

Revision of the Ozone Regulation

OVERVIEW

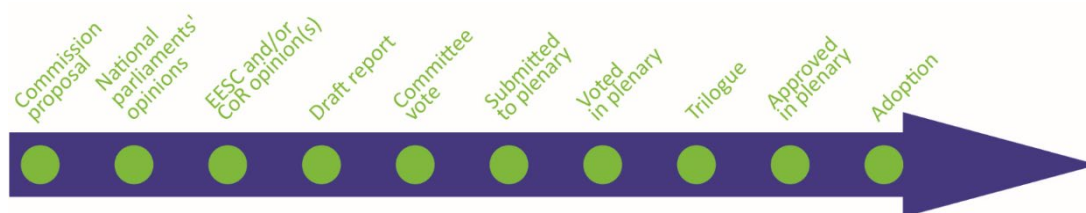
Stratospheric ozone absorbs ultraviolet radiation from the sun and reduces the overall amount of radiation reaching the Earth's surface. Ozone-depleting substances (ODS) are human-made chemicals that, once emitted, reach the upper atmosphere and destroy the protective ozone layer, causing what is known as the ozone hole. They have significant adverse impacts on human health and the environment and are also greenhouse gases with high global warming potential.

Regulation (EC) No 1005/2009 on substances that deplete the ozone layer lays down rules on the production, use, trade, recovery, recycling, reclamation and destruction of ODS and sets out requirements and measures for products and equipment containing these substances. On 5 April 2022, the European Commission adopted a proposal for a regulation on ODS repealing the current one. The aim was to increase the efficiency of the existing measures in order to achieve additional emissions reductions in line with the European Green Deal, to ensure more comprehensive monitoring of ODS, to reduce administrative costs by simplifying the rules, to modernise the licensing system and reduce costs for industry, and to improve the coherence with other pieces of legislation such as Regulation (EU) No 517/2014 on fluorinated greenhouse gases – being revised in parallel. One of the main objectives of the proposal was to prevent emissions from old products and equipment still containing ODS that have to be recovered and destroyed.

Parliament and Council adopted their positions on 30 March 2023 and 5 April 2023, respectively. Interinstitutional negotiations concluded on 5 October 2023 with a provisional agreement, adopted by Parliament on 16 January and by Council on 29 January 2024. The regulation was published in the Official Journal on 20 February 2024 and entered into force on 11 March 2024.

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

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| <i>Committee responsible:</i> | Environment, Public Health and Food Safety (ENVI) | COM(2022) 151 |
| <i>Rapporteur:</i> | Jessica Polfjärd (EPP, Sweden) | 5.4.2022 |
| <i>Shadow rapporteurs:</i> | Rovana Plumb (S&D, Romania) Ondřej Knotek (Renew, Czechia) Pär Holmgren (Greens/EFA, Sweden) Anna Zalewska (ECR, Poland) Anja Hazekamp (The Left, the Netherlands) | 2022/0100(COD) Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision') |
| <i>Procedure completed:</i> | Regulation (EU) 2024/590, OJL, 2024/590, 20.2.2024 | |



EPRS | European Parliamentary Research Service



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Introduction

On 5 April 2022, the European Commission put forward a [legislative proposal](#) to replace [Regulation \(EC\) No 1005/2009](#) of 16 September 2009 on substances that deplete the ozone layer (Ozone Regulation). The regulation,¹ in force since January 2010, is currently the main legal instrument targeting these substances in the EU. It is complemented by three additional legal texts regarding certain uses of ozone-depleting substances (ODS). The regulation also fulfils obligations under the [Montreal Protocol](#) on Substances that Deplete the Ozone Layer,² negotiated in the 1980s, and ensures an even higher level of ambition than the protocol, by setting, for instance, more restrictive rules on trade. According to the [European Environment Agency](#),³ the EU has already achieved its phase-out goals under the Montreal Protocol and reports on the uses that are still allowed. Although the regulation is still [considered fit for purpose](#), ODS emissions need to be cut still further to comply with the goals of the [European Green Deal](#), the 2030 and 2050 targets set by the [EU Climate Law](#) and the [Paris Agreement](#). The proposal's aim is therefore to improve the efficiency of the measures established under the current EU rules, to shift from phasing out production and consumption of ODS to improving control over the exempted uses, and to prevent emissions from old products and equipment at the end of their lifecycle still containing ODS that need to be recovered and destroyed.⁴ The equivalent of 180 million tonnes of CO₂ is expected to be saved by 2050.

Existing situation

The [Ozone Regulation](#) covers the ODS with a high ozone-depleting potential (ODP)⁵ – referred to as controlled substances – that are targeted by the Montreal Protocol. It also includes, in Annex II, five additional new substances – halon 1202, methyl chloride, ethyl bromide, trifluoroiodomethane and n-propyl bromide – that are not controlled under the protocol. Although the EU has reduced most of its use of ODS and the resulting emissions, challenges⁶ remain, for instance, as regards reducing emissions from exempted uses such as feedstocks⁷ or insufficient recycling and recovery of halons, from ODS banks such as foam banks, and from ODS not yet regulated.

The regulation governs the production, import, export, placing on the market, use, recovery, recycling, reclamation and destruction of substances that deplete the ozone layer and of products and equipment containing or relying on those substances. It also sets rules on the reporting of ODS-related information. However, the current rules do not require reporting of ODS emissions from production and destruction, or from old or existing products, equipment and ODS banks.

The EU prohibits the production, placement on the market and use of ODS and products and equipment containing or relying on them in its territory. However, the use of controlled substances as feedstock; as chemical process agents in specified processes by certain companies; in laboratory and analytical processes; and in firefighting (as fire protection agents in special applications such as on airplanes) is still permitted as long as certain conditions are met, for instance, as regards labelling, quantitative limits and registration. The Commission allocates quotas to importers and producers for the release of exempted uses. The use and sale of hydrochlorofluorocarbons (used in fridges and air-conditioning systems), halons (to extinguish fires), and methyl bromide (to control pests) are authorised, by way of derogation, under strict conditions.

Imports and exports of controlled substances and products containing them are prohibited, with exceptions. Where they are allowed, a licencing system is set up for monitoring trade and preventing illegal actions.

The Ozone Regulation also establishes an obligatory control of leakages and emissions when ODS are being used, as well as requirements regarding the recovery for destruction, recycling or reclamation of used ODS and products or equipment containing them. Recovery systems have to be put in place to destroy, recycle or reclaim controlled substances used in refrigeration, air-conditioning and heat pump equipment, in fire extinguishers and protection systems, and in items

containing solvents. These substances and products can only be destroyed by approved technologies.

Under the regulation, producers, importers and exporters of controlled substances as well as feedstock users, process agent users and destruction facilities have to annually report their activities related to substances in Annexes I and II to the regulation.

Member States have to annually report on the quantities of halons installed, used and stored for critical uses, on the measures taken to estimate and reduce their emissions, and on progress in evaluating and using existing alternatives.

Member States are also required to perform national inspections, to establish rules on penalties, and to report on the cases of illegal trade.

Parliament's starting position

Although there is no Parliament resolution on the revision of EU rules on ozone layer protection, Members of the European Parliament (MEPs) have regularly submitted questions to the Commission on this subject over the past two legislative terms. Their questions focused on the implementation of the Ozone Regulation ([E-7762/2010](#)) and the state of play in the EU and internationally ([E-000526/2011](#)). MEPs also expressed concern about substances not controlled under the Montreal Protocol ([E-004507-17](#)) and the use of gases with high global warming potential as an alternative to ODS ([E-003695/2011](#); [E-007073-17](#); [P-000740/2022](#)).

Preparation of the proposal

In 2020, the European Commission published its [evaluation](#) report on the implementation of Regulation (EC) No 1005/2009. Based on an [external study](#), the evaluation was carried out in 2019 and covered the scope of the regulation and its main measures as applied over the 2010-2017 period. It concluded that the Ozone Regulation is fit for purpose and should remain in place, despite the fact that some emissions continued being released as a result of exempted uses, the use of new ODS (Annex II) and ODS in equipment and products, even after their disposal. The evaluation estimated that further reductions would be possible at proportionate costs, especially if ODS in certain building materials containing foams blown with such substances were recovered and destroyed or reused. It also revealed that certain provisions (e.g. in Article 11) had become obsolete and that there was room for simplifying and improving the structure of the regulation to make it more coherent. Simplifying the licencing and quota systems for undertakings and the registration system for laboratories would also enhance its efficiency.

As part of its [review](#) of the EU rules on ozone layer protection, the Commission published in March 2020 an [inception impact assessment](#) and held stakeholder consultations, including a [public online consultation](#), as well as a targeted consultation with ODS businesses, NGOs and national authorities. The topics discussed at these consultations included simplification of the licencing system, prevention of illegal activities, abolishment of the quota system, and introduction of additional reporting measures. The need to deal effectively with end-of-life foams received support from a wide range of participants, although some of them pointed out the costs for the proper treatment of the waste.

The European Parliamentary Research Service (EPRS) published an [implementation appraisal](#) in March 2022.

The Commission proposal for a new regulation on ODS is accompanied by an [impact assessment](#) (IA), which was supported by an [external study](#) and took into account the conclusions of the evaluation. According to the study, the EU should take action and provide solutions to achieve the overall policy objectives in a more efficient, coherent and clear manner. The IA examines three options in order to adjust the design of the existing measures for controlling the remaining ODS uses and to find out if further emission cuts are possible at proportionate costs. The preferred option

estimates that 179 million tonnes of CO₂ (32 000 tODP) could be saved in 2021-2050 if certain types of ODS foams from construction and demolition waste are recovered and the ODS are destroyed or reused. According to the IA, halons should not be destroyed; prohibiting their destruction would avoid their new production for critical uses. The option also includes measures to reduce the administrative burden, to improve the controls and the prevention of illegal activities, and to ensure better monitoring as well as coherence with other EU legislation.

The Regulatory Scrutiny Board issued a [positive opinion](#) with a recommendation for a clearer description of the measures and their assessed impacts, which the Commission seems to have taken into account in the final version of the assessment.

EPRS has prepared an [initial appraisal](#) of the Commission impact assessment.

The changes the proposal would bring

The general objective of the [proposal](#) is to improve the Ozone Regulation by increasing the efficiency of the existing measures and rules and ensuring more comprehensive monitoring, while also bringing administrative simplifications and saving costs. To ensure legal clarity, it would replace the current regulation with a new one amending its structure but maintaining the existing control system, notably prohibitions, exemptions and derogations (e.g. for uses where alternatives are not yet available), and reporting.

The new regulation would maintain the subject matter of the current law and clarify its scope. It would apply to the ODS listed in Annexes I and II and their isomers, whether alone or in a mixture, as well as to products and equipment containing ODS or whose functioning relies on them.

The Commission aims to propose a simplified and coherent regulation that would introduce changes in the following areas:

Delivering higher ambition to reduce ODS emissions

The proposal aims, in particular, to prevent emissions of ODS from products and equipment in which the use of such substances was previously permitted. Thus, it makes obligatory the recovery of ODS contained in certain types of foams used as isolation materials, from construction and demolition waste (during the renovation and demolition of buildings), as well as the destruction of the ODS through approved technologies (or, alternatively, reuse of the foam). Member States' authorities would be responsible for the enforcement of the recovery of the foam reserves in line with the national waste regulations, which already monitor hazardous substances in demolition wastes.

The import and export of non-refillable containers for ODS (empty, fully or partially filled) should be banned, except for laboratory or analytical uses, to avoid the release of the remaining substances into the atmosphere.

Producers and importers must prevent emissions of trifluoromethane, which is a [fluorinated greenhouse gas](#) (F-gas) generated as a by-product in the production of some ODS. They must provide the competent authority with evidence on the destruction or recovery for subsequent use of this substance, before placing the processed ODS on the market.

The destruction of halons would be prohibited, so that the recovery and reuse of existing halons would help avoid producing them anew for critical uses. Exception would be possible if there is documented evidence that the purity of the recovered or recycled substance does not technically allow its reclamation and re-use. The use and sale would be allowed only for critical uses, such as fire protection agents on airplanes and when there are no available alternative substances or technologies. Methyl bromide would continue to be used and imported but only in emergency cases (unexpected pests or outbreaks). Virgin or reclaimed hydrochlorofluorocarbons would continue to be exported, while products and equipment containing them could be exceptionally authorised in particular cases.

To increase awareness on the climate impact of ODS, in addition to the ODP of the substances, their respective global warming potential (GWP) would be listed in the annexes to the regulation.

The proposal also adds three new substances in Annex II⁸ to ensure the monitoring of their production, trade and use.

Cost savings and decrease of the administrative burden

These objectives would be achieved by replacing the registration obligation for laboratory uses with the requirement to retain records; abolishing the annual quota allocation system for the import and use of exempted substances; and modernising the licensing system. The latter means that importers and exporters of ODS and products using them would apply for 'traders' licenses, instead of per shipment licences. The licensing system would be interconnected with the national customs authorities' systems through the [EU 'single window' for customs](#), so that the validity of licences would be checked automatically at customs for every shipment. These measures are expected to achieve substantial cost savings for industry and relevant authorities.

The leakage obligations for undertakings would be simplified taking also into account the prohibition to use ODS to refill products and equipment except for the use of halons in fire protection systems for critical uses.

Alignment with more recent EU legislation

This concerns in particular the EU rules on F-gases, ([Regulation \(EU\) No 517/2014](#)), which are also under [revision](#), as well as the Union Customs Code ([Regulation \(EU\) No 952/2013](#)) and the decisions taken into the framework of the Montreal Protocol.

To ensure consistency with the F-gases Regulation, the proposal includes an obligation for importers and producers to provide information on destruction or recovery of trifluoromethane. Both proposals, on ODS and on F-gases, include clearer requirements for action by customs authorities in case of imports and exports of these substances and related products and equipment.

Linking the licensing system with the proposed 'single window' for customs ([COM\(2020\) 673](#)) seeks to achieve greater consistency with customs rules and improvement of controls.

Improving enforcement, monitoring and reporting

The proposal clarifies the role of customs and market surveillance authorities in implementing the prohibitions and restrictions. Therefore, customs authorities would be authorised to confiscate or seize prohibited ODS substances, products and equipment for their disposal, while market surveillance authorities would withdraw or recall them from the market. Customs authorities' powers would be strengthened as regards illegal trade of ODS in terms of resources, equipment and knowledge.

Member States' competent authorities must also carry out checks regarding the compliance of undertakings with their obligations under the regulation and keep records of these checks. The checks could be carried out without prior warning to the undertakings. The proposal details the conditions for and different approaches to performing this task. It also requires the cooperation and exchange of information between the various authorities with inspection functions in one Member State, with the relevant authorities in other Member States, and with the Commission which also might request any necessary information from the public authorities and undertakings.

The Commission would monitor the implementation of the proposed measures in close cooperation with the national competent authorities. The Commission would be able to adopt delegated acts in order, for instance, to: amend the ODS lists (Annexes I and II) and Annex V related to the critical uses of halon; establish a list of products and equipment for which the recovery of ODS or destruction of products and equipment without prior recovery of these substances could be considered technically and economically feasible, specifying the technologies to be applied; introduce

additional control measures for monitoring illegal trade; ensure the smooth functioning of the licensing system and facilitate the enforcement of customs controls. The adoption of delegated acts would however be subject to certain conditions laid down in the regulation. By 1 January 2033, the Commission would have to prepare a report on the implementation of the regulation.

As regards reporting on emissions, producers, undertakings destroying ODS, and undertakings using ODS as feedstock or process agents would be required to communicate data on any emissions, including respectively those related to production and by-production, to destruction, and to storage and transport as well as during the transfer from one container to another. Each undertaking using ODS as feedstock or process agents must also communicate on purchases from and sales to other undertakings in the EU (Annex VI).

Enhancing rules on penalties

The competent authorities of each Member State would be able to impose appropriate administrative penalties and take other measures against infringements of the regulation. The proposal lists the criteria the authorities should apply to set the right type and level of penalties. It also seeks to further harmonise the sanctions among the individual Member States, making them more dissuasive, and sets maximum administrative fines to be envisaged in cases of unlawful activities related to ODS (including products and equipment) listed in Annex I.

Advisory committees

In its [opinion](#) of 15 June 2022, the European Economic and Social Committee (EESC) welcomes the Commission's proposal and supports the new measures to further reduce ODS emissions. The EESC is in favour of a transparent monitoring system that could be extended to new ODS not covered by the current regulation and the Montreal Protocol and being produced in increasing quantities.⁹ It also welcomes the connection of the licensing system to the EU Single Window for Customs as an efficient measure to prevent illegal activities and urges the introduction of minimum penalties for illegal trade with ODS. The Committee calls for fewer exceptions and derogations regarding the prohibited substances and is concerned that the proposal does not set quantitative limits of ODS for feedstock use. It also recommends that the management of ODS, which are still contained in existing equipment, foams and other products, should be part of a waste management system that already has legislation for specific waste streams in place.

National parliaments

The national parliaments had until 24 June 2022 to submit [reasoned opinions](#) on grounds of subsidiarity. No opinions were submitted by the designated deadline. However, on 15 June 2022, the Czech Senate adopted an [opinion](#) supporting the proposal yet voicing some concerns. The Commission communicated its reaction on 7 September 2022.

Stakeholders' views¹⁰

In its [answer](#) to the publication of the inception impact assessment, the NGO Environmental Investigation Agency (EIA) agrees with the considered policy options pointing at the same time to the need for increased monitoring and control of new ODS that are not covered by the Montreal Protocol, for additional measures to address HFC-23 by-product of any HCFC-22 imported for feedstock or other purposes, and for the introduction of mandatory extended producer responsibility requirements. Furthermore, EIA has already [warned](#) about the illegal production and use of ozone-destroying chlorofluorocarbon gases and called for an evaluation of the Montreal Protocol's monitoring, reporting, verification, compliance and enforcement mechanisms in order to address in particular the issues of ODS feedstock emissions and banks of ODS.

The [position](#) of the European Fluorocarbons Technical Committee (EFCTC) addresses in particular the possibility of further restrictions and controls on the use of feedstock or measures on very low

ODP alternatives such as HCFOs. Replying to the consultation launched by the Commission, the EFCTC advocates for maintaining the current measures for feedstock use of ODS. It considers that the introduction of restrictions that are neither included in the Montreal Protocol nor adopted at international level, will negatively affect EU competitiveness. For the EFCTC, simplifying the licensing system in view of the EU Single Window environment for Customs is a very important step in improving the functioning and the efficiency of the regulation. It also highlights that any changes in reporting and monitoring must be consistent with the scientific input and the Montreal Protocol.

Legislative process

In Parliament, the file was referred to the Committee on the Environment, Public Health and Food Safety (ENVI), which appointed Jessica Polfj rd (EPP, Sweden) as rapporteur on 24 June 2022.

The Commission presented its proposal to the ENVI committee on 2 June 2022. Throughout the discussion, the majority of MEPs supported the aim of bringing the existing regulation into line with the new ambition for climate neutrality and achieving greater consistency with other EU legislation. They also pointed out some adjustments that needed to be made as regards, for instance, the exemptions on the use of ODS as feedstock, the cost of the new measures concerning foams, the technologies for recovery and recycling of ODS, and the implementation of new safety rules for buildings and for handling demolition waste.

In March 2023, the ENVI committee adopted its [report](#) with 74 votes in favour, 0 against and 2 abstentions. On 30 March, the European Parliament adopted the [amendments](#) to the Commission proposal by 553 votes in favour, 10 against and 20 abstentions. MEPs supported the main objectives of the proposal and made further additions, pointing out that more action is needed to avoid the risk of further delays in the recovery of the ozone layer.

Regarding the use of ODS as feedstock, this being one of the main outstanding issues of concern, the Commission should establish a list of Annex I substances for which such use is permitted, including the respective feedstock uses for each substance and their emissions level. The Commission should also assess by 1 January 2025 and every 2.5 years thereafter the current and future availability of alternatives to ODS used as feedstock. Where a feasible alternative exists, the Commission would be empowered to propose measures to cap the emissions and progressively phase out the use of the relevant ODS. Substances produced, placed on the market and supplied or made available within the EU for use as feedstock could only be used for that purpose. In addition, this should be clearly indicated on the container labels.

The amended text points out that any prohibited non-refillable containers for ODS should be destroyed. As regards refillable containers, undertakings that place them on the market should provide a declaration of conformity that includes evidence on the arrangements for the return of the containers for refilling. These arrangements include binding obligations with regard to the supplier of those containers to end users.

To prevent emissions of trifluoromethane resulting from the production process of some ODS (by-product emissions), the rigorous monitoring of these emissions should be one of the conditions for placing the substances on the market. Thus, the declaration of conformity drawn up by importers and producers would have to be verified by an accredited auditor and accompanied by the supporting documents listed in the regulation. These documents would provide, for instance, proof of the destruction and recovery of emitted trifluoromethane in line with the best available techniques.

The labelling provisions for containers proposed by the Commission are extended to halon and methyl bromide and products and equipment containing them, as well as to ODS listed in Annex I that are placed on the market for destruction or reclamation. Labels should contain several indications, such as the ODP and the GWP of the substance concerned. The GWP would be

expressed on a 100-year timescale and, if available, on a 20-year timescale in order to increase awareness about the short-term impact of such gases.

In response to the growing concern about the impact of certain new substances on global emissions, several amendments to the proposal address the ODS listed in Annex II. For instance, the requirements in relation to leakages, to unintentional releases during production, and to registration in the electronic licensing system are extended to these ODS.

The current requirements for checking leaks from refrigeration, air conditioning or heat pump equipment and fire protection systems containing ODS are re-introduced. Undertakings should check their stationary equipment or system for leakage as follows: every 12 months, if the fluid charge is 3 kg or more, at least once every 6 months if the fluid charge is 30 kg or more, and at least once every 3 months if the fluid charge is 300 kg or more. Leakages should be repaired within 14 days.

Some amendments point to the need for appropriate training programmes, to be made available by the Member States, for persons dealing with the recovery, recycling, reclamation and destruction of ODS or responsible for tasks related to the repair of leakages.

The amended text strengthens the penalty provisions by introducing minimum administrative fines to be set by the Member States in cases of unlawful production, trade or use of ODS. These fines would have to amount to at least four times the market value of the ODS or products and equipment concerned. The maximum administrative fines proposed by the Commission are increased to at least six times the market value of the substances or products and equipment. In case of repeated infringement within a five-year period, the amounts of the minimum and maximum administrative fines would have to be respectively at least seven and 10 times the market value.

An amendment adds a reference in the recitals calling for the establishment of adequate arrangements to enable whistle-blowers to alert the competent authorities about actual or potential infringements of the regulation and to protect them from retaliation.

In order to review the regulation, the Commission should assess its implementation and effectiveness and submit a report to the Parliament and the Council by 1 January 2030, 3 years earlier than the date envisaged in the proposal. The report would focus in particular on the availability of alternatives to exempted substances (used as feedstock or process agents, or used for essential laboratory, analytical or critical purposes), as well as on the impact of the regulation on combating the illegal trade in ODS. If appropriate, a legislative proposal might be submitted.

The European Scientific Advisory Board on Climate Change would be empowered to provide own-initiative scientific advice and reports that would have to be taken into account by the Commission. In the recitals, Parliament stresses that in spite of the fact that the increasing use of alternatives to ODS would incentivise green innovation and employment, Member States should ensure a fair and just transition for all, in particular for workers in undertakings that are unable to shift to such alternatives.

An amendment to the recitals clarifies that illegally imported substances, products and equipment should be destroyed after being confiscated or seized, to prevent them from re-entering the EU market.

After the vote in plenary, the matter was referred back to the ENVI committee for interinstitutional negotiations.

The Commission presented the proposal to the Council's Working Party on the Environment on 20 May 2022. The Council adopted its [position](#) on 5 April 2023, in which it introduced some changes to the Commission's proposal. To reduce the administrative burden, it adapts the provisions on essential laboratory and analytical uses by removing the requirement to retain records. It also adds provisions on requirements for the registration of undertakings dealing with ODS intended for use as feedstock or process agents, or intended to be destroyed or reclaimed. As regards imports or

exports of recovered, recycled or reclaimed halon for the critical uses, it clarifies the time limit of the licence. In Annex V on critical uses of halons, the Council includes certain uses considered essential to national security. Clarifications are introduced to measures aimed at monitoring illegal trade. The Council inserts into the proposal the existing provisions that lay out the conditions for undertakings dealing with refrigeration, air conditioning or heat pump equipment, or fire protection systems. To make penalties less prescriptive and compatible with national systems, the Council removes certain provisions, e.g. the list of penalties to be imposed in case of infringements of the regulation or the maximum administrative fines to be envisaged in cases of unlawful production, trade, or use of ODS listed in Annex I or of products and equipment containing them.

Following interinstitutional negotiations, on 5 October 2023 the European Parliament and the Council reached a [provisional agreement](#), which was endorsed by Coreper on 18 October and [approved by the ENVI committee](#) on 24 October. This agreement confirms and finalises the informal agreement on ODS reached in June 2023.

In 2021, the **use of ODS as feedstock** increased by 11 % compared to 2020. Taking this into account, the agreement, which maintains the exemption on the use of ODS as feedstock, requires the Commission to establish – through a delegated act – a list of chemical production processes for which the use of ODS listed in Annex I as feedstock must be banned. This list should be regularly updated. By the end of 2027, the Commission must make its own assessment of the emissions levels of existing feedstock uses and the available alternatives to these uses, if such a technical assessment has not been already carried out under the Montreal Protocol.

Regarding the new **ODS, listed in Annex II**, the agreed text includes provisions on their recovery or destruction, the repair of leakage, and the prevention of unintentional release. For instance, in line with Parliament's position, the agreement extends the requirement to recover ODS for destruction, recycling or reclamation to all substances in Annexes I and II contained in refrigeration, air conditioning and heat pump equipment, equipment containing solvents, fire protection systems and fire extinguishers, and in other products and equipment. It also stipulates that products and equipment containing or relying upon ODS in Annexes I and II must be decommissioned when they reach the end of their life.

With respect to **exemptions from the bans**, imports for recovery of ODS listed in Annex I will now be authorised by way of derogation, in line with the Council's position. Following Parliament's amendment on export of products and equipment containing **hydrochlorofluorocarbons**, it is specified that, before authorising the export, the Commission must verify whether the legislation of the country of destination guarantees that, at the end of their life cycle, these products and equipment will be handled in a manner that minimises the release of ODS.

To ensure that refillable containers are refilled and not discarded, obligations are imposed on undertakings when placing these containers on the market, in line with Parliament's position.

Regarding the **trifluoromethane** produced as a by-product that must be destroyed or recovered for subsequent use as a condition for placing some ODS on the market, the agreed text clarifies the content of the supporting documents to be attached to the declaration of conformity provided by producers and importers. These are required, for instance, to document evidence of the destruction or recovery of the emissions of trifluoromethane in line with the best available techniques.

In line with the Council's position, records containing information specified in the regulation must be kept for at least five years by undertakings that deal with ODS in Annex I intended for use as feedstock or process agents or intended to be destroyed or reclaimed. This includes undertakings that destroy or reclaim these substances or use them as feedstock or as process agents.

Regarding the **trade in ODS**, the agreement does not keep Parliament's amendment to extend the registration in the electronic licensing system to the ODS listed in Annex II. However, it follows Parliament's position in stipulating that each company holding a licence must notify the Commission 'without undue delay' of any changes that occur in relation to the provisions set out in

the annex on the licensing system (Annex VII). In terms of control, customs authorities or market surveillance authorities are empowered to take all measures to prevent attempts to import or export the substances, products and equipment covered under the regulation 'that were already not allowed to enter or exit the territory'. Controllers must have access to appropriate equipment to carry out relevant physical checks based on risk analysis. The agreement also introduces clarifications relating to measures aimed at monitoring illegal trade.

With respect to emissions control, the agreed text specifies that, during the renovation, refurbishing or demolition of buildings, the recovery of **ODS listed in Annex I contained in foams** must be carried out by appropriately qualified natural persons.

The reintroduction of the existing requirements for **checking leaks** from refrigeration, air conditioning or heat pump equipment and fire protection systems containing ODS listed in Annex I is maintained. However, the 14-day deadline to repair any detected leakage and the amendment to ensure appropriate training for persons carrying out those activities, both proposed by the Parliament, are not kept in the final agreement.

Regarding the **amendments to the lists of ODS**, the Commission is empowered to add the GWP on a 20-year timescale, if available, for substances listed in Annexes I and II, in line with Parliament's position. With respect to reporting, producers, importers, exporters, and undertakings destroying ODS or using them as feedstock or process agents are required to communicate annually data according to criteria set out in Annex VI.

In terms of enforcement, the agreed text includes an obligation for competent authorities to carry out **checks of online platforms** where consumers conclude distance contracts¹¹ with undertakings offering ODS or products and equipment containing ODS. This is to verify whether these undertakings, as well as the substances, products and equipment, comply with the rules established by the regulation.

Regarding the **penalty provisions**, the final text follows the Commission's proposal, but with some changes. For instance, it specifies that the penalties must take due account of the human population or the environment affected by the infringement to ensure a high level of protection of human health and the environment. Parliament's amendment introducing minimum administrative fines to be set by the Member States in cases of unlawful activities under the regulation or repeated infringement, as well as an increase in the amounts of maximum administrative fines, is not accepted. However, for the same infringements, Member States may use administrative as well as criminal penalties, provided that the latter are as effective, proportionate and dissuasive as the former.

On 13 June 2023, the Parliament and the Council reached a compromise on the **review of the regulation**. The Commission will publish an implementation report by 1 January 2030, 3 years earlier than the date initially proposed, which will include an assessment of the availability of alternatives to ODS for uses that are exempted from the prohibitions. However, the agreed text does not require the Commission to assess the impact of the regulation on combating the illegal trade in ODS. The possibility of submitting a legislative proposal, following the presentation of the report and the assessment that has been requested, is also not envisaged. Furthermore, the role of the European Scientific Advisory Board on Climate Change is confirmed, but the Commission is not obliged to take into account its own-initiative scientific advice and reports, as proposed by Parliament.

The final text was endorsed by Coreper and approved by the ENVI committee in October 2023. The Parliament then adopted it in plenary by a large majority (538 votes for, 8 against, with 13 abstentions) on 16 January 2024, and the Council [formally approved](#) it on 29 January 2024. After the legislative procedure had been completed, the final act was signed by the presidents of the Parliament and the Council on 7 February 2024 and published in the *Official Journal of the European Union* on 20 February 2024. The [new regulation](#) entered into force on 11 March 2024.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

[Further reduction of the ozone depleting substances](#), initial appraisal of a European Commission impact assessment, EPRS, November 2022.

[Revision of Regulation \(EC\) 1005/2009 on substances depleting the ozone layer](#), implementation appraisal, EPRS, March 2022.

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ENDNOTES

- ¹ The European legal framework on ozone layer protection has more than 30 years of history. The first EU legal text was the [Council Regulation \(EEC\) No 3322/88](#) of 14 October 1988 on certain chlorofluorocarbons and halons that deplete the ozone layer. It was substituted by new regulations in 1991, 1994 and 2000. The current Ozone Regulation was adopted in 2009.
- ² The [Montreal Protocol](#), adopted in 1987, entered into force in 1989. Its objective is to protect the stratospheric ozone layer by phasing out the production of ozone-depleting substances. The protocol covers over 200 individual substances, including chlorofluorocarbons (CFCs), halons, carbon tetrachloride (CTC), 1,1,1-trichloroethane (TCA), hydrochlorofluorocarbons (HCFCs), hydrobromofluorocarbons (HBFCs), bromochloromethane (BCM) and methyl bromide (MB), all of which are referred to as 'controlled substances'. The European Union, in addition to its Member States, is a party to the Montreal Protocol since 1987. More information is available on the [website of the Ozone Secretariat](#) housed within the United Nations Environment Programme (UNEP).
- ³ This EEA briefing contains an online data viewer, which summarises recent and updated data for 2012-2022. It also explains the terminology, such as, for instance, ozone-depleting potential (ODP).
- ⁴ 'Recovery' means collecting and storing ODS from products, equipment or containers during maintenance or servicing, or prior to their disposal; 'destruction' means the process of transforming or decomposing ODS into more stable substances that are not ODS; 'reclamation' is the reprocessing of an ODS in order to make its performance equivalent to that of a virgin substance (which has not been used yet); 'recycling' is the reuse of a recovered ODS following a basic cleaning processes. All definitions are listed in Article 3 of the proposal.
- ⁵ Ozone-depleting potential or ODP means the figure specified in Annexes I and II representing the potential effect of each controlled substance or new substance on the ozone layer.
- ⁶ See the [presentation](#) of the virtual stakeholder workshop on Impact Assessment for amending Regulation (EC) No 1005/2009 on substances that deplete the ozone layer, 26 January 2021.
- ⁷ Some ODS are used as feedstock for the manufacture of other products such as refrigerants, foam blowing agents, polymers, pharmaceuticals and agricultural chemicals.
- ⁸ Under the proposal, Halon-1202 is included in Annex I. The new ODS to be added are: 2-bromo-3,3,3-trifluoropropen (2-BTP), Dichloromethane (DCM), and Tetrachloroethene (Perchloroethylene (PCE)).
- ⁹ This conclusion is based on an [article](#) published in *Nature Communications* on 26 August 2020.
- ¹⁰ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.
- ¹¹ 'Distance contract' means any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded; see [Directive 2011/83/EU](#), Article 2.

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