



OPINION

European Economic and Social Committee

Revision of the ozone-depleting substances regulation

Proposal for a Regulation of the European Parliament and of the Council on substances that
deplete the ozone layer and repealing Regulation (EC) No 1005/2009
[COM(2022) 151 final – 2022/0100 (COD)]

NAT/848

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Referral	European Parliament, 02/05/2022 Council of the European Union, 10/05/2022
Legal basis	Article 192(1) of the Treaty on the Functioning of the European Union
Section responsible	Section for Agriculture, Rural Development and the Environment
Adopted in section	31/05/2022
Adopted at plenary	15/06/2022
Plenary session No	570
Outcome of vote (for/against/abstentions)	123/0/2

1. Conclusions and recommendations

- 1.1 The EESC welcomes the proposal for the revision of Regulation (EC) No 1005/2009¹, which has ensured that ozone-depleting substances (ODS) have been significantly reduced, but further reductions are possible. The few ODS that are still allowed are used in the production of other chemicals, as fire protection agents in special applications such as on board airplanes, and in laboratories for analysis. However, the now obsolete use of ODS as blowing agents in insulation foams is still relevant today as many of these foams are still in place in buildings. As they reach the end of their lifespan over the coming decades, they will be removed which could lead to emissions. Adjusting it to bring it more in line with the European Green Deal² and improving its structure are good initiatives.
- 1.2 The EESC approves of this regulation's consistency with the F-gas Regulation (Regulation (EU) No 517/2014)³. It is important that the main rules of these regulations be consistent with each other (e.g. regarding custom controls, leakage rules and definitions).
- 1.3 The EESC notes from the various reports available and the evaluation carried out that the current regulation ((EC) No 1005/2009) is meeting its predefined objectives. However, it also considers it necessary to raise the level of ambition in order to meet the Green Deal objectives and simultaneously provide maximum protection for citizens against toxic, cancer-causing substances. The EESC therefore agrees with the measures in the proposal to further reduce ODS emissions.
- 1.4 Good monitoring and registration are key elements to achieve a good result. The EESC is in favour of a monitoring system that is as transparent as possible and that can meet the need for expansion if necessary, for example, for new ODS not covered by the current regulation. The objective should be a universal system applicable in all Member States. However, it should also be easy to implement as a registration and monitoring system in countries outside the EU because of the pioneering role that the EU currently fulfils.
- 1.5 The EESC also calls for the number of exceptions to the prohibitions to be kept to a minimum, and for derogations from the list of prohibited substances only to be possible in exceptional and necessary cases. The exempted uses should be strictly controlled in order to avoid abuse and thus a worsening of the situation.
- 1.6 The EESC draws attention to the dangerous and unresolved problem of the accumulation of large amounts of ODS in old equipment and insulation foams, while at the same time no international convention regulates the management or destruction of ODS resources. The Committee calls for urgent action to introduce effective legislation in the Member States to prevent leakage of ODS in order to avoid endangering the atmospheric environment and the living conditions of the population.

1 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009R1005&from=EN>

2 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0640&from=EN>

3 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0517&from=EN>

- 1.7 Ideally, ODS management should be part of a waste management system (for control, collection, recovery and treatment) with overarching policies, legislation and regulations for specific waste streams already in place. The management of ODS in foams and other ODS banks is a huge challenge, especially for developing countries. The EU needs to demonstrate feasible solutions and an adequate legal framework.
- 1.8 Given the continued high level of production and use of ODS for feedstock purposes and associated emissions, which may be underestimated, the EESC is concerned that quantitative limits of ODS for feedstock use have been entirely dismissed. Narrowing feedstock exemptions under the new regulation has multiple environmental benefits. There should be a focus on environmentally friendly alternatives.
- 1.9 Measures to prevent by-product hydrofluorocarbon (HFC) emissions associated with ODS production should be strengthened, through additional reporting requirements.
- 1.10 Measures to reduce emissions of new ODS should be put in place, including leakage reduction and requirements to recover, recycle and reclaim.

2. **Background**

- 2.1 The Montreal Protocol⁴ on Substances that Deplete the Ozone Layer is the landmark multilateral environmental agreement that regulates the production and consumption of nearly 100 synthetic chemicals referred to as ODS. When released into the atmosphere, those chemicals damage the stratospheric ozone layer, Earth's protective shield that protects humans and the environment from harmful levels of ultraviolet radiation from the sun. Adopted on 15 September 1987, the Protocol is to date the only UN treaty ever that has been ratified by every country on Earth – all 198 UN Member States.
- 2.2 Regulation (EC) No 1005/2009⁵ on substances that deplete the ozone layer (ODS Regulation) is the main instrument targeting ODS in the EU. Its general objective is to prevent ODS emissions and safeguard compliance with the Protocol. The ODS Regulation was submitted for a "REFIT" evaluation, which concluded that, while the Regulation was generally fit for purpose, it could be better aligned with the European Green Deal and its design could be slightly improved. In this context, the proposal aims to replace the ODS Regulation, while maintaining a strict level of control, notably to:
1. align the measures with the European Green Deal by mandating additional emission reductions that are feasible at proportionate costs;
 2. ensure more comprehensive monitoring of ODS, including of substances that are not yet controlled;
 3. simplify and improve the efficiency of existing rules to reduce administrative costs;
 4. improve clarity and coherence with other rules.

⁴ <https://treaties.un.org/doc/publication/unts/volume%201522/volume-1522-i-26369-english.pdf>

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009R1005&from=EN>

- 2.3 ODS have a global warming potential (GWP)⁶ many times greater than carbon dioxide, so to combat climate change and protect the health and well-being of EU citizens it is necessary to reduce their emissions.
- 2.4 The Montreal Protocol is phasing out the production and use of ODS for emissive purposes. The EU rules on ODS have always been more ambitious than the Montreal Protocol and have completely phased out ODS for emissive purposes.
- 2.5 Because most production, usage and trade of ODS is already prohibited, the main purpose is therefore to prevent ODS emissions from formerly legal applications in products and equipment and from other processes, e.g. feedstocks, that are exempt from the Montreal Protocol phase-out.
- 2.6 The proposal for the ODS Regulation is closely related to the proposal for F-gases (NAT/847⁷). Both are greenhouse gases and contribute to global warming. The two regulations must jointly ensure that the Union complies with its obligations relating to ODS and HFCs under the Protocol.
- 2.7 The proposal aims to prevent the equivalent of 180 million CO₂-equivalent tonnes and 32,000 Ozone-Depleting Potential tonnes (ODP-tonnes) by 2050 through measures to recover and destroy ODS from two types of insulation foam.

3. **General comments**

- 3.1 The EESC firmly supports the Commission's proposal to change the regulation on ODS with the aim to reduce emissions even further and provide incentives to use climate-friendly alternatives.
- 3.2 The EESC recognises that some measures in the current regulation aimed at preventing illegal activities could be made more efficient and therefore welcomes the connection of the ODS licensing system to the EU Single Window Environment for Customs⁸. The EESC recommends that such measures also apply to special customs procedures including transit and temporary storage of ODS.
- 3.3 The EESC acknowledges the great importance of proper monitoring in order to be able to take preventive action and make progress. Illegal trading practices can be identified and thus addressed through effective monitoring and reporting. Considering the severe environmental impacts of illegal trade in ODS, the EESC welcomes the introduction of minimum standards for maximum penalties relating to unlawful production, import and placing on the market of ODS but urges additionally the introduction of minimum penalties. The new regulation fits in well

⁶ The **Global Warming Potential** (GWP) was developed to allow comparisons of the global warming impacts of different gases. Specifically, it is a measure of how much energy the emissions of 1 tonne of a gas will absorb over a given period of time, relative to the emissions of 1 tonne of carbon dioxide (CO₂).

⁷ [On-going EESC opinion NAT/847 on Revision of the F-gas regulation](#)

⁸ For more information on the EU Single Window Environment for Customs see https://ec.europa.eu/taxation_customs/eu-single-window-environment-customs_en

with the Commission's proposal to review the Directive on the protection of the environment through criminal law and to replace Directive 2008/99/EC (ECD)⁹.

- 3.4 The EESC strongly supports measures which ensure the recovery for destruction of ODS in foams, recognising the significant climate mitigation potential for this measure as well as the opportunity for job creation and R&D in the recycling industry.
- 3.5 The EESC welcomes the fact that coherence with existing policy provisions in the policy area has been carefully considered. This is necessary in order to ultimately achieve the objectives of both Fit for 55 (2030) and the Green Deal (2050).
- 3.6 Given that the EU is a leader in reducing ODS, the EESC suggests that the EU should also lead by example when it comes to other economies to work with the same rules, for example by restricting ODS for feedstock and process agent uses where alternatives exist. In 2020, production of controlled ODS amounted to 164,704 metric tonnes, mostly for feedstock uses within the EU. Scientists have raised concerns that reported emissions from feedstock processes are underestimated and may account globally for elevated atmospheric levels of carbon tetrachloride (CTC) and CFC-113¹⁰.
- 3.7 The EESC assumes that the revision will not result in an excessive administrative or financial burden. The proposal is expected to deliver a number of simplification benefits to business. It is also good that the revision can only be deviated from in very exceptional cases.
- 3.8 In the EESC's view, the inclusion of new ODS not yet covered by the Protocol is a good improvement. In 2020, the production of new substances, in terms of metric tonnes, was about six times higher than the production of controlled substances. It is therefore important to monitor developments in this area, including the quantities used and produced and to minimise emissions of the new gases in order to minimise their effect on the ozone layer and climate change.
- 3.9 The EESC welcomes the updated impact assessment, in particular regarding the main emission savings measure of insulation foam recovery and destruction. The evaluation arrangement in the proposal is necessary in order to be able to assess the results in the meantime. Experts play an important role in this respect with regard to insulation foam and developments. The administrative burden must also be considered.
- 3.10 The EESC welcomes measures to clarify the role of customs authorities and market surveillance authorities in order to control the trade of ODS. This is necessary because illegal trade is still occurring¹¹.

⁹ EESC opinion on [Improving environmental protection through criminal law](#) (not yet published in the O.J.)

¹⁰ [Solomon et al. 2020. Unfinished business after five decades of ozone-layer science and policy. Nature Communications 11:4272.](#)

¹¹ <https://www.europol.europa.eu/media-press/newsroom/news/how-company-earned-to-%E2%82%AC1-million-illegally-trading-tons-of-ozone-depleting-substances>

3.11 The excessive use of ODS as refrigerants and foam blowing agents in the past has led to the accumulation of large amounts of ODS, e.g. in old refrigerators, insulation foam or cylinder. E-waste containing ODS can also release other toxic, cancer-causing substances: lead, cadmium, polychlorinated biphenyl (PCB), flame retardants and many more. As neither the Montreal Protocol nor any other international environmental convention regulates the management and destruction of existing ODS banks, it is each country's own responsibility to establish a successful ODS bank management scheme to handle this important source of emissions. For these reasons, the EESC considers it important to secure the objective of protecting the atmospheric environment by preventing leakage and release through effective management of ODS banks.

4. **Specific comments**

4.1 The production, use and trade of ODS for emissive purposes is already prohibited. The EESC therefore supports the aim of the new proposal to prevent, in particular, emissions of ODS from products and equipment in which the use of such substances was previously permitted. A significant part of this is the obligation to recover or destroy ODS in certain types of insulating foam when buildings are renovated or demolished. However, the EESC notes that more can be done to support EU adoption of more environmentally friendly alternatives to ODS feedstocks and process agents.

4.2 The revision of the regulation will help to achieve the Paris Agreement¹² objective of ideally not exceeding a 1.5 °C degree temperature increase.

4.3 The EESC welcomes the requirement for a minimum level of training for staff working with ODS. However, we hope that these minimum requirements will be the same for all Member States.

4.4 The EESC notes that significant quantities of ODS continue to be used as feedstock in chemical production, despite the availability of alternatives in certain feedstock processes. Ongoing use of HCFC-22 is of particular concern, due to the high emissions of its associated by-product, HFC-23, which has a global warming potential (GWP) of 14,600.¹³ The EESC notes that narrowing feedstock exemptions under the Montreal Protocol would have multiple benefits,¹⁴ and the EU should lead by example by banning ongoing ODS use for feedstock and process agents where environmentally benign alternatives exist. This could account for 38% of all ODS used for feedstock in the EU.

4.5 Given the concern regarding ODS feedstocks and associated emissions, the EESC recommends that the potential for the Commission to adopt implementing acts to establish maximum quantities and emission levels and a list of permitted undertakings with respect to process agents

¹² https://unfccc.int/sites/default/files/english_paris_agreement.pdf

¹³ The compound HFC-23 (Trifluoromethane or CHF₃), a potent greenhouse gas with a 100-year GWP of 14,600, is generated as a by-product during the manufacture of HCFC-22 (chlorodifluoromethane or CHClF₂)

¹⁴ Andersen et al. 2021. Narrowing feedstock exemptions under the Montreal Protocol has multiple environmental benefits. PNAS 2021 Vol 118 No 49. <https://doi.org/10.1073/pnas.2022668118>

(as laid down in Article 7(3)) be extended to feedstocks, by including an equivalent provision in Article 6.

- 4.6 Considering the potential HFC-23 emissions associated with HCFC-22 use, the EESC welcomes the declaration of conformity as a first step towards combating this, and calls for further measures including reporting, verification and required disclosure of the production facility of origin, proof of HFC-23 by-product abatement and traceability.
- 4.7 Recognising the concern over the impact of emissions of new substances including in Annex II (e.g. the rapid increase in atmospheric concentration of dichloromethane that could substantially delay, by more than a decade, the recovery of the ozone hole¹⁵), the EESC recommends that measures to require recovery, recycling and reclaim (Article 20) and leakage requirements (Article 21) are also applied to Annex II gases. Further, that undertakings shall have a valid registration in the licencing system prior to the import or export of Annex II gases.

Brussels, 15 June 2022

Christa Schweng
The president of the European Economic and Social Committee

¹⁵ Hossaini, R., Chipperfield, M., Montzka, S. *et al.* The increasing threat to stratospheric ozone from dichloromethane. *Nat Commun* 8, 15962 (2017). <https://doi.org/10.1038/ncomms15962>