unduly restrict the Commission’s right of initiative.

Amendment 42 aims to facilitate the Commission’s role and increase transparency in relation to national measures on F-Gases and also ensure timely Member State notification under Article 176. The Commission cannot accept this amendment, there is already a system of notification of national measures and this amendment will provide no added value.

Amendment 45 says that the Regulation shall not prevent Member States from keeping or taking stronger protective measures. Amendment 7 that introduces the same notion in a recital has been accepted in principle. However, this amendment refers to an article of the Regulation. Some Member States may use it as a justification for any stricter measure even if they are detrimental to the internal market. The provisions of the Treaty are directly applicable, hence this amendment is not acceptable.

4.2 The Directive

4.2.1. Amendments accepted by the Commission

4.2.1.1. Amendments Accepted in Full

None

4.2.1.2. Amendments Accepted in Part

None

4.2.1.3 Amendments Accepted in Principle

None

4.2.2. Amendments rejected by the Commission

Amendment 1 would allow Member States to promote the installation of air conditioning systems using a gas that is efficient and which has a low global warming potential using fiscal or other incentives. This amendment does not add anything to the proposal. Member States are already allowed to grant fiscal incentives provided that they comply with state aid rules, particularly the Guidelines on State Aid for environmental protection as well as on Commission notice on the application of the State aid rules to measures relating to direct

business taxation. Such measures have to be notified to the Commission and assessed on a case by case basis.

5. CONCLUSION

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal as set out above. The Commission would like to underline that, in order to contribute positively to the conciliation phase, it is ready to look at ways of facilitating solutions to outstanding issues.