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*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a regulation of the European Parliament and of the Council on certain fluorinated greenhouse gases (16056/5/2004 – C6-0221/2005 – 2003/0189A(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Avril Doyle

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position
- *** Assent procedure
majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Council common position for adopting a regulation of the European Parliament and of the Council on certain fluorinated greenhouse gases (16056/5/2004 – C6-0221/2005 – 2003/0189A(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (16056/5/2004 – C6-0221/2005),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2003)0492)²,
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 62 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on the Environment, Public Health and Food Safety (A6-0301/2005),
1. Approves the common position as amended;
 2. Instructs its President to forward its position to the Council and Commission.

Council common position

Amendments by Parliament

Amendment 1
Citation 1

Having regard to the Treaty establishing the European Community, and in particular, Article 175(1) thereof **and Article 95 thereof in relation to Articles 7, 8 and 9 of this Regulation,**

Having regard to the Treaty establishing the European Community, and in particular, Article 175(1) thereof,

Justification

In order to assure legal certainty, the whole Regulation has to be based on Article 175, since the aim and content of the Regulation are clearly concerned with the environmental protection.

Amendment 2
Recital 3 a (new)

¹ OJ C 130E, 29.4.2004, p. 600.

² Not yet published in OJ.

(3a) Annex II of Decision 2002/358/EC lays down different reduction targets for individual Member States. The Member States are therefore required to take individual measures. Individual Member States must therefore also be able to take, or maintain, adequate measures to attain their national reduction targets.

Justification

Reinstates amendment 2 from first reading.

Amendment 3
Recital 3 b (new)

(3b) Fluorinated greenhouse gases controlled under the Kyoto Protocol and this Regulation are strong greenhouse gases, of which some are up to 23 900 times more damaging than CO₂, or have atmospheric lives of up to 50 000 years.

Amendment 4
Recital 5

(5) The primary objective of this Regulation is to reduce the emissions of the fluorinated greenhouse gases covered by the Kyoto Protocol and thus to protect the environment. The legal base should therefore be Article 175(1) of the Treaty.

(5) The primary objective of this Regulation is to ***prevent and*** reduce the emissions of the fluorinated greenhouse gases covered by the Kyoto Protocol and thus to protect the environment. The legal base should therefore be Article 175(1) of the Treaty. ***According to Article 176 Member States should therefore be allowed to take more stringent measures. However, such measures must be compatible with the Treaty, i.e. proportionate, non-discriminatory and not purely economic in nature.***

Justification

For a vast majority of applications, there are already technically feasible, cost-effective and more environmentally acceptable replacements available for HFCs, PFCs and SF₆. Climate change needs to be tackled through innovation and therefore rapid transition to environmentally friendly alternatives and technologies must be encouraged.

It is important to keep in mind that Articles 175 and 176 do not give Member States a free hand to introduce whatever measures they want. The internal market is still protected from measures restricting trade more than necessary.

Amendment 5
Recital 6

(6) ***Nevertheless***, it is appropriate to take measures at Community level ***on the basis of Article 95 of the Treaty*** to harmonise requirements on the use of fluorinated greenhouse gases and the marketing and labelling of products and equipment containing fluorinated greenhouse gases. Marketing and use restrictions for certain applications of fluorinated greenhouse gases are considered appropriate where viable alternatives are available and improvement of containment and recovery is not feasible. Voluntary initiatives by some industry sectors should also be taken into account, as well as the fact that the development of alternatives *is* still ongoing.

(6) It is appropriate to take measures at Community level to harmonise ***basic*** requirements on the use of fluorinated greenhouse gases and the marketing and labelling of products and equipment containing fluorinated greenhouse gases. Marketing and use restrictions for certain applications of fluorinated greenhouse gases are considered appropriate where viable alternatives are available and improvement of containment and recovery is not feasible. Voluntary initiatives by some industry sectors should also be taken into account, as well as the fact that the development of ***new alternatives and the transition to existing alternatives are*** still ongoing ***and should be encouraged***.

Justification

Change needed in order to be consistent with the change of legal base. Innovation should be promoted as well as the transition to more environmentally friendly alternatives.

Amendment 6
Recital 6 a (new)

(6a) The application and enforcement of this Regulation should spur technological innovation by encouraging continued development of alternative technologies and transition to already existing technologies that are more environmentally friendly.

Justification

It is important to emphasise that innovation and development of alternatives is something that should be encouraged and that this Regulation is one way of doing so.

Amendment 7

Recital 6 b (new)

(6b) This Regulation should not prevent Member States from maintaining or introducing stricter protective measures. The differences that exist between Member States with regard to their established practices of restricting certain fluorinated greenhouse gases require that Member States should have the possibility to maintain or introduce stricter measures. This is necessary in order to comply with the provisions of the Treaty stipulating a high level of protection in the field of the environment as specified in Article 174(2) and in Article 95(3). Furthermore, this is necessary in order to ensure the possibility for Member States to implement their plans for reducing fluorinated greenhouse gases in accordance with the Kyoto Protocol.

Justification

If the regulation is carried out without this "environmental guarantee" some Member States will get a lower level of protection than they have today and get difficulties when carrying out the planned reductions of f-gases as stated in the Kyoto protocol.

Amendment 8

Recital 6 c (new)

(6c) Since less harmful alternatives to HFCs, PFCs and SF6 already exist for the vast majority of applications, it is justified to restrict their use and the placing on the market of products and equipment containing these gases to applications where there are no safe and more environmentally friendly alternatives available.

Justification

For a vast majority of applications, there are already technically feasible, cost-effective and more environmentally acceptable replacements available for HFCs, PFCs and SF6. However there is a great deal of inertia in the market that prevents quicker take-up of alternatives, in part due to the powerful fluorocarbon industry, which continues to have an obvious vested interest in the use of CFCs, HCFCs and now, HFCs. While the levels of emissions of other gases covered by the Kyoto Protocol, i.e. CO2, methane and N2O, are steady or rising slightly in Europe, HFCs emissions in particular are growing very fast.

Amendment 9

Recital 12

(12) Since the objectives of this Regulation, namely the containment and reporting of certain fluorinated greenhouse gases and the control of use and placing on the market of products and equipment containing certain fluorinated greenhouse gases, in order to protect the environment **and to preserve the internal market**, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale and effects of this Regulation be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(12) Since the objectives of this Regulation, namely the containment and reporting of certain fluorinated greenhouse gases and the control of use and placing on the market of products and equipment containing certain fluorinated greenhouse gases, in order to protect the environment, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale and effects of this Regulation be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

Justification

Change needed in order to be consistent with the change of legal base.

Amendment 10

Article 1, paragraph 1

The objective of this Regulation is to reduce emissions of the fluorinated greenhouse gases covered by the Kyoto Protocol. It shall apply to the fluorinated greenhouse gases

The objective of this Regulation is to **prevent and** reduce emissions of the fluorinated greenhouse gases covered by the Kyoto Protocol. It shall apply to the

listed in Annex A to that Protocol. Annex I to this Regulation contains a list of the fluorinated greenhouse gases currently covered by this Regulation, together with their global warming potentials. In the light of revisions provided for by Article 5(3) of the Kyoto Protocol and accepted by the Community and its Member States, Annex I may be reviewed and if appropriate may then be updated.

fluorinated greenhouse gases listed in Annex A to that Protocol. Annex I to this Regulation contains a list of the fluorinated greenhouse gases currently covered by this Regulation, together with their global warming potentials. In the light of revisions provided for by Article 5(3) of the Kyoto Protocol and accepted by the Community and its Member States, Annex I may be reviewed and if appropriate may then be updated.

Justification

For a vast majority of applications, there are already technically feasible, cost-effective and more environmentally acceptable replacements available for HFCs, PFCs and SF6. The amendments seeks to clarify that this Regulation aims not only at the containment of these fluorinated greenhouse gases, but also at their replacement by more environmentally friendly alternatives A rapid transition towards these alternatives would not only help tackling climate change but would also promote technological innovation.

Amendment 11 Article 1, paragraph 2

This Regulation addresses the containment, use, recovery and destruction of the fluorinated greenhouse gases listed in Annex I; the labelling and disposal of products and equipment containing those gases; the reporting of information on those gases; the uses referred to in Article 8 and the placing on the market of the products and equipment referred to in Article 9; and the training and certification of personnel involved in activities provided for by this Regulation.

This Regulation addresses the containment, use, recovery and destruction of the fluorinated greenhouse gases listed in Annex I; the labelling and disposal of products and equipment containing those gases; the reporting of information on those gases; the **control of** uses referred to in Article 8 and the placing on the market **prohibitions** of the products and equipment referred to in Article 9 **and Annex II**; and the training and certification of personnel **and companies** involved in activities provided for by this Regulation.

Justification

The changes clarify the content of Articles 8, 9 and Annex II. The addition of the words “and companies” after “personnel” is necessary to be consistent with the wording of Article 5.

Amendment 12
Article 2, point 7

7) "placing on the market" means the supplying of or making available to third persons, against payment or free of charge, products and equipment containing or whose functioning relies upon fluorinated greenhouse gases, by a **producer** or an importer for the first time in the European Union;

7) "placing on the market" means the supplying of or making available to third persons, against payment or free of charge, products and equipment containing or whose functioning relies upon fluorinated greenhouse gases, by a **manufacturer, the manufacturer's authorised representative in the Community** or an importer for the first time in the European Union, **with a view to distribution or use in the Community**;

Justification

The aim of this amendment is to bring the definition "placing on the market" in line with the "Guide to the implementation of Directives based on the New Approach and the Global Approach". Placing on the market is considered not to take place where a product is manufactured in a Member State with a view to exporting it to a third country. According to this Guide, it is better to use "manufacturer or authorised representative" instead of "producer"

Amendment 13
Article 2, point 11

11) "hermetically sealed system" means a system in which all refrigerant containing parts are made tight by welding, brazing or a similar permanent connection;

11) "hermetically sealed system" means a system in which all refrigerant containing parts are made tight by welding, brazing or a similar permanent connection, **which may include sealed or protected access points to allow proper repair or disposal**;

Justification

Even sealed systems may need suitable access points to assure proper repair or disposal. This amendment facilitates the recovery of the refrigerant from the system in an environmentally sound way, as stipulated in article 4 (recovery). Such access points are not brazed or welded but protected from improper use via special caps, the need of special tools, the use of seals etc.

Amendment 14
Article 2, point 17 a (new)

17a) "stationary" application or equipment means an application or equipment which is normally not in transit during operation.

Justification

Stationary systems are non-mobile systems. These include fixed installations, erected by an assembler or installer at a given place, but also portable appliances, which an end-user may use at different locations.

Amendment 15
Article 3, paragraph 1, introductory part

1. Operators of the following stationary applications: refrigeration, air conditioning and heat pump equipment and fire protection systems, which contain fluorinated greenhouse gases listed in Annex I, shall, using all measures which are technically feasible and do not entail disproportionate cost:

1. Operators of the following stationary applications: refrigeration, air conditioning and heat pump equipment and **circuits and** fire protection systems, which contain fluorinated greenhouse gases listed in Annex I, shall, using all measures which are technically feasible and do not entail disproportionate cost:

Justification

Equipment can include different circuits. The word "equipment" is too general and can be misinterpreted in this situation. The wording "circuits" states an unambiguous description

Amendment 16
Article 3, paragraph 2, introductory part and point (a)

2. Operators of the applications referred to in paragraph 1 shall ensure that they are **inspected** for leakage by certified personnel who comply with the requirements of Article 5, according to the

2. Operators of the applications referred to in paragraph 1 shall ensure that they are **subject to controls** for leakage by certified personnel who comply with the requirements of Article 5, according to the

following schedule:

(a) applications containing 3 kg or more of fluorinated greenhouse gases shall be **inspected** at least once every twelve months; this shall not apply to **equipment** with hermetically sealed systems, which are labelled as such and contain less than 6 kg of fluorinated greenhouse gases;

following schedule:

(a) applications containing 3 kg or more of fluorinated greenhouse gases shall be **subject to controls for leakage** at least once every twelve months; this shall not apply to **circuits** with hermetically sealed systems, which are labelled as such and contain less than 6 kg of fluorinated greenhouse gases;

[horizontal amendment – if adopted, the term "inspected" will be changed to "subject to controls for leakage" throughout the whole text of, and all amendments to, the Regulation]

Justification

The word "inspection" in some countries (e.g. France) implies a control procedure by an outside organisation, independent of the operator of the plant. Imposing such an outside control in certain countries would undoubtedly lead to unfair competition. It would therefore be better to use the word "control" instead of inspection, throughout the document establishing standard inspection requirements. Equipment can include different circuits. The word "equipment" is too general and can be misinterpreted in this situation. The wording "circuits" states an unambiguous description.

Amendment 17

Article 3, paragraph 2, subparagraph 3

For the purposes of this paragraph, "**inspected** for leakage" means that the equipment or system is examined **primarily** for leakage using direct **or indirect** measuring methods, focusing on those parts of the **equipment or** system **most** likely to leak.

For the purposes of this paragraph, "**controls** for leakage" means that the equipment or system is examined for leakage using direct measuring methods – focusing on those parts of the system likely to leak – **or using indirect measuring methods – focusing on the amount of fluorinated greenhouse gas contained in the system.**

Justification

A more precise definition of the word "controls for leakage" is necessary.

Amendment 18

Article 3, paragraph 4

4. Where a properly functioning appropriate leakage detection system is in place, the frequency of the **inspections** required under paragraph 2 (b) and (c) shall be halved.

4. Where a properly functioning appropriate leakage detection system is in place, the frequency of the **control measures** required under paragraph 2 (b) and (c) shall be halved.

[horizontal amendment – if adopted, the term "inspection(s)" will be changed to "control measures" throughout the whole text of, and all amendments to, the Regulation]

Justification

To be consistent with the change above in Article 3, paragraph 2.

Amendment 19

Article 4, paragraph 3 a (new)

3a. Member States shall facilitate the cross-border transport of recovered fluorinated greenhouse gases for destruction or reclamation within the European Union by allowing the competent authority of the Member State of destination to grant pre-consents to facilities that recover fluorinated greenhouse gases. Pre-consents may be limited in time and may be revoked by the competent authorities of Member States at any time.

Justification

In order for producers of fluorinated greenhouse gases to deal with waste materials and products in an environmentally responsible manner, Member States should ensure that recovery is encouraged. By removing administrative burdens for cross-border transport of waste within the EU, recovery is made more attractive and economically viable. Waste materials and products can then be efficiently turned into valuable, reusable materials and are not unnecessarily discarded as waste.

Allowing the destination Member State's competent authorities to grant pre-consents to facilities that recover F-gases will ensure that F-gases are handled in an environmentally responsible manner at their end of life. A system of pre-consents has been in place through the Shipment of Waste Regulation (since the implementation of the 1993 Regulation). Pre-consents for F-gases reclamation would be granted to individual recovery sites, would be limited in time and could be revoked by competent authorities at any time. If there should be a problem with waste treatment of an operator, the pre-consent could and should be withdrawn.

For producers dedicated to recovery, reuse, and recycling, pre-consents issued by the destination Member States are necessary to ensure the cost-effectiveness of F-gases recovery operations.

Amendment 20
Article 5, paragraph 1

1. By * on the basis of information received from Member States and in consultation with the relevant sectors, the Commission shall establish, in accordance with the procedure referred to in Article 11(2), minimum requirements and the conditions for mutual recognition in respect of training programmes and certification for ***the relevant personnel and for the companies and their personnel*** involved in the activities provided for in Articles 3 and 4.

1. By * on the basis of information received from Member States and in consultation with the relevant sectors, the Commission shall establish, in accordance with the procedure referred to in Article 11(2), minimum requirements and the conditions for mutual recognition in respect of training programmes and certification for ***both the companies and all relevant personnel*** involved in ***installing or maintaining the equipment concerned by this Regulation as well as for those involved in servicing or carrying out controls of the equipment*** for the activities provided for in Articles 3 and 4.

Justification

The objective of the Regulation is to achieve efficient containment. The need for minimum qualifications and skills starts with proper planning and execution of the installations, it follows with professional preventive maintenance and servicing and it should not be limited to inspection and recovery activities.

The European Economic and Social Committee has correctly said that: “Article 5 provided for training and certification of personnel involved in containment and recovery, but not in installation and maintenance. This will be essential if the changes are to be effective.”

It is necessary, in order to ensure that f-gas containment inspections or controls are comprehensive, to certify both the companies and the personnel involved, whether they are independent contractors or working within that company. It should not be an option to certify one or the other

Amendment 21
Article 6, paragraph 1, point a), indent 1

- its total production of each fluorinated greenhouse gas in the Community, identifying the main categories of applications (e.g. mobile air-conditioning, refrigeration, air-conditioning, foams, aerosols, electrical equipment, semi-conductor manufacture) in which the

- its total production of each fluorinated greenhouse gas in the Community, identifying the main categories of applications (e.g. mobile air-conditioning, refrigeration, air-conditioning, foams, aerosols, electrical equipment, semi-conductor manufacture, ***solvents and***

substance is expected to be used;

fire protection) in which the substance is expected to be used;

Justification

It is understood that the list of applications was not intended to be a complete list of all applicable sectors. However, exclusion of the fire protection sector in this list may suggest to some that the sector is not as significant as other sectors for the purpose of targeting emission reductions. The working group on Fluorinated Gases in the European Climate Change Programme has identified both solvents and fire protection as main areas of application.

Amendment 22

Article 6, paragraph 1, point (c a) (new)

(ca) 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.

Justification

There is no clear link between the containment and reporting provisions in the common position. A registration process for big installations which contain at least 30+ kg would allow the competent authority to know where those systems are actually installed, who operates them and what ultimately happens to the fluorinated greenhouse gases contain in these systems.

Amendment 23

Article 6, paragraph 1 a (new)

1a. The competent authorities shall review every two years a representative sample of the records referred to in Article 3(6), for each of the categories indicated in Article 3(2)(b) and (c), and report to the Commission estimated emissions.

Justification

There is no clear link between the containment and reporting provisions in the proposal. The reporting requirements in the proposal only monitor trade flow and will not meet the objectives of the proposal: the monitoring of actual emissions. It is essential to include a sampling of the real data to ensure an accurate picture of emissions.

Amendment 24
Article 6, paragraph 2

2. By * the Commission shall determine, in accordance with the procedure referred to in Article 11(2), the format of the reports referred to in **paragraph 1** of this Article.

2. By * the Commission shall determine, in accordance with the procedure referred to in Article 11(2), the format of the reports referred to in **paragraphs 1 and 1a** of this Article.

Justification

Linked to the insertion above of a new paragraph 1a in Article 6.

Amendment 25
Article 7, paragraph 1

1. Without prejudice to the provisions of Council Directive 67/548/EEC and of Directive 1999/45/EC of the European Parliament and of the Council in respect of the labelling of dangerous substances and preparations, the products and equipment, listed in paragraph 2, containing fluorinated greenhouse gases shall not be placed on the market unless the chemical name of the fluorinated greenhouse gases is identified by way of a label using the accepted industry nomenclature. Such label shall clearly indicate that the product or equipment contains fluorinated greenhouse gases, and this shall be clearly and indelibly stated on the product or equipment, adjacent to the service points for charging or recovering the fluorinated greenhouse gas, or on that part of the product or equipment which contains the fluorinated greenhouse gas. Hermetically sealed systems shall be labelled as such.

1. Without prejudice to the provisions of Council Directive 67/548/EEC and of Directive 1999/45/EC of the European Parliament and of the Council in respect of the labelling of dangerous substances and preparations, the products and equipment, listed in paragraph 2, containing fluorinated greenhouse gases shall not be placed on the market unless the chemical name of the fluorinated greenhouse gases is identified by way of a label using the accepted industry nomenclature. Such label shall clearly indicate that the product or equipment contains fluorinated greenhouse gases **and state their global warming potential**, and this shall be clearly and indelibly stated on the product or equipment. **The label shall be placed on the outside of the front or top of the appliance or equipment, in such a way as to be clearly visible, and not obscured. If this label is not** adjacent to the service points for charging or recovering the fluorinated greenhouse gas, or on that part of the product or equipment which contains the fluorinated greenhouse gas, **a second label shall be placed adjacent to these points or that part**. Hermetically sealed systems shall be labelled as such.

Justification

It is important that consumers are aware not only of the gases contained in a product but also of the global warming potential of that gas. Reinstates the idea of amendment 78 in first reading.

In many appliances, the servicing points and parts that contain fluorinated gases are not visible to consumers. This amendment will ensure that consumers can be aware of the fact that a product contains greenhouse gases, as well as of the global warming potential of the gas.

Amendment 26

Article 8, paragraph 2 a (new)

2a. Fluorinated greenhouse gases shall only be used where other safe, technically feasible and environmentally acceptable alternatives do not exist.

Justification

This amendment recognizes a) that innovation and transition towards environmental alternatives away from fluorinated greenhouse gases must rapidly occur and b) that there is already a substantial amount of fluorinated greenhouse gases that are stocked (e.g. in foams, refrigeration, air-conditioning or in fire protection systems) which could affect our climate since every kg installed can eventually be emitted into the atmosphere.

Amendment 27

Article 10, paragraph 1

1. On the basis of progress in ***potential*** containment or replacement of fluorinated greenhouse gases in air conditioning systems, other than those fitted to motor vehicles referred to in Council Directive 70/156/EEC of 6 February 1970 on the approximation of laws relating to the type-approval of motor vehicles and their trailers, and in refrigeration systems contained in modes of transport, the Commission shall review this Regulation and publish a report by 31 December 2007 at the latest. ***If appropriate it*** shall present legislative

1. On the basis of progress in containment or replacement of fluorinated greenhouse gases in air conditioning systems, other than those fitted to motor vehicles referred to in Council Directive 70/156/EEC of 6 February 1970 on the approximation of laws relating to the type-approval of motor vehicles and their trailers, and in refrigeration systems contained in modes of transport, the Commission shall review this Regulation and publish a report by 31 December 2007 at the latest. ***It*** shall present legislative proposals also with a view to applying the provisions of Article 3

proposals also with a view to applying the provisions of Article 3 to air conditioning systems, other than those fitted to motor vehicles referred to in Directive 70/156/EEC, and refrigeration systems contained in modes of transport.

to air conditioning systems, other than those fitted to motor vehicles referred to in Directive 70/156/EEC, and refrigeration systems contained in modes of transport **by 31 December 2008**.

Justification

It has to be clear that these applications will also be covered by the requirements on containment in Article 3.

Amendment 28

Article 10, paragraph 2, point (e)

(e) evaluate the effectiveness of containment measures carried out by operators under Article 3 and assess whether maximum leakage rates for installations can be established;

(e) evaluate the effectiveness of containment measures carried out by operators under Article 3 and assess whether maximum leakage rates for installations can be established, **taking into account representative data gathered from operator records in the Member States**;

Justification

Ensures that data recorded under Article 6 are taken into account by the Commission in its assessment.

Amendment 29

Article 10, paragraph 2, point (j)

(j) assess whether the inclusion of further products and equipment containing fluorinated greenhouse gases in Annex II is technically feasible and cost-effective and, if appropriate, make proposals to amend Annex II in order to include such further products and equipment;

(j) assess whether the inclusion of further products and equipment containing fluorinated greenhouse gases in Annex II is technically feasible, **energy-efficient** and cost-effective and, if appropriate, make proposals to amend Annex II in order to include such further products and equipment;

Justification

The choice of refrigerant and equipment design can have a major impact on energy efficiency and energy consumption, and will affect the overall equipment cost. Therefore the choice of refrigerant can influence the cost-effectiveness of energy consumption measures for stationary refrigeration and air-conditioning. It is important to ensure that such factors are fully taken into account when considering additional measures.

Amendment 30

Article 10, paragraph 3

3. ***Where necessary***, the Commission shall present appropriate proposals for revision of the relevant provisions of this Regulation.

3. The Commission shall present appropriate proposals for revision of the relevant provisions of this Regulation, ***including its annexes, by 31 December 2007 at the latest and, where necessary, every two years thereafter.***

Justification

The legislative review should be in line with the timeframe of the Commission review report process, which will be published by 31 December 2007. Future possible revision will have to be on a regular basis.

Amendment 31

Article 10 a (new)

Article 10a

Promotion of alternatives

1. Without prejudice to the Treaty and in particular Article 87 thereof, Member States shall promote the placing on the market of equipment using alternatives to gases with a high global warming potential taking into account the energy-efficiency benefits provided by certain gases in certain applications, such as insulation. They shall notify all measures introducing any sort of ban in addition to those following from Article 9 to the Commission for authorisation.

2. Paragraph 1 shall apply to the following types of products and equipment:

- (a) refrigeration products and equipment;**
- (b) air conditioning products and equipment (other than those contained in motor vehicles);**
- (c) foams.**

Justification

Reinstates amendment 77 from first reading. The notification will be a proactive way of avoiding court proceedings and it will help to ensure that national measures of this kind are compatible with the Treaty, i.e. proportionate, non-discriminatory and not purely economic in nature. In many appliances, the servicing points and parts that contain fluorinated gases are not visible to consumers. This amendment will ensure that consumers can be aware of the fact that a product contains greenhouse gases, as well as of the global warming potential of the gas.

Amendment 32

Annex II, row 8 a (new)

<i>Fluorinated greenhouse gases</i>	<i>Foams other than one component foams, except when required to meet safety standards</i>	<i>1 January 2009</i>
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Justification

A number of manufactures have already been using alternative blowing agents to the fluorinated greenhouse gases in foams. Such an amendment would spur European technological innovation in this sector, causing a significant knock-on effect in the global market.

Amendment 33

Annex II, row 9 a (new)

<i>Hydrofluorocarbons</i>	<i>Aerosols (except in metered dose inhalers and for cleaning of electronic components and where safety regulations prohibit</i>	<i>1 January 2006</i>
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	alternatives)	
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Justification

Alternatives are available for most of aerosols except for metered dose inhalers and for certain cleaning of electronic components. Therefore an exemption is made for such uses.

Amendment 34
Annex II, row 9 b (new)

Hydrofluorocarbons	Domestic refrigeration systems with less than 150g of refrigerant charge	Four years after the date of entry into force
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Justification

Alternative refrigerants to hydrofluorocarbons are already widely commercially available. Under the terms of the Waste Electrical and Electronic Equipment Directive, hydrofluorocarbons need to be recovered at the end of a refrigerator's useful life. Their replacement is more cost-effective - switching to a hydrocarbon refrigerant, for example, would cost 3.40 €/ ton of CO₂ equivalent, whereas recovering them has an estimated cost of 90 €/ ton of CO₂ equivalent

Amendment 35
Annex II, row 9 c (new)

Hydrofluorocarbons	Commercial and industrial refrigeration, except when required to meet safety standards	1 January 2010
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Justification

A number of manufacturers have already been using alternative refrigerants to hydrofluorocarbons in commercial refrigeration. Such an amendment would spur European technological innovation in this sector, causing a significant knock-on effect in the global market.

Amendment 36
Annex II, row 9 d (new)

<i>Fluorinated greenhouse gases</i>	<i>Stationary air-conditioning, except when required to meet safety standards</i>	<i>1 January 2010</i>
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Justification

The tabler supports the change in the legal basis, to Article 95, so that the industry can plan with certainty for the entire European market. The climate problem is a global problem, and for that reason it is not national measures which are required, but measures which are at least European in scope. However, the change in the legal basis will make it very difficult for Member States to go beyond the requirements laid down in the directive. Accordingly, the requirements must be stricter than those incorporated in the common position.

Amendment 37
Annex II, row 9 e (new)

<i>Sulphur hexafluoride</i>	<i>Trace gas, except for use in laboratories</i>	<i>1 January 2006</i>
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Justification

Alternatives such as hydrocarbons are available for most uses of SF6 as a trace gas except for certain laboratory uses. Therefore an exemption is made for such uses.

Amendment 38
Annex II, row 9 f (new)

<i>Sulphur hexafluoride</i>	<i>All applications, except in switchgears</i>	<i>1 January 2008</i>
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Justification

The tabler supports the change in the legal basis, to Article 95, so that the industry can plan with certainty for the entire European market. The climate problem is a global problem, and for that reason it is not national measures which are required, but measures which are at least European in scope. However, the change to the legal basis will make it very difficult for

Member States to go beyond the requirements laid down in the regulation. Accordingly, the requirements must be stricter than those incorporated in the common position. In the case of switchgears, there are at present no practical alternatives.

EXPLANATORY STATEMENT

1. Response to Climate Change

The overall objective of the proposed Regulation is to make a significant contribution towards the European Community's Kyoto Protocol target by introducing cost-effective mitigation measures. Action to reduce emissions of fluorinated gases needs to be considered in the context of wider efforts being taken to combat climate change. Climate change is recognised as one of the greatest environmental and economic challenges facing humanity. This Regulation provides a legislative framework at the Community level to improve the containment and monitoring of fluorinated gases, and to introduce marketing and use restrictions for certain applications.

2. Gases covered by the Regulation

Fluorinated Gases (hydrofluorocarbons, or HFCs, perfluorocarbons or PFCs and sulphur hexafluoride or SF₆) were introduced in the nineties to replace the ozone-depleting CFCs and HCFCs (chlorofluorocarbons and hydrochlorofluorocarbons). Using alternatives such as HFCs enabled EU Member States to meet the requirements of the Montreal Protocol. However, the global warming potential (GWP) of fluorinated greenhouse gases is high and many of them tend to stay in the atmosphere for very long periods of time. For example, the Commission estimates that SF₆ has a global warming potential that is 23,900 times that of carbon dioxide (CO₂, which has a GWP of 1). If no action is taken, the Commission estimates that "emissions of fluorinated gases would increase from 65.2 million tonnes of CO₂ equivalent in 1995 to 98 million tonnes in 2010.

3. The Common Position(s)

Whereas the original Commission proposal was in the form of one Regulation with a single market legal base (Article 95), the Council reached a Common Position which took the form of two separate texts, a Directive based on Article 95 and a Regulation based on a dual legal base consisting of Articles 175 and 95. The rationale for the split of the Commission proposal into two different texts was to move all the requirements relating to emissions from air conditioning in motor vehicles from the proposed Regulation to the framework Directive 70/156/EEC for type-approval of motor vehicles. The proposed Regulation would then focus on the remaining stationary applications.

Many of the European Parliament's amendments adopted in first reading have been incorporated in the Common Position, notably the idea of linking the ban on certain fluorinated greenhouse gases in air-conditioning systems in vehicles to the type-approval procedure in Directive 70/156/EC, but also ideas linked to the requirements for containment as well as for training and certification of personnel involved in handling greenhouse gases.

4. The Rapporteur's Position

The rapporteur welcomes the proposed Regulation from the Council which is an important step in combating Climate change. It is vital for the European Union to show that concrete measures are taken within Europe to mitigate emissions of greenhouse gases. It is evident, however, that there is a balance to be struck between being sufficiently ambitious in environmental terms and allowing the internal market to work without too many restrictions or administrative burdens.

a) Legal base

As a matter of general principle, and in the interests of promoting better, simpler and clearer legislation, the introduction of a dual legal base represents a dangerous direction in European policy making and an attempt to create a precedent. The "centre of gravity" of the Regulation is Environmental protection and according to recent case law of the European Court of Justice, there should be a sole legal base which reflects that preponderant purpose. In order to ensure legal certainty the rapporteur sees no other workable solution than to introduce an amendment changing the dual legal base to a single one so that the whole Regulation is based on Article 175.

This will also allow those Member States who already have more ambitious legislation in force to keep that legislation where it is appropriate and not, as would be the case with the current Common Position, force them to lower their environmental standards to a common (lower) EU level. It is important to keep in mind however that Articles 175 and 176 do not give Member States a free hand to introduce whatever measures they want. The internal market will still be protected from measures restricting trade more than necessary. It is clearly stated in Article 176 that the measures have to be compatible with the Treaty, i.e. they have to be proportionate, non-discriminatory and not purely economic in nature.

In an enlarged Europe of 25 (soon to be 27) Member States, the Council may well resort to a more frequent use of a dual legal base in order to try to please various national interests. This will result in the fragmentation of the purpose and focus of legislation. This trend towards cobbling together sloppy compromises at the Council negotiating table when Member States cannot reach an acceptable political agreement is extremely worrying. The rapporteur believes that the European Parliament is uniquely placed to overcome the constraints of national positions and to provide policy coherence in areas where Community level action is required. As an Environment Committee, we should resist the dilution and emasculation of environmental legislation, especially in relation to climate change.

b) Promotion of innovation and transition to more environmentally benign technologies

While the rapporteur believes in containment and recovery as very useful tools for mitigating emissions of greenhouse gases, she also sees the need for promoting the development of alternative technologies which are more environmentally benign than the existing ones. It is also fair to give those companies that have already invested in research and developed more environmentally friendly technologies some credit for doing so. By allowing more ambitious legislation in the Member States (see above, legal base) and by restricting the marketing of certain products where better alternatives exist, the objectives just mentioned will be given impetus. Any more stringent measures proposed by Member States should be notified to the Commission in advance of their enactment to obviate legal challenges at a later stage.

Industry must be given long term certainty and it is our duty to lay out the directions for the future.

Once adopted, your rapporteur hopes that this Regulation will contribute to the reduction and containment of greenhouse gases and play its part in the European Union's and Member State's effort to combat Climate change.

PROCEDURE

Title	Council common position for adopting a regulation of the European Parliament and of the Council on certain flourinated greenhouse gases
References	16056/5/2004 – C6-0221/2005 – 2003/0189A(COD)
Legal basis	Article 251(2), 175 and 95 EC
Basis in Rules of Procedure	Rule 62
Date of Parliament's first reading – P[5]	31.3.2004 T5-0237/2005
Commission proposal	COM(2003)0492
Amended Commission proposal	
Date receipt of common position announced in plenary	21.6.2005
Committee responsible Date announced in plenary	ENVI 7.7.2005
Rapporteur(s) Date appointed	Avril Doyle 12.7.2005
Previous rapporteur(s)	Robert Goodwill
Discussed in committee	14.9.2005
Date adopted	10.10.2005
Result of final vote	for: 54 against: 0 abstentions: 1
Members present for the final vote	Adamos Adamou, Georgs Andrejevs, Johannes Blokland, John Bowis, Frederika Brepoels, Hiltrud Breyer, Martin Callanan, Dorette Corbey, Chris Davies, Avril Doyle, Mojca Drčar Murko, Edite Estrela, Anne Ferreira, Alessandro Foglietta, Françoise Grossetête, Cristina Gutiérrez-Cortines, Satu Hassi, Gyula Hegyi, Mary Honeyball, Dan Jørgensen, Christa Kläß, Eija-Riitta Korhola, Urszula Krupa, Peter Liese, Kartika, Jules Maaten, Roberto Musacchio, Riitta Myller, Vittorio Prodi, Dagmar Roth-Behrendt, Guido Sacconi, Karin Scheele, Carl Schlyter, Richard Seeber, Jonas Sjöstedt, María Sornosa Martínez, Antonios Trakatellis, Thomas Ulmer, Anja Weisgerber, Åsa Westlund, Anders Wijkman
Substitutes present for the final vote	Margrete Auken, María del Pilar Ayuso González, Christofer Fjellner, Milan Gaľa, Hélène Goudin, Ambroise Guellec, Rebecca Harms, Erna Hennicot-Schoepges, Kartika Tamara Liotard, Miroslav Mikolášik, Pál Schmitt, Renate Sommer, Andres Tarand, Phillip Whitehead
Substitutes under Rule 178(2) present for the final vote	Eoin Ryan (183.3)
Date tabled – A6	13.10.2005 A6-0301/2005
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