I

*(Acts whose publication is obligatory)*

# COUNCIL REGULATION (EEC) No 3322/88

## of 14 October 1988

## on certain chlorofluorocarbons and halons which deplete the ozone layer

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130s thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Comittee (2),

Whereas the Community together with several of its Member States signed, on 22 March 1985, the Vienna Convention for the protection of the ozone layer;

Whereas it is established that continued emissions of certain chlorofluorocarbons and halons at current levels are likely to cause significant damage to the ozone layer; whereas there is an international consensus that significant reductions in both production and consumption of such substances are necessary; whereas Decisions 80/372/EEC (3) and 82/795/EEC (4) provide for controls which are of limited effect and which cover only two such substances (CFC 11 and CFC 12);

Whereas a Protocol supplementary to the Vienna Convention, the Montreal Protocol on substances that deplete the ozone layer, was negotiated and adopted on 16 September 1987; whereas the Protocol has been signed by the Community and by several of its Member States;

Whereas in view of the responsibilities of the Community for the environment and trade, the Community has approved by Decision 88/540/EEC (5) the Vienna Convention and the Montreal Protocol;

Whereas it is necessary for action to be taken at Community level to carry out the Community's obligations under the Convention and the Protocol, in particular to control production and consumption within the Community of certain chlorofluorocarbons and halons;

Whereas, in accordance with Article 130t of the Treaty, the adoption of such Community action will not prevent any Member State from maintaining or introducing more stringent measures for the protection of the environment compatible with the Treaty;

Whereas bearing in mind the market structure for certain chlorofluorocarbons and halons, it is appropriate to control consumption of these substances by controlling supply rather than demand; whereas supply can be controlled by limiting sales and use by producers in the Community, and by limiting imports;

Whereas it is necessary to keep under review the evolution of the market in chlorofluorocarbons and halons, particularly with regard to sufficient supply for essential uses, and the state of development of appropriate substitutes;

Whereas the Protocol also requires certain restrictions to be imposed on trade with States which are not Parties to the Protocol, and requires certain data to be reported;

Whereas additional Community measures may be needed to carry out the Community's obligations under the Protocol in respect of research and development, and technical assistance;

Whereas the reductions in production and consumption envisaged for the year 1 July 1998 to 30 June 1999 and in each period of 12 months thereafter will be reconsidered in the light of any decision of the Parties in accordance with Article 2 (4) of the Protocol,

(1) OJ No C 187, 18. 7. 1988, p. 46.
(2) OJ No C 208, 8. 8. 1988, p. 3.
(3) OJ No L 90, 3. 4. 1980, p. 45.
(4) OJ No L 329, 25. 11. 1982, p. 29.

(5) See page 8 of this Official Journal.

HAS ADOPTED THIS REGULATION:

*Article 1*

This Regulation applies to the importation, exportation, production and consumption of the chlorofluorocarbons and halons referred to in Annex I.

*Article 2*

**Definitions**

In this Regulation:

— 'the Protocol' means the Montreal Protocol on substances that deplete the ozone layer,

— 'chlorofluorocarbons' means the substances listed in Group I of Annex I,

— 'halons' means the substances listed in Group II of Annex I,

— 'producer' means any natural or legal person manufacturing chlorofluorocarbons or halons within the Community,

— 'undertaking' means any natural or legal person which produces or uses in the Community chlorofluorocarbons or halons for industrial or commercial purposes or which imports those substances into, or exports them from, the Community for industrial or commercial purposes,

— 'ozone-depleting potential' means the figure specified in the final column of Annex I representing the potential effect of each substance on the ozone layer,

— 'calculated level' means a quantity determined by multiplying the quantity of each substance by the ozone-depleting potential of that substance specified in Annex I and by adding together, for each group of substances in Annex I separately, the resulting figures,

— 'industrial rationalization' means the transfer either between Parties to the Protocol or within a Member State of all or a portion of the calculated level of production of one producer to another, for the purpose of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures.

PART I

**Import regime**

*Article 3*

1. The importation into the Community of chlorofluorocarbons and halons originating in third countries shall be subject to quantitative limits.

2. For this purpose the Community shall open the quotas set out in Annex II which shall be applicable during the period laid down in that Annex.

3. The Commission, according to the procedure set out in Article 10, may modify the quotas set out in Annex II.

*Article 4*

1. With effect from 1 January 1990, the importation into the Community of chlorofluorocarbons and halons originating in third countries not Parties to the Protocol is prohibited.

2. By derogation from paragraph 1 above, the importation into the Community of chlorofluorocarbons and halons originating in a third country not a Party to the Protocol may be permitted by the Commission if that country is determined by a meeting of the Parties to the Protocol to be in full compliance with Articles 2 and 4 of the Protocol, and has submitted data to that effect as specified in Article 7 of the Protocol. The Commission shall act in accordance with the procedure set out in Article 10.

*Article 5*

1. Subject to the decision referred to in paragraph 2, the importation into the Community of products originating in third countries which are not Parties to the Protocol, containing chlorofluorocarbons or halons, is prohibited with effect from 1 January 1993.

2. The Council, on the proposal of the Commission, shall adopt before that date the list of these products in the light of the list established by the Parties to the Protocol. The Council shall act by a qualified majority.

*Article 6*

In the light of the decision of the Parties to the Protocol, the Council, on the proposal of the Commission, shall adopt rules applicable to the importation into the Community of products originating in third countries which are not Parties to the Protocol, which are produced with chlorofluorocarbons or halons but which do not contain these substances. The Council shall act by a qualified majority.

*Article 7*

1. The release into free circulation in the Community of chlorofluorocarbons or halons which are subject to the quotas referred to in Article 3 shall be subject to presentation of an import licence issued by the competent authority of the Member State in which the chlorofluorocarbons or halons

are to be released into free circulation in the Community. This licence shall be issued in accordance with the quotas allocated to importers by the Commission following the procedure set out in Article 10.

2. A request for a licence shall contain:

(a) the name and address of the importer;

(b) the description of each substance stating:
- the commercial description,
- the heading in the combined nomenclature,
- the country of origin,
- the country from which the substance is imported;

(c) a statement of the quantity of each substance to be imported in tonnes;

(d) the place and date of proposed importation, if known.

PART II

*Article 8*

**Control of production**

1. Each producer shall, subject to the provisions of paragraphs 3 and 4, ensure that:

- the calculated level of its production of chlorofluorocarbons in the period 1 July 1989 to 30 June 1990 and in each 12-month period thereafter, does not exceed the calculated level of its production in 1986,
- the calculated level of its production of chlorofluorocarbons in the period 1 July 1993 to 30 June 1994 and in each 12-month period thereafter, does not exceed 80 % of the calculated level of its production in 1986;
- the calculated level of its production of chlorofluorocarbons in the period 1 July 1998 to 30 June 1999 and in each 12-month period thereafter, does not exceed 50 % of the calculated level of its production in 1986.

2. Each producer shall, subject to the provisions of paragraphs 3 and 4, ensure that the calculated level of its production of halons in the period 1 January to 31 December 1992 and in each 12-month period thereafter, does not exceed the calculated level of its production of halons in 1986.

3. A producer may be authorized by the Commission in agreement with the competent authority of the Member State in which it is situated, to exceed the calculated levels of production set out in paragraphs 1 and 2 for the purposes of industrial rationalization between Parties to the Protocol or so as to satisfy the basic domestic needs of States operating under Article 5 of the Protocol, provided that the calculated levels of production of chlorofluorocarbons and halons respectively of the Member State concerned do not exceed the levels permitted by Article 2 of the Protocol for the periods in question.

In the case of authorization for industrial rationalization, the agreement of the competent authority of the Member State in which it is intended to reduce production shall also be required.

4. A producer may exceed the calculated levels of production set out in paragraphs 1 and 2 for the purposes of industrial rationalization within the Member State in whose territory the producer is established, provided that the obligations of that Member State under the Protocol are not thereby infringed. The competent authority of the Member State and the Commission shall be notified beforehand.

*Article 9*

**Control on consumption through control of supply in the Community**

1. Each producer shall ensure that the quantity of chlorofluorocarbons which it places on the market or uses for its own account within the Community from quantities produced by it shall not exceed:

- in the period 1 July 1989 to 30 June 1990, and in each 12-month period thereafter, the calculated level of the quantity which it placed on the market or used for its own account within the Community in 1986,
- in the period 1 July 1993 to 30 June 1994, and in each 12-month period thereafter, 80 % of the calculated level of the quantity which it placed on the market or used for its own account in 1986,
- in the period 1 July 1998 to 30 June 1999, and in each 12-month period thereafter, 50 % of the calculated level of the quantity which it placed on the market or used for its own account in 1986.

2. Each producer shall ensure that the quantity of halons which it places on the market or uses for its own account within the Community, from quantities produced by it in the period 1 January to 31 December 1992, and in each 12-month period thereafter, shall not exceed the calculated level of the quantity which it placed on the market or used for its own account within the Community in 1986.

3. Any imports permitted in accordance with Part I of this Regulation shall be in addition to the quantities which producers may place on the market or use for their own account in accordance with this Article.

4. The quantities resulting from the application of paragraphs 1 and 2 may be increased by the Commission if imports of chlorofluorocarbons or halons into the Community in any 12-month period to which paragraph 1 or 2 applies shall be less than the respective quantitative limits fixed in Annex II.

The Commission shall act in accordance with the procedure set out in Article 10.

5. Any producer having the right to place on the market or use may transfer its right in respect of all or any of the quantity fixed in accordance with this Article to any other producer within the Community. The producer acquiring the right shall immediately notify the Commission. A transfer of the right to place on the market or use does not imply additional right to produce.

## PART III

## Management, data reporting and final provisions

### *Article 10*

The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the comittee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measure which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the third paragraph.

### *Article 11*

### Data reporting

1. Each producer, importer and exporter of chlorofluorocarbons and halons shall communicate to the Commission, with a copy to the competent authority of the Member State concerned, not later than 31 August and 28 February of every year the figures of its:

— production,

— quantities placed on the market or used for the producer's own account within the Community,

— imports into the Community,

— exports from the Community, separately to countries Parties and non-parties to the Montreal Protocol,

— stocks,

— quantities destroyed, in accordance with technologies approved by the Parties to the Protocol,

of each of the chlorofluorocarbons and halons listed in Annex I in respect of the period 1 January to 30 June 1989 and for each six-month period thereafter.

2. Each company which produced, imported or exported chlorofluorocarbons or halons in 1986 shall communicate to the Commission the data referred to in paragraph 1 in respect of that year not later than 30 November 1988.

3. The communications referred to in the last indent of paragraph 1 shall be made to the Commission for the first time on 31 August or 28 February, whichever is applicable, following the date on which approval is granted.

4. The Commission will take the appropriate measures to protect the confidentiality of the submitted data.

### *Article 12*

### Inspection

1. In carrying out the tasks assigned to it by this Regulation, the Commission may obtain all necessary information from the governments and competent authorities of the Member States and from undertakings.

2. When sending a request for information to an undertaking the Commission shall at the same time forward a copy of the request to the competent authority of the Member State in whose territory the seat of the undertaking is situated, together with a statement of why this information is required.

3. The competent authorities of the Member States will undertake the investigations which the Commission considers to be necessary under this Regulation.

4. If agreed by the Commission and the competent authority of the Member State in whose territory the investigation is to be made, the officials of the Commission shall assist the officials of such authority in carrying out their duties.

5. The Commission will take the appropriate measures to protect the confidentiality of information obtained pursuant to this Article.

*Article 13*

Member States shall take appropriate legal or administrative action in case of infringement of the provisions of this Regulation.

*Article 14*

This Regulation shall come into force on 1 January 1989.

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

Done at Luxembourg, 14 October 1988.

*For the Council*

*The President*

V. PAPANDREOU

*ANNEX I*

**Substances covered by the Regulation**

The Regulation applies to the substances listed in this Annex, whether alone or in a mixture; it does not apply to any such substance which is in a manufactured product other than a container used for the transport or storage of the substance listed.

| Group | Substance | | Ozone-depleting potential (1) |
|---|---|---|---|
| Group I | $CFCl_3$ | (CFC- 11) | 1,0 |
| | $CF_2Cl_2$ | (CFC- 12) | 1,0 |
| | $C_2F_3Cl_3$ | (CFC-113) | 0,8 |
| | $C_2F_4Cl_2$ | (CFC-114) | 1,0 |
| | $C_2F_5Cl$ | (CFC-115) | 0,6 |
| Group II | $CF_2BrCl$ | (halon-1211) | 3,0 |
| | $CF_3Br$ | (halon-1301) | 10,0 |
| | $C_2F_4Br_2$ | (halon-2402) | 6,0 (2) |

(1) These ozone-depleting potentials are estimates based on existing knowledge and will be reviewed and revised periodically.
(2) Provisional figure pending decision of the Parties to the Protocol.

*ANNEX II*

**Quantitative limits on imports from third countries**

| Description (2) | Units | For 12-month periods from 1 July 1989 to 30 June 1993 | For 12-month periods from 1 July 1993 to 30 June 1998 | For 12-month periods from 1 July 1988 |
|---|---|---|---|---|
| Group I of Annex I (Chlorofluorocarbons) | Weighted tonnes (1) | 2 321 (a) | 1 857 (b) | 1 161 (c) |
| Group II of Annex I (Halons) | Weighted tonnes (1) | For 12-month periods from 1 January 1992 700 (a) | | |

(a) Equals imports in 1986.
(b) Equals imports in 1986 minus 20 %.
(c) Equals imports in 1986 minus 50 %.
(1) Weighted according to the ozone-depleting potentials specified in Annex I. This is equivalent to the calculated levels mentioned in the Regulation.
(2) The codes and the descriptions of the combined nomenclature are indicated in Annex III.

*ANNEX III*

**Codes and descriptions of the combined nomenclature for the substances referred to in Annexes I and II**

| CN code | Description |
|---|---|
| 2903 40 10 | – – – Trichlorofluoromethane |
| 2903 40 20 | – – – Dichlorodifluoromethane |
| 2903 40 30 | – – – Trichlorotrifluoroethane |
| 2903 40 40 | – – – Dichlorotetrafluoroethane |
| 2903 40 50 | – – – Chloropentafluoroethane |
| 2903 40 70 | – – – Bromotrifluoromethane |
| 2903 40 80 | – – – Dibromotetrafluoroethane |
| 2903 40 91 | – – – Bromochlorodifluoromethane |
| ex 3823 90 96 | Mixtures containing products falling within codes 2903 40 10, 2903 40 20, 2903 40 30, 2903 40 40 or 2903 40 50 |
| ex 3823 90 97 | Mixtures containing products falling within codes 2903 40 70, 2903 40 80, 2903 40 91 or 3823 90 96 |