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2022/0100 (COD)

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**

(Text with EEA relevance)

{SEC(2022) 157 final} - {SWD(2022) 98 final} - {SWD(2022) 99 final} -  
{SWD(2022) 100 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

##### Problem definition and objectives

The European Green Deal launched a new growth strategy for the EU that aims to transform the EU into a fair and prosperous society with a modern, resource-efficient and competitive economy. It reaffirms the Commission's ambition to increase its climate targets and make Europe the first climate-neutral continent by 2050. Furthermore, it aims to protect the health and well-being of citizens from environment-related risks and impacts. In response to the urgency for climate action, the EU increased its climate ambition through Regulation (EU) No 2021/1119 (the European Climate Law)<sup>1</sup>, which was adopted in 2021. The climate law establishes a binding net GHG reduction target of at least 55% by 2030 compared to 1990 and EU climate neutrality at the latest by 2050. The EU has also enhanced its initial Nationally Determined Contribution under the *Paris Agreement on Climate Change* from at least 40% greenhouse gas emissions reductions by 2030, to at least 55% net greenhouse gas emissions reductions. Achieving those objectives, and having a chance to keep global average temperature within 1.5°C, requires reinforcing all instruments relevant for the decarbonisation of EU's economy;

Ozone depleting substances (ODS) are human-made chemicals that, after emission, frequently reach the upper atmosphere and damage the stratospheric ozone layer which protects the earth's surface from dangerous UV radiation from the sun. This damage results in the so-called 'ozone hole' with significant adverse impacts on our health and the biosphere and which in turn entail high financial costs. Moreover, ODS are also strong greenhouse gases with high global warming potentials.

Due to global action taken against ozone depletion through the adoption of the Montreal Protocol on Substances that Deplete the Ozone Layer in 1987 (hereafter: the Protocol), the ozone hole is on the way to recovery, provided that compliance with existing measures is ensured and any new challenges are swiftly addressed. Furthermore, significant climate-related benefits have been achieved, e.g. for the period 1988 to 2010 these benefits were 5-6 times higher than those achieved during the Kyoto Protocol's first commitment period 2008-2012.<sup>2</sup> In 2019 researchers estimated that the Protocol had avoided as much as 1.1 °C warming over parts of the Arctic.<sup>3</sup>

Thus, it is essential that the EU avoids any backsliding and ensures that its ODS policy is aligned with the objectives in the European Green Deal, the Protocol and the Paris Agreement.

Regulation (EC) No 1005/2009 on substances that deplete the ozone layer (ODS Regulation) is the main instrument targeting ODS in the EU. Its general objective is to prevent ODS emissions and safeguard compliance with the Protocol. The ODS Regulation was submitted for a 'REFIT' evaluation,<sup>4</sup> which concluded that while the Regulation was generally fit for

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<sup>1</sup> OJ L 243, 9.7.2021, p. 1.

<sup>2</sup> UNEP (2011). A critical link in protecting the climate and the ozone layer. <https://www.unep.org/resources/report/hfcs-critical-link-protecting-climate-and-ozone-layer>.

<sup>3</sup> Rishav Goyal et al. 2019. Reduction in surface climate change achieved by the 1987 Montreal Protocol.

<sup>4</sup> Evaluation of Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer {SWD(2019) 407 final} [https://ec.europa.eu/clima/sites/default/files/ozone/docs/swd\\_2019\\_406\\_en.pdf](https://ec.europa.eu/clima/sites/default/files/ozone/docs/swd_2019_406_en.pdf)

purpose it could be better aligned with the European Green Deal and its design could be slightly improved.

In this context, the proposal aims to replace the ODS Regulation, while maintaining a strict level of control, notably to:

1. Align the measures with the European Green Deal by mandating additional emission reductions that are feasible at proportionate costs.
2. Ensure a more comprehensive monitoring of ODS including of substances that are not (yet) controlled.
3. Simplify and improve the efficiency of existing rules to reduce the administrative costs.
4. Improve clarity and coherence with other rules.

## **Background**

In response to ozone depletion and to the 'ozone hole' discovered in the 1980s, the international community agreed to take measures under the 1985 Vienna Convention for the Protection of the Ozone Layer. The Convention's Protocol and established a global phase-out schedule for production and consumption of nearly 100 ozone depleting substances. The Protocol and subsequent decisions of its 197 Parties have created a global legal framework for controlling ODS.

The EU and its Member States are Parties to the Protocol and are bound to the phase-out schedules for the different groups of ODS. All phase-out dates for developed countries are now in the past.

Consequently, the ODS Regulation generally prohibits production, trade and use of ODS while exempting a few specified uses. Many ODS were phased-out in the Union years ahead of the global schedule agreed under the Protocol. The ODS Regulation also goes beyond the Protocol by limiting trade and use of products and equipment with ODS. Finally, the ODS Regulation covers, in Annex I, the ODS that are controlled under the Protocol and in Annex II so-called 'new substances' that are not (yet) controlled by the Protocol.

The ODS Regulation is complemented by Commission Decision (EU) 2010/372 on the use of controlled substances as process agents, Commission Regulation (EU) No 1088/2013 on import and export licences of products and equipment containing or relying on halons for critical uses in aircraft and Commission Regulation (EU) No 291/2011 on essential uses of controlled substances other than hydrochlorofluorocarbons for laboratory and analytical purposes.

### **• Consistency with existing policy provisions in the policy area**

The proposed Regulation (as well as the current ODS Regulation) has many similarities with Regulation (EU) No 517/2014 on fluorinated greenhouse gases<sup>5</sup> (F-gas Regulation), which is being revised in parallel. These two Regulations must jointly ensure that the Union complies with its obligations relating ODS and HFCs under the Protocol. While the two reviews do not directly impact each other, they do affect similar stakeholders and sectors, as well as similar activities (trade, equipment use etc.) and they use similar control measures, including a trade licencing system as required by the Protocol. Both industry and authorities have therefore called for their relevant rules to be closely aligned (e.g. regarding custom controls, leakage rules, definitions etc.).

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<sup>5</sup> OJ L 150, 20.5.2014, p.195.

- **Consistency with other Union policies**

Regulation (EU) No 2021/1119 sets out a binding objective of climate neutrality in the Union by 2050 in pursuit of the long-term temperature goal of the Paris Agreement. In order to reach the climate-neutrality objective, the European Climate Law also sets the binding EU 2030 climate target of at least 55 % net greenhouse gas emissions reductions compared to 1990 levels. Both the 2030 and 2050 targets require alignment of all relevant EU policies. While the climate relevance of ODS emissions is not counted towards these targets, any action to prevent and further reduce ODS emissions results in additional savings that can contribute to reaching the temperature goal under the Paris Agreement.

Furthermore, there are also close links to waste<sup>6</sup> and chemical<sup>7</sup> policies, as well as customs and market surveillance legislation. The current review seeks to achieve more clarity by aligning more closely with these pieces of legislation. Directive 2010/75/EU on industrial emissions (IED) and Regulation (EC) No 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register (E-PRTR) are also currently under review.

The latter monitors emissions of ODS, but more granularity on these data would be useful to complement the reporting data collected under the Regulation. Under the IED, emission limit values are set by the competent authority and should not exceed emission levels associated with best available technologies (BAT). A more systematic consideration of ODS as a key environmental parameter in the development of BAT reference documents (BREFs) would be useful with regards to controlling industrial emissions. Given the relevance of end-of-life emissions from insulation foams containing ODS, there are strong synergies with objectives of the circular economy and EU waste policies. The targeted 2023 revision of the Waste Framework Directive on which the impact assessment work has begun is a good opportunity to reinforce these links to the ODS Regulation.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

This proposal is based on Article 192(1) of the Treaty on the Functioning of the European Union, in line with the objective to preserve, protect and improve the quality of the environment; protect human health; and to promote measures at international level to deal with climate change.

- **Subsidiarity**

The proposal complements EU legislation that has existed at EU level since 2000 and it clearly complies with the subsidiarity principle for the following reasons:

Firstly, protecting the climate system is a cross-border issue. Individual member states cannot solve the problems alone. The scale of the problem demands EU-wide action as well as action worldwide.

The ODS Regulation prohibits the production, placing on the market and further supply, import, export and use of controlled substances and products and equipment using those substances. It is therefore relevant to the functioning of the internal market. For the

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<sup>6</sup> E.g. Regulation (EC) No 1013/2006 on transboundary waste shipments, the Waste Electrical and Electronic Equipment Directive 2012/19/EU and the Waste Framework Directive (Directive 2008/98/EC).

<sup>7</sup> E.g. REACH (Regulation (EC) Nr 1907/2006), the Industrial Emissions Directive (IED: Directive 2010/75/EU) and the European Pollutant Release and Transfer Register (ePRTR) Regulation (EC) No 166/2006.

functioning of the EU internal market and the free movement of goods, it is highly preferably if such measures are taken at EU level.

The Protocol considers the EU as a regional economic integration organisation (REIO) and the EU must therefore comply with the Protocol's obligations at Union level (e.g. reporting, licensing system, consumption phase-down). This requires relevant legislation at the same level; it would be very difficult if not infeasible to achieve compliance through 27 different national systems.

- **Proportionality**

The proposal complies with the proportionality principle. The measures are based on a thorough assessment of their cost-effectiveness.

In general terms, the proposal mainly improves certain aspects of the ODS Regulation. Where further restrictions are proposed (i.e. recovery obligations) the proposal ensures that technically and economically feasible alternatives are available. If under particular circumstances this is not the case, it allows derogations to be granted.

Modifications on reporting are minor and should not entail any significant costs on undertakings. On the other hand certain modifications result in costs savings and prevent unnecessary administrative burden for undertakings and national competent authorities (for example removal of the quota allocation system).

No detailed provisions are proposed in areas where the objectives might be better achieved by action in other policy areas, for example by legislation on waste or labelling. This is to avoid overlaps that might lead to the unclear allocation of responsibilities, creating an additional burden for public authorities and companies.

- **Choice of the instrument**

The legal instrument chosen is a Regulation since the proposal aims to replace and improve the ODS Regulation while maintaining its general structure on control measures (prohibitions, exemptions and derogations, reporting). The ODS Regulation has proven to be effective and fit for purpose. Since the proposal includes several adaptations as well as amendments to the structure of the ODS Regulation, the ODS Regulation should be repealed and replaced with a new Regulation to ensure legal clarity. Any major changes (i.e. repeal, or turning it into a Directive) would unduly burden Member States and create additional uncertainty for the undertakings active in this sector.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

On 26 November 2019, the Commission published its evaluation report<sup>8</sup> on the implementation of the ODS Regulation in line with the 'Better regulation' requirements. The Regulatory Scrutiny Board acknowledged that the evaluation findings were well substantiated but advised to better describe (i) the contribution of the current Regulation on top of previous achievements, (ii) the EU's global role in this area and (iii) the need for continued high ambition, in particular as related to climate action. The Board also suggested to make the text more reader-friendly to the non-expert. With these suggestions in mind, the evaluation text was re-written in the relevant parts.

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<sup>8</sup> Evaluation of Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer {SWD(2019) 407 final}

The evaluation found that the ODS Regulation ensures compliance with the Protocol and positively influences third countries to do likewise. It has safeguarded a high environmental ambition by eliminating the vast majority of past ODS uses, while also ensuring a level playing field for concerned industries and undertakings among Member States. Thus, the evaluation concluded that most of the obligations and measures of the current Regulation are fit for purpose and should therefore remain in place.

However, the evaluation further recognises that its measures are not fully aligned with the European Green Deal and that further emission reductions would be possible at proportionate costs. In particular, a significant amount of ozone layer and climate relevant emissions could be saved at relatively low costs if ODS in certain building materials that contain foams blown with ODS, were being systematically recovered and destroyed or reused. In addition, some measures could be more efficient or even abolished, as they have effectively become obsolete in the present situation, where ODS uses have become generally prohibited. This would allow avoiding partially redundant administrative costs. In addition, certain gaps in the monitoring were observed. Finally, some of the rules were found to be slightly incoherent with other EU legislation. This includes, *inter alia*, customs legislation and border checking obligations. Similarly, there is some scope for simplification, improvement and clarifications as regards the coherence of the Regulation.

- **Stakeholder consultations**

The Commission carried out a broad consultation with stakeholders, including a public online consultation from 13 July 2020 to 9 November 2020<sup>9</sup>. A targeted stakeholder consultation involving 42 stakeholders was also organised, tailored to ODS businesses, NGOs and competent authorities. Finally, an online stakeholder workshop was held on 26 February 2021 to present the preliminary results of the impact assessment and ask for stakeholder input on existing data gaps 66 stakeholders participated.

Overall, stakeholders agreed that the ODS Regulation remains a successful tool to address ozone depletion and it is important to safeguard the progress made.

Almost all respondents in the public consultation agreed that there is a need for further reduction of emissions from foams at their end of life. Member States authorities and business confirmed the considerable positive environmental impact of such an option. Some Member State authorities raised concerns regarding the costs for the proper treatment of the waste.

Moreover, the simplification of the licencing system in light of the European Single Window Environment for Customs<sup>10</sup> as well as strengthening measures for the prevention of illegal activities were overall considered as important objectives by stakeholders. All businesses (including any laboratory users that responded) and public authorities agreed on the option to simplify registration for laboratory use. Furthermore, all industry respondents and most public authorities found it important to abolish the quota system. In addition, the aviation industry highlighted the infeasibility of one halon prohibition, which was confirmed by authorities.

All non-business stakeholder groups in the public consultation placed high importance on additional reporting measures, whereas businesses were divided on this issue.

Many of the suggestions to ensure better coherence and clarification were provided by stakeholders in the context of the evaluation and in the context of the consultation activities

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<sup>9</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12310-Ozone-layer-protection-revision-of-EU-rules/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12310-Ozone-layer-protection-revision-of-EU-rules/public-consultation_en)

<sup>10</sup> Commission proposal for a Regulation establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013 of 28 October 2020 COM(2020) 673 final.

for this review. Two thirds of the respondents to the public consultation highlighted the importance of ensuring a clearer and more accessible legal text of the Regulation.

The consultations therefore were fully considered in developing the proposal, in particular regarding the design of the policy measures considered and their potential impacts.

- **Collection and use of expertise**

The Commission has gathered extensive technical advice from a number of expert studies<sup>11</sup> including a comprehensive preparatory study for the review of the Regulation. The industry sector, Member States authorities and civil society were asked to provide input and technical support for the preparation of the study.

- **Impact assessment**

The Commission carried out an impact assessment. Three policy options, covering different policy measures, were examined in terms of their effectiveness in achieving the objectives sought as well as their environmental, economic and social impacts. For each review objective, a series of measures were identified. The measures, which are complementary and not mutually exclusive, were grouped into three policy options on the basis of their expected (abatement) costs:

- **Option 1:** includes measures resulting in cost **savings or very low costs only**. It focuses mainly on simplifications and better coherence and clarifications, but includes also one additional very cost-efficient measure to reduce emissions, requiring recovery of ODS-containing foams in metal-faced panels.
- **Option 2 (the preferred option):** the same as Option 1, but also includes additional measures that are expected to generate some costs, notably measures targeting emission reductions, e.g. by enlarging the scope of ODS containing foams for which recovery is required, as well as more comprehensive monitoring and control.
- **Option 3** includes all measures assessed including those with high (abatement) costs.

The baseline, against which policy options were assessed, assumes that the ODS Regulation and implementing acts are fully implemented without any changes. Option 1, is the low-cost option. It would save a relevant amount of emissions compared to baseline and achieve costs savings for business and authorities. Option 2 almost doubles the additional emission savings at moderate abatement costs. The additional costs largely relate to foam recovery for building owners. These costs will, however, be spread over many years and a high number of persons/entities. The overall emission savings of Option 3 are only very marginally higher than Option 2, while the additional measures included in Option 3 would likely lead to very high costs to undertakings and may have considerable detrimental effects on employment. All changes related to better coherence and clarity are included in all three options.

On the basis of the assessment it is concluded that Option 2 includes the preferred package of measures. It achieves significantly more emission savings than Option 1 and is therefore more coherent with the European Green Deal. Moreover, the abatement costs for Option 2 are very reasonable compared to the forecasted costs in the EU long-term strategy needed to reach climate neutrality. On the other hand, Option 3 would add considerable costs at only incremental savings and potential environmental benefits would be uncertain.

The preferred option is thus characterised as follows:

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<sup>11</sup> Main studies are: Ramboll (2019). Support study for the evaluation of Regulation (EC) No 1005/2009 on substances that deplete the ozone layer, SKN Enviros (2012), Further Assessment of Policy Options for the Management and Destruction of Banks of ODS and F-Gases in the EU. Final Report.

- The main measure to avoid further emissions is an explicit requirement to recover certain types of ODS foams<sup>12</sup> from construction and demolition waste and destroy or reuse the ODS contained therein; it is estimated to save about 180 million CO<sub>2</sub> equivalents until 2050;
- It will be prohibited to destroy halons in order to preserve non-virgin stocks for exempted critical uses and thereby, prevent that a restart of new halon production for such uses would become necessary;
- All measures meant to reduce the burden on companies and authorities and/or improving the controls in place are included;
- All measures to improve monitoring are included;
- All measures to improve coherence and clarifications are included.

The initiative contributes to the Sustainable Development Goals, most prominently to “fight climate change”, but also “health and well-being”, “life on land” and “sustainable production and consumption”. It responds to the “digital by default” principle by modernising the licensing system and exploiting fully the opportunities of the Single Environment for Customs initiative by electronically linking custom offices on the Member States to the EC-central ODS licensing system. It is also fully in line with the “do no significant harm” principle as it will further strengthen the controls on ODS and reduce ozone- and climate-relevant emissions.

The Regulatory Scrutiny Board gave a positive opinion but recommended to provide more clarity on the description of the measures and their assessed impacts. The impact assessment was updated to address these issues, in particular regarding the main emission savings measure of insulation foam recovery and destruction.

- **Regulatory fitness and simplification**

A significant focus of the proposal is on increasing efficiency of the existing measures, rather than creating new ones, given that this is a regulation that has already been evolving over three decades in response to obligations under the Protocol, new developments and changes in technologies.

The proposal is expected to deliver a number of simplification benefits to business. In particular, the abolishment of the registration requirements for laboratory uses will result in cost savings for companies as it will decrease the administrative burden on the 2,211 laboratories registered in 2020, often SMEs. Moreover, abolishing the annual quota allocation system also reduces administrative costs for undertakings that have to apply for such quota on a yearly basis. Finally, business applying for longer-term licences instead of per-shipment licences will reduce administrative costs.

The registration and issuing of licenses referred to in this proposal will be implemented through the existing ODS licensing system. An adaptation is required for its interconnection with the national customs authorities systems via the EU Single Window Environment for Customs. Through this interconnection, the validity of licences will be automatically checked at customs for every single shipment. Until the latter electronic system is operable in all Member States, the current licensing system will continue.

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<sup>12</sup> Metal-faced panels, as well as laminated boards when feasible with burden of proof on owner/contractor

In total, the cost savings achievable are up to €180,000 per year for industry (plus non-recurrent savings of €36.000), and 254 person days per year for authorities in addition to a non-recurrent saving of 440 person days and yearly IT costs savings of €31,500.

- **Fundamental rights**

The proposed rules of this initiative ensure the full respect of the rights and principles set out in the Charter of Fundamental Rights of the European Union.

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no incremental implications to the budget of the European Union.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Future monitoring and evaluation of the ODS Regulation can rely on companies' reporting data that is collected and aggregated by the European Environment Agency each year. In addition, Member States reporting pursuant to Art. 26 allows to (i) monitor the availability of halon stocks to satisfy the remaining critical uses, and to (ii) report on illegal trade activities which may give an indication of the success of aligning with custom rules and improving controls, including through modernising the licensing system. Efficiency improvements will be monitored by the amount of resources still needed for the implementation of the system on the Commission side, as well as the numbers of (traders) licenses that companies would still require.

The enforcement of the recovery of foam banks would be in the hands of the Member State authorities. There are synergies with national waste regulations that may already monitor the presence of hazardous substances such as ODS in demolition wastes, that would allow to better ensure that ODS are indeed recovered for destruction.

The Commission will monitor the implementation of the proposed measures. In this context, the Commission will cooperate closely with national authorities e.g. the national experts on ozone depleting substances, customs authorities and market surveillance authorities. The committee referred to in the proposal will assist the Commission in its work and will discuss questions on the harmonised implementation of the proposed rules where appropriate. The development of the relevant case-law of the Court of Justice of the European Union will also be monitored.

The impacts of the Regulation should be evaluated regularly; the first report should be published by 2033. In this context, an expert study would be needed to estimate the progress made on foam banks. The evaluation should also examine the developments in administrative costs.

- **Detailed explanation of the specific provisions of the proposal**

The proposal maintains the current control system envisaged under the ODS Regulation, namely the general prohibitions on production, use and trade of ODS and products and equipment using ODS, and the applicable exemptions on a few uses where alternatives are not yet available (feedstock, process agents, essential analytical and laboratory uses). Following the phase-out of ODS for almost all uses, certain rules have not been retained since they are no longer necessary: this concerns in particular the system of allocating quota for the import and use of exempted substances and the registration requirement for ODS laboratory and analytical uses. Moreover, the proposal ensures the necessary alignments with more recent EU legislation, in particular Regulation (EU) No 517/2014 on fluorinated greenhouse gases

and the Commission proposal reviewing that Regulation (in terms of definitions, provisions on penalties and controls by customs authorities). Regulation (EU) No 952/2013 laying down the Union Customs Code, as well as with decisions of the Parties to the Protocol.

Obsolete exemptions to prohibitions have been removed for legal clarity purposes and to avoid illegal trade. The structure of the ODS Regulation has been slightly amended to increase coherence.

### **Chapter I**

The proposal lays out the subject matter, scope and applicable definitions of the Regulation. A number of definitions set out in the ODS Regulation have been deleted for reasons of legal clarity or because they became obsolete.

### **Chapter II**

The proposal sets out the general prohibitions on the production, import, placing on the market, use, and trade of ODS.

### **Chapter III**

The proposal sets out the exemptions from the prohibitions stated under Chapter I (Article 6-14) and includes conditions for those exemptions (Article 15).

To ensure consistency with Regulation (EU) No 517/2014, importers and producers must provide evidence of destruction or recovery for subsequent use of trifluoromethane produced as a by-product in the production of ODS. The proposal also clarifies that, in general, the entry in the territory of non-refillable containers is prohibited, thus under any customs procedures.

### **Chapter IV**

The proposal modernises the licensing system set out in the ODS Regulation to take into account its interconnection with the European Single Window Environment for Customs, which will allow for automatic customs controls per shipment. In this setup, importers and exporters of ozone depleting substances and products using such substances will only need to apply for ‘traders’ licenses, instead of per shipment licenses, since the European Single Window Environment for Customs, envisaged under the Commission proposal adopted on 28 October 2020, enables real-time checks on each shipment automatically. The proposal also clarifies the role of customs authorities and, where relevant, of market surveillance authorities, in implementing the prohibitions and restrictions set out in the proposed Regulation and strengthens their powers to prevent illegal trade of ODS. The obligations of economic operators have also been clarified and adapted in view of enabling the correct operation of the European Single Window Environment for Customs.<sup>13</sup>

As required under the Protocol, the proposal retains the trade ban with non-Parties to that Protocol.

### **Chapter V**

To ensure the maximum emissions savings, at proportionate costs, it is proposed to make the recovery of ODS contained in certain types of foams used as isolation materials in building, from construction and demolition waste obligatory, as well as the destruction of the ODS contained therein via approved technologies (or, alternatively, reuse of the foam). The destruction of halons is prohibited under the proposal to ensure that, where possible, it is recovered and re-used thereby preventing the need for future production of halon for critical

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<sup>13</sup> COM(2020) 673 final.

uses. The leakage obligations set out the ODS Regulation have been simplified taking 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.

## **Chapter VI**

The proposal introduces reporting obligations for Member States and for undertakings (the latter is an obligation under the Protocol). In order to complete monitoring, the reporting obligations for undertakings of ‘new substances’ in Annex II have been aligned with those applicable for substances in Annex I. Reporting obligations have also been extended in relation to emissions and sales in the Union. The proposal also adds three new substances to ensure proper monitoring of their production, trade and use. The global warming potential of ODS has also been added to the annexes in order to increase awareness of the climate impacts of ODS.

## **Chapter VII**

The proposal specifies the cases where exchange of information and cooperation with competent authorities within a Member State, as well as amongst Member States and with competent authorities of third countries is required.

The proposal also establishes the obligation for competent authorities to check on the compliance of undertakings with the Regulation on a risk basis and where concrete evidence are available.

## **Chapter VIII**

Finally, the proposal establishes that the level and type of administrative penalties for infringements of the Regulation must be effective, dissuasive and proportionate and shall also take into account relevant criteria (such as the nature and gravity of the infringement). In particular, it proposes an administrative fine to be imposed in cases of illegal production, use or trade of ODS or of the products and equipment covered under this Regulation. The proposed provisions are aligned, and compliment the Commission Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal penalties adopted on 15 December 2021<sup>14</sup>.

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<sup>14</sup> COM(2021) 851 final.

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**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>15</sup>,

Having regard to the opinion of the Committee of the Regions<sup>16</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The European Green Deal launched a new growth strategy for the Union that aims to transform the Union into a fair and prosperous society with a modern, resource-efficient and competitive economy. It reaffirms the Commission's ambition to increase its climate targets and make Europe the first climate-neutral continent by 2050 and aims to protect the health and well-being of citizens from environment-related risks and impacts. Furthermore, the Union is committed to the 2030 Agenda for Sustainable Development and its Sustainable Development Goals.
- (2) The ozone layer protects humans and other living beings from harmful ultra-violet (UV) radiation from the sun. It is scientifically well established that continuous emissions of ozone depleting substances cause significant damage to the ozone layer, leading to significant adverse impacts on human health and ecosystems, the biosphere as well as to large economic implications if left unaddressed.
- (3) Pursuant to Council Decision 88/540/EEC<sup>17</sup>, the Union became a Party to the 1985 Vienna Convention for the Protection of the Ozone Layer and to its Montreal Protocol on Substances that Deplete the Ozone Layer ('the Protocol') adopted in 1987. The Protocol and subsequent decisions of its Parties constitute a set of globally binding control measures to address ozone depletion.

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<sup>15</sup> OJ C [...], [...], p. [...]

<sup>16</sup> OJ C [...], [...], p. [...]

<sup>17</sup> Council Decision 88/540/EEC of 14 October 1988 concerning the conclusion of the Vienna Convention for the protection of the ozone layer and the Montreal Protocol on substances that deplete the ozone layer (OJ L 297, 31.10.1988, p. 8).

- (4) Regulation (EC) No 1005/2009 of the European Parliament and of the Council<sup>18</sup> ensures, *inter alia*, that the Union complies with the Protocol. The Commission in its evaluation of Regulation (EC) No 1005/2009<sup>19</sup> concluded that the control measures established under that Regulation remain, in general, fit-for-purpose.
- (5) There is clear evidence of a decrease in the atmospheric burden of ozone depleting substances and of stratospheric ozone recovery. However, the recovery of the ozone layer to the concentrations level existing before 1980 is not projected to take place before the middle of the 21st century. Therefore, increased UV-radiation persists as a significant threat to health and the environment. Avoiding the risk of further delays in the recovery of the ozone layer remains dependent on ensuring that existing obligations are fully implemented, as well as that the necessary measures are in place to address any upcoming challenges swiftly and effectively.
- (6) Most ozone depleting substances also have high global warming potential and are contributory factors towards increasing the temperature of the planet. Considering the significant findings of the Intergovernmental Panel on Climate Change (IPCC) Special Report,<sup>20</sup> this Regulation should ensure that all feasible efforts are taken to reduce emissions of ozone depleting substances. Reducing emissions contributes to reaching the objective of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change<sup>21</sup> of ‘keeping a global temperature rise in this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius’.
- (7) In order to increase awareness on the global warming potential of ozone depleting substances, in addition to the ozone depleting potential of the substances, their respective global warming potential should also be listed in this Regulation.
- (8) Regulation (EC) No 1005/2009 and previous Union legislation, established more stringent control measures than required under the Protocol, requiring more restrictive rules on import and export.
- (9) Under Regulation (EC) No 1005/2009, the production and placing on the market of ozone depleting substances has been phased-out for almost all uses. The placing on the market of products and equipment containing or relying on ozone depleting substances has also been prohibited except for certain cases where the use of such substances is still allowed. Even after the phase-out of ozone depleting substances, under certain conditions, it is necessary to continue to allow for exemptions for certain uses, where alternatives are not yet available.
- (10) Taking into account the small quantities of ozone depleting substances actually used for essential laboratory and analytical uses, a proportionate control measure needs to be established in this respect. The registration obligation under Regulation (EC) No 1005/2009 should be replaced with the requirement to retain records in order to allow controlling unlawful use and monitoring of developments of alternatives.

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<sup>18</sup> Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (OJ L 286, 16.09.2009, p.1).

<sup>19</sup> Evaluation of Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer, SWD(2019) 407 final of 26 November 2019.

<sup>20</sup> IPCC Special Report. Global warming of 1.5 C (August 2021).

<sup>21</sup> OJ L 282, 19.10.2016, p. 4.

- (11) The placing on the market and use of halons should only be allowed for critical uses, which should be determined taking into account the availability of alternative substances or technologies and developments of international standards.
- (12) Halons Technical Options Committee (HTOC) established under the Protocol indicated that non-virgin halon stocks for critical uses might not be sufficient to meet the needs from 2030 onwards at global level. To avoid that new production of halons become necessary to meet future needs, it is important to take measures to increase the availability of stocks of halon recovered from equipment.
- (13) Under Regulation (EC) No 1005/2009, the exemption for critical uses of methyl bromide (for quarantine and pre-shipment purposes) ceased on 18 March 2010. The possibility to grant a derogation in emergency situations should, however, remain available, namely in the event of unexpected pests or disease outbreaks where such emergency use is to be permitted under Regulation (EC) No 1107/2009 of the European Parliament and of the Council<sup>22</sup> and Regulation (EU) No 528/2012 of the European Parliament and of the Council<sup>23</sup>.
- (14) Restrictions set out in this Regulation regarding products and equipment containing ozone depleting substances should also cover products and equipment relying on those substances in order to prevent circumventions of those restrictions.
- (15) It is important to ensure that ozone depleting substances are allowed to be placed on the market for the purpose of reclamation in the Union. Ozone depleting substances and the products and equipment containing those substances or whose functioning relies upon those substances should also be allowed to be placed on the market for the purpose of destruction by technologies approved by the Parties or by technologies not yet approved but that are environmentally equivalent.
- (16) Non-refillable containers for ozone depleting substances, should be banned, considering that an amount of substance inevitably remains in these containers when emptied, which is then released into the atmosphere. In this respect, it is necessary to prohibit their import, placing on the market, subsequent supply or making available on the market, use, except for laboratory and analytical uses, and their export.
- (17) Regulation (EC) No 1272/2008 of the European Parliament and of the Council<sup>24</sup> provides for the labelling of substances classified as ozone depleting substances and the labelling of mixtures containing such substances. As it is allowed to release for free circulation in the Union market ozone depleting substances produced for feedstock, process agent, laboratory and analytical uses, those substances should be distinguished from substances that are produced for other uses.
- (18) The export of products and equipment containing hydrochlorofluorocarbons may be exceptionally permitted in cases where it may be more beneficial to allow these products and equipment to end their natural life cycle in a third country than to be decommissioned and disposed of in the Union.
- (19) Given that the production process for some ozone depleting substances can result in emissions of the fluorinated greenhouse gas produced trifluoromethane as a by-

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<sup>22</sup> Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market (OJ L 309, 24.11.2009, p. 1).

<sup>23</sup> Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1).

<sup>24</sup> Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures (OJ L 353, 31.12.2008, p. 1).

product, such by-product emissions should be destroyed or recovered for subsequent use as a condition for the placing the ozone depleting substance on the market. Producers and importers should also be required to document measures adopted to prevent emissions of trifluoromethane during the production process.

- (20) To avoid illegal trade of prohibited substances and products covered under this Regulation, the prohibitions established therein as well as the licensing requirements for trade should not only cover the entry of goods into the customs territory for release for free circulation in the Union, but also temporary storage and all other customs procedures established under Union customs law. Licensing facilitations should be allowed for goods under temporary storage, in order to avoid unnecessary burden on operators and customs authorities.
- (21) The licensing system on imports and exports of ozone depleting substances is an essential requirement under the Protocol for monitoring trade and preventing illegal activities in this respect. In order to ensure automatic, real-time, customs controls, at shipment level as well as an electronic exchange and storing of information on all shipments of substances and products and equipment covered by this Regulation presented to customs it is necessary to interconnect the electronic licensing system for ozone depleting substances with the European Union Single Window Environment for Customs established by Regulation (EU) No .../... of the European Parliament and of the Council [*full reference to be inserted once that Regulation has been adopted*].<sup>25</sup> Given this interconnection with the European Single Windows Environment for Customs it is disproportionate to provide for a shipment licencing system in the Union.
- (22) In order to facilitate customs controls, it is important to specify the information to be submitted to customs authorities in cases of imports and exports of the substances and products covered by this Regulation, as well as the tasks for customs authorities, and market surveillance authorities where relevant, when implementing the prohibitions and restrictions to imports and exports of those substances and the products and equipment covered by this Regulation.
- (23) To ensure that substances as well as products and equipment covered by this Regulation that have been imported illegally in the Union market does not re-enter the market, competent authorities should confiscate or seize these products for disposal. Re-export of products not compliant with this Regulation should be prohibited in any event.
- (24) Member States should ensure that customs authorities carrying out controls under this Regulation have the appropriate resources and knowledge, for example via training made available to them, and are sufficiently equipped in view of addressing cases of illegal trade in the substances and products and equipment covered by this Regulation. Member States should designate those customs offices that meet those conditions and are therefore mandated to carry out customs controls on imports, exports and in cases of transit.
- (25) Cooperation and exchange of the necessary information between all competent authorities involved in the implementation of this Regulation, namely customs authorities, market surveillance authorities, environmental authorities and any other competent authorities with inspection functions, amongst Member States and with the

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<sup>25</sup> Regulation (EU) No .../... of the European Parliament and of the Council establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013 OJ C , , p. [*full reference to be added once that Regulation is adopted*].

Commission, is extremely important for tackling infringements of this Regulation, notably illegal trade. Due to the confidential nature of the exchange of customs risk-related information, the Customs Risk Management System should be used for that purpose.

- (26) In carrying out the tasks assigned to it by this Regulation, and in view of promoting cooperation and adequate exchange of information between competent authorities and the Commission in cases of compliance checks and illegal trade in ozone depleting substances, the Commission should be assisted by the European Anti-Fraud Office, (OLAF). OLAF should have access to all necessary information to facilitate the performance of its tasks.
- (27) In order to ensure compliance with the Protocol the import and export of ozone depleting substances as well as products and equipment containing those substances or relying on those substances from and to a State not party to the Protocol should be prohibited.
- (28) The intentional release of ozone depleting substances into the atmosphere, where such release is unlawful, is a serious infringement of this Regulation and should be explicitly prohibited. All feasible measures should be taken by undertakings to reduce the unintentional release of ozone depleting substances into the atmosphere also considering their global warming potential. Thus, it is necessary to lay down provisions on the recovery of used ozone depleting substances from products and equipment and the prevention of leakages of such substances. Recovery obligations should also be extended to building owners and contractors when removing certain foams from buildings to maximise emissions reductions.
- (29) It is necessary to lay down rules on new ozone depleting substances not yet covered by the Protocol (listed in Annex II), considering the quantities produced and used in the Union as well as the effect on stratospheric ozone from emissions of these substances.
- (30) Member States should report on cases of illegal trade detected by competent authorities to the Commission including on the penalties issued.
- (31) The use of halons should only be allowed for critical uses established in this Regulation. Member States should report on the quantities of halons installed, used or stored from critical uses, as well as on containment measures to reduce emissions from these substances and on progress made in identifying alternatives. This information is needed for knowing the halon quantities still available in the Union for critical uses, as well as for monitoring technological progress in this area which will signal that for certain uses, halon is no longer necessary.
- (32) The Protocol requires reporting on trade in ozone depleting substances. Producers, importers and exporters of ozone depleting substances should therefore report annually on trade in ozone depleting substances. Trade in ozone depleting substances not yet covered by the Protocol (listed in Annex II), should also be reported in order to be able to assess the need to extend some or all of the control measures applicable for the substances listed in Annex I to also cover those substances.
- (33) Competent authorities of the Member States, including their environmental authorities, market surveillance and customs authorities, should carry out checks, taking a risk-based approach in order to ensure compliance with all provisions of this Regulation. Such approach is necessary in order to target the activities representing the highest risk of illegal trade or unlawful release of ozone depleting substances into the atmosphere. In addition, competent authorities should carry out checks when in possession of

evidence or other relevant information on potential cases of non-compliance. Where relevant and, to the extent possible, such information should be communicated to customs authorities in order to proceed to a risk analysis prior to controls, in accordance with Article 47 of Regulation (EU) No 952/2013 of the European Parliament and of the Council<sup>26</sup>. It is important to ensure that competent authorities responsible for issuing penalties are informed of cases of infringements of this Regulation in order to be able to issue the appropriate penalty where needed.

- (34) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (35) It is also necessary to provide for administrative penalties of such a level and type that truly deter violations of this Regulations.
- (36) Serious infringements of this Regulation should also be prosecuted under criminal law, in accordance with Directive 2008/99/EC of the European Parliament and of the Council<sup>27</sup>.
- (37) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards to the establishment of a list of undertakings that may use ozone depleting substances as process agents as well as the maximum quantities to be used for make-up or for consumption, and maximum emission levels for each undertaking; the determination of essential and analytical uses for which production and import is permitted within a certain period and the specification of authorised users, the granting of derogations from the end-dates and cut-off dates established in relation to critical uses of halons; the authorisation of the temporary production, placing on the market, further supply and use of methyl bromide in emergency cases; the authorisation of the export of products and equipment containing hydrochlorofluorocarbons; the detailed arrangements for the declaration of conformity for pre-charged equipment and verification; the evidence to be provided on the destruction or recovery of trifluoromethane by production during the manufacturing of ozone depleting substances; the form and content of labelling requirements; the authorisation of trade with entities not covered by the Protocol; and the format for the submission of information by Member States on critical uses of halons and illegal trade, as well as the format and means of the information to be reported by undertakings in particular on production, import, export, feedstock uses and destruction. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>28</sup>
- (38) In order to amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union ('TFEU') should be delegated to the Commission as regards the processes for which ozone depleting substances may be used as process agents, and the maximum amount permitted for such uses including their emissions in the Union, the conditions for the placing on the market and further distribution of ozone depleting substances for

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<sup>26</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

<sup>27</sup> Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

<sup>28</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).

essential laboratory and analytical uses, the timeframes established in Annex V for critical uses of halons, the functioning of the licensing system for ozone depleting substances, additional measures for the monitoring of substances and of products and equipment placed under temporary storage and customs procedures, the rules applicable to the release for free circulation of products and equipment imported from or exported to any entity not covered by the Protocol; the establishment of a list of products and equipment for which the recovery of ozone depleting substances and their destruction is technically and economically feasible, and the specification of the technologies to be applied; amendments of Annexes I and II listing ozone depleting substances; the update of global warming and ozone depleting potentials of listed substances; the reporting requirements for Member States on critical uses of halons and illegal trade and the reporting requirements by undertakings in particular on production, import, export, feedstock uses and destruction. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (39) The protection of individuals with regard to the processing of personal data by the Member States is governed by Regulation (EU) No 2016/679 of the European Parliament and of the Council<sup>29</sup> and the protection of individuals with regard to the processing of personal data by the Commission is governed by Regulation (EU) No 2018/1725 of the European Parliament and of the Council<sup>30</sup> in particular as regards the requirements of confidentiality and security of processing, the transfer of personal data from the Commission to the Member States, the lawfulness of processing, and the rights of data subjects to information, access to and rectification of their personal data.
- (40) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) No 2018/1725 and delivered an opinion [*date of issuing of the opinion*].
- (41) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the transboundary nature of the environmental problem addressed and the effects of this Regulation on the intra-Union and external trade, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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.

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<sup>29</sup> Regulation (EU) No 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

<sup>30</sup> Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

(42) A number of amendments are to be made to Regulation (EC) No 1005/2009. In the interests of clarity, that Regulation should be repealed and replaced,

HAVE ADOPTED THIS REGULATION:

## **Chapter I**

### **General Provisions**

#### *Article 1*

##### **Subject matter**

This Regulation lays down rules on the production, import, export, placing on the market, further supply as well as use, recovery, recycling, reclamation and destruction of ozone depleting substances, on the reporting of information related to those substances and on the import, export, placing on the market, further supply and use of products and equipment containing ozone depleting substances or whose functioning relies upon on those substances.

#### *Article 2*

##### **Scope**

1. This Regulation applies to the ozone depleting substances listed in Annexes I and II and their isomers, whether alone or in a mixture.
2. This Regulation also applies to products and equipment, and parts thereof, containing ozone depleting substances or whose functioning relies upon those substances.

#### *Article 3*

##### **Definitions**

For the purposes of this Regulation, the following definitions apply:

- (1) ‘feedstock’ means any ozone depleting substance that undergoes chemical transformation in a process in which it is entirely converted from its original composition and emissions are insignificant;
- (2) ‘process agents’ means ozone depleting substances used as chemical process agents in the applications listed in Annex III;
- (3) ‘import’ means the entry of substances, products and equipment covered by this Regulation into the customs territory of the Union as far as the territory is covered by a ratification of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer and includes temporary storage and the customs procedures referred to in Articles 201 and 210 of Regulation (EU) No 952/2013;
- (4) ‘export’ means the exit from the customs territory of the Union, in so far as the territory is covered by a ratification of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, of substances, products and equipment;
- (5) ‘placing on the market’ means the supplying or making available to another person within the Union, for the first time, for payment or free of charge, the customs release for free circulation in the Union, and the use of substances produced or the use of products or equipment manufactured for own use;

- (6) ‘use’ means the utilisation of ozone depleting substances in the production, maintenance or servicing, including refilling, of products and equipment or in other activities referred to in this Regulation;
- (7) ‘recovery’ means the collection and the storage of ozone depleting substances from products and equipment or containers during maintenance or servicing, or prior to the disposal of the product, equipment or container;
- (8) ‘recycling’ means the reuse of a recovered ozone depleting substance following a basic cleaning processes, including filtering and drying;
- (9) ‘reclamation’ means the reprocessing of an ozone depleting substance in order to match the performance that is equivalent to that of a virgin substance, taking into account its intended use;
- (10) ‘undertaking’ means any natural or legal person which carries out an activity referred to in this Regulation;
- (11) ‘products and equipment’ means all products and equipment, including parts thereof, except containers, used for the transportation or storage of ozone depleting substances;
- (12) ‘virgin substances’ means substances which have not previously been used;
- (13) ‘decommissioning’ means the removal from operation or usage of a product or equipment, containing ozone depleting substances including the final shut-down of an installation;
- (14) ‘destruction’ means the process of permanently transforming or decomposing completely, to the extent possible, an ozone depleting substance into one or more stable substances that are not ozone depleting substances;
- (15) ‘establishment within the Union’ means for a natural person to have his or her habitual residence in the Union and for a legal person to have in the Union a permanent business establishment as referred to in Article 5(32) of Regulation (EU) No 952/2013 in the Union.

## **Chapter II Prohibitions**

### *Article 4*

#### **Ozone depleting substances**

1. The production, placing on the market, any subsequent supply or making available to another person within the Union for payment or free of charge and use of ozone depleting substances listed in Annex I are prohibited.
2. Imports and exports of ozone depleting substances listed in Annex I are prohibited.

### *Article 5*

#### **Products and equipment containing ozone depleting substances or whose functioning relies upon those substances**

1. The placing on the market and any subsequent supply or making available to another person within the Union for payment or free of charge, of products and equipment

containing ozone depleting substances listed in Annex I or whose functioning relies upon those substances are prohibited.

2. Imports and exports of products and equipment containing ozone depleting substances listed in Annex I or whose functioning relies upon those substances are prohibited.

This paragraph does not apply to personal effects.

## **Chapter III**

### **Exemptions to prohibitions**

#### *Article 6*

##### **Feedstock**

By way of derogation from Article 4(1), ozone depleting substances listed in Annex I may be produced, placed on the market, and subsequently supplied or made available to another person within the Union for payment or free of charge to be used as feedstock.

#### *Article 7*

##### **Process agents**

1. By way of derogation from Article 4(1), ozone depleting substances listed in Annex I may be produced, placed on the market and subsequently supplied or made available to another person within the Union for payment or free of charge to be used as process agents in the processes referred to in Annex III and subject to the conditions laid down pursuant to paragraphs 2 and 3 of this Article.
2. Ozone depleting substances referred to in paragraph 1, may only be used as process agents in installations existing on 1 September 1997, provided that the emissions of ozone depleting substances from those installations are insignificant, subject to the conditions laid down pursuant to paragraph 3.
3. The Commission may, by means of implementing acts, establish a list of undertakings for which the use of ozone depleting substances listed in Annex I, as process agents in the processes referred to in Annex III in the installations referred to in paragraph 2 is permitted, laying down the maximum quantities that may be used for make-up or for consumption as process agents and maximum emission levels for each of the undertakings concerned. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2).
4. The Commission is empowered to adopt delegated acts in accordance with Article 29 to amend Annex III where it is necessary due to technical developments or decisions taken by the Parties to 1987 Montreal Protocol on Substances that Deplete the Ozone Layer ('the Protocol').

#### *Article 8*

##### **Essential laboratory and analytical uses**

1. By way of derogation from Article 4(1), ozone depleting substances listed in Annex I may be produced, placed on the market and subsequently supplied or made available

to another person within the Union for payment or free of charge to be used for essential laboratory and analytical uses, subject to the conditions laid down pursuant to paragraph 2 of this Article.

2. The Commission may, by means of implementing acts, determine any essential laboratory and analytical uses for which the production and import of ozone depleting substances may be permitted in the Union, the period for which the exemption is valid and those users which may take advantage of those essential laboratory and analytical uses. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2).
3. The undertaking placing on the market or subsequently supplying or making available to another person within the Union for payment or free of charge ozone depleting substances for essential laboratory and analytical uses referred to in paragraph 1 shall retain records of the following information:
  - (a) name of the substances;
  - (b) amount placed on the market or supplied;
  - (c) purpose of their use;
  - (d) list of the purchasers and suppliers.
4. The undertaking using ozone depleting substances for laboratory and analytical uses referred to in paragraph 1 shall retain records of the following information:
  - (a) name of the substances;
  - (b) amounts supplied or used;
  - (c) purpose of their use;
  - (d) list of suppliers.
5. The records referred to in paragraphs 3 and 4 shall be retained for a minimum period of five years and shall be made available, upon request, to the competent authorities of the Member States and to the Commission.
6. Ozone depleting substances for essential laboratory and analytical uses referred to in paragraph 1 shall only be placed on the market and subsequently supplied or made available to another person within the Union for payment or free of charge under the conditions set out in Annex IV.
7. The Commission is empowered to adopt delegated acts in accordance with Article 29 to amend Annex IV, where it is necessary due to technical developments or decisions taken by the Parties to the Protocol.

#### *Article 9*

#### **Critical uses of halon**

1. By way of derogation from Article 4(1), halons may be placed on the market and used for critical uses in accordance with Annex V. Halons may only be placed on the market and subsequently supplied or made available to another person within the Union for payment or free of charge by undertakings authorised by the competent authority of the Member State concerned to store halons for critical uses.
2. Fire protection systems and fire extinguishers containing halons applied for uses referred to in paragraph 1 or whose functioning relies upon those halons shall be

decommissioned by the end dates specified in Annex V. Halons contained therein shall be recovered in accordance with Article 20(5).

3. The Commission is empowered to adopt delegated acts in accordance with Article 29 to amend Annex V, where technically and economically feasible alternatives or technologies are not available for the uses listed in that Annex within the timeframes set out in Annex V or are not acceptable due to their impacts on environment or health, or where it is necessary to ensure compliance with the international commitments of the Union concerning critical uses of halons established in particular under the Protocol, the International Civil Aviation Organization (ICAO) or the International Convention for the Prevention of Pollution from Ships (MARPOL).
4. The Commission may, by means of implementing acts, and following a substantiated request of the competent authority of a Member State, grant time-limited derogations from the end dates or cut-off dates specified in Annex V for a specified case where it is demonstrated in the request that no technically and economically feasible alternative is available for that particular application. The Commission may include in those implementing acts reporting requirements, and may require submission of supporting evidence necessary for monitoring the use of the derogation, including evidence on amounts recovered for recycling or reclamation, results of leakage checks and amounts of unused halons in stocks. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2).

#### *Article 10*

##### **Emergency use of methyl bromide**

1. In case of an emergency, where unexpected outbreaks of particular pests or diseases so require, the Commission may, at the request of the competent authority of a Member State, by means of implementing acts, authorise the temporary production, placing on the market, and use of methyl bromide, provided that the placing on the market and use of methyl bromide are allowed respectively under Regulation (EC) No 1107/2009 and Regulation (EU) No 528/2012. Any unused quantities of methyl bromide shall be destroyed.
2. Implementing acts referred to in paragraph 1 shall specify measures to be taken to reduce emissions of methyl bromide during use and apply for a period not exceeding 120 days and to a quantity not exceeding 20 metric tonnes of methyl bromide. The Commission may include in those implementing acts reporting requirements and may require submission of supporting evidence necessary for monitoring the use of methyl bromide, including evidence on the destruction of substances following the end of the derogation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2).

#### *Article 11*

##### **Products and equipment containing ozone depleting substances or whose functioning relies upon those substances**

1. By way of derogation from Article 5(1), products and equipment for which the use of the respective ozone depleting substance is authorised in accordance with Article 8 or Article 9 may be placed on the market, subsequently supplied or made available to another person within the Union for payment or free of charge.

2. Except for the critical uses referred to in Article 9, fire protection systems and fire extinguishers containing halons are prohibited and shall be decommissioned.
3. Products and equipment containing ozone depleting substances or whose functioning relies upon those substances shall be decommissioned when they reach the end of their life.

#### *Article 12*

#### **Destruction and reclamation**

By way of derogation from Articles 4(1) and 5(1), ozone depleting substances listed in Annex I and products and equipment containing ozone depleting substances or whose functioning relies upon those substances may be placed on the market and subsequently supplied or made available to another person within the Union for payment or free of charge for destruction within the Union pursuant to Article 20(7). Ozone depleting substances listed in Annex I may also be placed on the market for reclamation within the Union.

#### *Article 13*

#### **Imports**

1. By way of derogation from Article 4(2) and Article 5(2), the following imports are allowed:
  - (a) ozone depleting substances to be used as feedstock in accordance with Article 6;
  - (b) ozone depleting substances to be used as process agents in accordance with Article 7;
  - (c) ozone depleting substances to be used for essential laboratory and analytical uses in accordance with Article 8;
  - (d) ozone depleting substances for destruction by technologies referred to in Article 20(7);
  - (e) methyl bromide for emergency uses in accordance with Article 10;
  - (f) recovered, recycled or reclaimed halons, under the condition that they are only imported for critical uses referred to in Article 9(1), by undertakings authorised by the competent authority of the Member State concerned to store halons for critical uses;
  - (g) products and equipment containing halons or whose functioning relies upon halons to satisfy critical uses referred to in Article 9(1);
  - (h) products and equipment containing ozone depleting substances or whose functioning relies upon those substances for destruction, where applicable by technologies referred to in Article 20(7);
  - (i) products and equipment containing ozone depleting substances or whose functioning relies upon those substances to satisfy essential laboratory and analytical uses referred to in Article 8.
2. Imports referred to in paragraph 1 shall be subject to the presentation of a licence to customs authorities issued by the Commission in accordance with Article 16.

The licence referred to in the first subparagraph shall not be required in cases of temporary storage.

#### *Article 14*

##### **Export**

1. By way of derogation from Article 4(2) and Article 5(2), the following exports are allowed:
  - (a) ozone depleting substances to be used for essential laboratory and analytical uses referred to in Article 8;
  - (b) ozone depleting substances to be used as feedstock in accordance with Article 6;
  - (c) ozone depleting substances to be used as process agents in accordance with Article 7;
  - (d) virgin or reclaimed hydrochlorofluorocarbons, for uses other than those referred to in points (a) and (b), except for destruction;
  - (e) recovered, recycled or reclaimed halons stored for critical uses referred to in Article 9(1) by undertakings authorised by the competent authority of a Member State;
  - (f) products and equipment containing halons or whose functioning relies upon halons to satisfy critical uses referred to in Article 9(1);
  - (g) products and equipment containing ozone depleting substances imported under Article 13(1), point (i) or whose functioning relies upon those substances.
2. By way of derogation from Article 5(2), the Commission may, by means of implementing acts, following a request by a competent authority of a Member State, authorise the export of products and equipment containing hydrochlorofluorocarbons where it is demonstrated that in view of the economic value and the expected remaining lifetime of the specific good, the prohibition of export would impose a disproportionate burden on the exporter, and such export is in line with national legislation in the destination country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2).

Prior to such export the Commission shall notify the destination country thereof.

3. Exports referred to in paragraphs 1 and 2 shall be subject to the presentation of a licence to customs authorities issued by the Commission in accordance with Article 16.

The licence referred to in the first subparagraph shall not be required in cases of re-export subsequent to temporary storage.

#### *Article 15*

##### **Conditions for exemptions**

1. The import, placing on the market, any subsequent supply or making available to another person within the Union for payment or free of charge, utilisation, or export of non-refillable containers for ozone depleting substances, empty, or fully or partially filled, is prohibited, except for essential laboratory and analytical uses

referred to in Article 8. Such containers may only be stored or transported for subsequent disposal.

Any prohibited non-refillable containers referred to in the first subparagraph shall be confiscated, seized, withdrawn or recalled from the market by the customs authorities or the market surveillance authorities for disposal. The re-export of prohibited non-refillable containers is prohibited.

The first and second subparagraph applies to:

- (a) containers which cannot be refilled without being adapted for that purpose (non-refillable); and
  - (b) containers that could be refilled but are imported or placed on the market without provision having been made for their return for refilling.
2. Ozone depleting substances shall not be placed on the market unless producers or importers provide evidence to the competent authority at the time of such placing, that any trifluoromethane produced as a by-product during the manufacturing process, including during the manufacturing of feedstock for their production, has been destroyed or recovered for subsequent use, using best available techniques.

For the purpose of submitting evidence, importers and producers shall draw up a declaration of conformity and join supporting documentation on the production facility and the mitigation measures adopted to prevent emissions of trifluoromethane. Producers and importers shall keep the declaration of conformity and supporting documentation for a period of at least five years after the placing on the market and make them available, upon request, to national competent authorities and to the Commission.

The Commission may, by means of implementing acts, determine the detailed arrangements relating to the declaration of conformity and supporting documentation referred to in the second subparagraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2).

3. Ozone depleting substances produced or placed on the market as feedstock, as process agents, or for essential laboratory and analytical uses as referred to in Articles 6, 7 and 8 may only be used for those purposes.

Containers containing the substances intended for the uses referred to in Articles 6, 7 and 8 shall be labelled with a clear indication that the substance may only be used for the applicable purpose. Where such substances are subject to labelling requirements provided for in Regulation (EC) No 1272/2008, such indication shall be included in the labels referred to in that Regulation.

The Commission may, by means of implementing acts, determine the format and the indication to be used on the labels referred to in the second subparagraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2).

## **Chapter IV**

### **Trade**

#### *Article 16*

#### **Licensing System**

1. The Commission shall set up and ensure the operation of the electronic licensing system for ozone depleting substances listed in Annex I and products and equipment containing those substances or whose functioning relies upon those substances ('the licensing system').
2. Undertakings that wish to obtain the licences respectively required in accordance with Article 13(2) and Article 14(3) shall submit applications using the licensing system. Before submitting such an application, undertakings shall have a valid registration in the licensing system. Undertakings shall also ensure that they have a valid registration in the licensing system before reporting pursuant to Article 24.  

Applications for licences shall be processed within 30 days. Licences shall be issued in accordance with the rules and procedures laid down in Annex VII.
3. Licences may be issued to undertakings established in the Union and to undertakings established outside the Union.  

Undertakings established outside the Union shall mandate an only representative with an establishment within the Union that assumes the full responsibility for complying with this Regulation. The only representative may be the same as the one mandated pursuant to Article 8 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>31</sup>.
4. Licences may be time-limited. They shall remain valid until they expire, until they are suspended or revoked by the Commission pursuant to this Article, or until they are withdrawn by the undertaking.
5. Each undertaking that holds a licence shall, during the period of validity of the license, notify the Commission of any changes which might occur during the period of validity of the licence in relation to the information submitted in accordance with Annex VII.
6. The Commission may request additional information where needed to confirm the accuracy and completeness of the information provided by the undertakings in accordance with Annex VII.
7. Competent authorities of the Member States including the customs authorities, or the Commission, may require a certificate attesting the nature or composition of substances to be imported or exported and may request a copy of the licence issued by the country from which the import or to which the export takes place.
8. The Commission may share the data submitted in the licensing system to the extent necessary in specific cases with competent authorities of the Parties to the Protocol concerned.
9. A license shall be suspended where there is reasonable suspicion that any relevant obligations set out in this Regulation is not complied with. A license shall be revoked where there is evidence that any obligation set out in this Regulation is not complied with. The license application shall also be rejected or the license revoked where there

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<sup>31</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p.1).

is evidence of serious or repeated infringements of Union customs or environmental legislation by the undertaking related to its activities under this Regulation.

Undertakings shall be informed, as soon as possible, of any licence application being rejected or of any licence being suspended or revoked, specifying the reasons for rejection, suspension or revocation. Member States shall also be informed of such cases.

10. Undertakings shall take all necessary measures to ensure that an export of ozone depleting substances does not:
  - (a) constitute a case of illegal trade;
  - (b) impact adversely on the implementation of control measures of the destination country taken to comply with its obligations under the Protocol
  - (c) lead to an excess of the quantitative limits under the Protocol for the country referred to in point (b).
11. Competent authorities of the Member States, including customs authorities, shall have access to the licensing system for the purpose of enforcing this Regulation. Access to the licensing system by customs authorities shall be ensured via the European Union Single Window Environments for Customs referred to in paragraphs 14 and 15.
12. The Commission and competent authorities of the Member States shall ensure the confidentiality of the information included in the licensing system.
13. The Commission is empowered to adopt delegated acts in accordance with Article 29 to amend Annex VII where it is necessary to ensure the smooth functioning of the licensing system, to facilitate the enforcement of customs controls, or where it is necessary to comply with the Protocol.
14. The Commission shall ensure the interconnection of the licensing system with the European Union Single Window Environment for Customs through the European Union Customs Single Window - Certificate Exchange System established by Regulation (EU) No .../... [full reference to be inserted once that Regulation has been adopted].<sup>32</sup>
15. Member States shall ensure the interconnection of their national single window environments for customs with the European Union Customs Single Window - Certificate Exchange System for the purpose of exchanging information with the licensing system.

#### *Article 17*

#### **Controls of trade**

1. Customs authorities and market surveillance authorities shall enforce the prohibitions and other restrictions set out in this Regulation with regards to imports and exports.
2. For the purpose of imports, the undertaking holding the license pursuant to Article 13(2) shall be the importer, or where not available the declarant, indicated in the customs declaration.

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<sup>32</sup> Regulation (EU) No .../... of the European Parliament and of the Council establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013 OJ C , , p. [full reference to be added once that Regulation is adopted].

For the purpose of export, the undertaking holding the license pursuant to Article 14(3) shall be the exporter indicated in the customs declaration.

3. In cases of imports of ozone depleting substances listed in Annex I and of products and equipment containing those substances or whose functioning relies upon those substances the importer, or where not available the declarant, indicated in the customs declaration or in the temporary storage declaration and in cases of exports the exporter indicated in the customs declaration, shall provide to customs authorities in the declaration the following, where relevant:
  - (a) the number of the licence pursuant to Article 13(2) and Article 14(3);
  - (b) the Economic Operators Registration and Identification (EORI) number;
  - (c) the net mass of ozone depleting substance(s), also when included in products and equipment;
  - (d) the net mass multiplied by the ozone depletion potential of the ozone depleting substance(s), also when included in products and equipment;
  - (e) the commodity code under which the goods are classified.
4. Customs authorities shall verify, in particular, that in cases of imports the importer indicated in the customs declaration, or where not available the declarant, and in cases of exports the exporter indicated in the customs declaration, has a valid license pursuant to Article 13(2) and Article 14(3).
5. Where relevant, customs authorities shall communicate information regarding the customs clearance of goods to the licensing system via the European Union Single Window Environment for Customs.
6. Importers of ozone depleting substances listed in Annex I in refillable containers shall make available to customs authorities at the time the customs declaration related to the release for free circulation is submitted, a declaration of conformity including evidence confirming the arrangements in place for the return of the container for the purpose of refilling.
7. Importers of halons in accordance with Article 13(1), point (f), and exporters of halons in accordance with Article 14(1), point (e), shall make available to customs authorities at the time the customs declaration related to the release for free circulation or to the export is submitted a certificate confirming the nature of the substance as listed in Article 13(1), point (f) and Article 14(1), point (e).
8. Importers of ozone depleting substances shall make available to customs authorities at the time the customs declaration related to the release for free circulation is submitted, the evidence referred to in Article 15(2).
9. Customs authorities shall verify compliance with the rules on imports and exports set out in this Regulation, when carrying out the controls based on risk analysis in the context of Customs Risk Management Framework and in accordance with Article 46 of Regulation (EU) No 952/2013. The risk analysis shall take into account in particular any available information on the likelihood of illegal trade of ozone depleting substances, and the compliance history of the undertaking concerned.
10. Based on risk analysis, when carrying out physical customs controls of the substances and products and equipment covered by this Regulation, the customs authority shall, in particular, verify the following on imports and exports:

- (a) that the goods presented correspond to those described in the licence and in the customs declaration;
- (b) that the goods are appropriately labelled in accordance with Article 15(3) before releasing the goods for free circulation.

The importer or exporter shall make its licence available to customs authorities during controls in accordance with Article 15 of Regulation (EU) No 952/2013.

11. Customs authorities shall confiscate or seize substances, the substances and products and equipment that are prohibited by this Regulation is prohibited for their disposal in accordance with Articles 197 and 198 of Regulation (EU) No 952/2013. Market surveillance authorities shall also withdraw or recall from the market such substances and products and equipment in accordance with Article 16 of Regulation (EU) No 2019/1020 of the European Parliament and the Council<sup>33</sup>.

The re-export of substances and products and equipment that do not comply with this Regulation is prohibited.

12. Member States customs authorities shall designate or approve customs offices or other places and shall specify the route to those offices and places, in accordance with Articles 135 and 267 of Regulation (EU) No 952/2013, for the presentation to customs of ozone depleting substances listed in Annex I and of products and equipment containing those substances or whose functioning relies upon those substances at their entry into or at their exit from the customs territory of the Union. Those customs offices or places shall be sufficiently equipped to carry out the relevant physical controls based on risk analysis, and shall be knowledgeable on matters related to the prevention of illegal activities under this Regulation.

Only the designated or approved places and customs offices referred to in the first subparagraph shall be authorised to open or end a transit procedure of ozone depleting substances listed in Annex I and products and equipment containing, or whose functioning relies upon, such substances.

### *Article 18*

#### **Measures to monitor illegal trade**

The Commission is empowered to adopt delegated acts in accordance with Article 29 to supplement this Regulation by establishing additional control measures to those set out in this Regulation for the monitoring of ozone depleting substances and of products and equipment containing those substances or whose functioning relies upon those substances placed under temporary storage, or a customs procedure including customs warehousing or free zone procedure or in transit through the customs territory of the Union on the basis of an evaluation of the potential risks of illegal trade linked to such movements, including tracing methodologies for substances placed on the market, taking into account the environmental benefits and socio-economic impacts of such measures.

### *Article 19*

#### **Trade with states or regional economic integration organisations and territories not covered by the Protocol**

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<sup>33</sup> Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169, 25.6.2019, p. 1).

1. Import and export of ozone depleting substances listed in Annex I and of products and equipment containing those substances or whose functioning relies upon those substances from and to any state or regional economic integration organisation that has not agreed to be bound by the provisions of the Protocol applicable to a particular controlled substance shall be prohibited.
2. The Commission is empowered to adopt delegated acts in accordance with Article 29 to supplement this Regulation by establishing the rules applicable to the release for free circulation in the Union and export of products and equipment imported from and exported to any state or regional economic integration organisation subject to paragraph 1, which were produced using ozone depleting substances listed in Annex I, but do not contain substances which can be positively identified as ozone depleting substances listed in that Annex, as well as rules on the identification of such products and equipment. When adopting those delegating acts the Commission shall take into account the relevant decisions taken by the Parties to the Protocol and, as regards the rules on the identification of such products and equipment, periodical technical advice given to the Parties to the Protocol.
3. By way of derogation from paragraph 1, trade with any state or regional economic integration organisation subject to paragraph 1 in ozone depleting substances listed in Annex I and equipment containing those substances or whose functioning relies upon those substances or which are produced by means of one or more such substances may be authorised by the Commission, by means of implementing acts, to the extent that the state or regional economic integration organisation is determined by a meeting of the Parties to the Protocol pursuant to Article 4(8) of the Protocol to be in full compliance with the Protocol and has submitted data to that effect as specified in Article 7 of the Protocol. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2).
4. Subject to any decision taken under paragraph 2, paragraph 1 shall apply to any territory not covered by the Protocol in the same way as such decisions apply to any state or regional economic integration organisation subject to paragraph 1.
5. Where the authorities of a territory not covered by the Protocol are in full compliance with the Protocol and have submitted data to that effect as specified in Article 7 of the Protocol, the Commission may decide, by means of implementing acts, that some or all of the provisions of paragraph 1 of this Article shall not apply in respect of that territory. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2).

## **Chapter V**

### **Emission Control**

#### *Article 20*

##### **Recovery and destruction of used ozone depleting substances**

1. Ozone depleting substances listed in Annex I contained in refrigeration, air-conditioning and heat pump equipment, equipment containing solvents or fire protection systems and fire extinguishers shall, during the maintenance or servicing of equipment or before the dismantling or disposal of equipment, be recovered for destruction, recycling or reclamation.

2. Building owners and contractors shall ensure that during renovation, refurbishing or demolition activities implying the removal of metal-faced panels that contain foams with ozone depleting substances listed in Annex I are avoided to the extent possible by recovery for reuse or destruction of the foams and the substances contained therein.
3. Building owners and contractors shall ensure that during renovation, refurbishing or demolition activities implying the removal of foams in laminated boards installed in cavities or built-up structures that contain ozone depleting substances listed in Annex I are avoided to the extent possible by recovery for reuse or destruction of the foams and the substances contained therein.
4. Where recovery of the foams referred to in the first subparagraph is not technically feasible, the building owner or contractor shall draw up documentation providing evidence for the infeasibility of the recovery in the specific case. Such documentation shall be retained for five years and shall be made available, upon request, to the competent authorities and the Commission.
5. Halons contained in fire protection systems and fire extinguishers shall, during the maintenance or servicing of equipment or before the dismantling or disposal of equipment, be recovered for recycling or reclamation.  

Destruction of halon is prohibited unless there is documented evidence that the purity of the recovered or recycled substance does not technically allow its reclamation and subsequent re-use. Undertakings destroying halons in such cases shall retain this documentation for a minimum period of five years. Such documentation shall be made available, upon request, to competent authorities and the Commission.
6. Ozone depleting substances listed in Annex I contained in products and equipment other than those mentioned in paragraphs 1 to 5 shall, if technically and economically feasible, be recovered for destruction, recycling or reclamation, or shall be destroyed without prior recovery.
7. Ozone depleting substances listed in Annex I and products and equipment containing such substances shall only be destroyed by technologies approved by the Parties to the Protocol or by destruction technologies that are not yet approved, but are environmentally equivalent and comply with Union and national legislation on waste and with additional requirements under such legislation.
8. The Commission is empowered to adopt delegated acts in accordance with Article 29 to supplement this Regulation by establishing a list of products and equipment for which the recovery of ozone depleting substances or destruction of products and equipment without prior recovery of ozone depleting substances shall be considered technically and economically feasible, specifying, if appropriate, the technologies to be applied.
9. Member States shall promote the recovery, recycling, reclamation and destruction of ozone depleting substances listed in Annex I and shall establish the minimum qualification requirements for the personnel involved.

#### *Article 21*

#### **Release of ozone depleting substances and leakage checks**

1. The intentional release of ozone depleting substances including when contained in products and equipment into the atmosphere shall be prohibited where the release is not technically necessary for the intended uses permitted under this Regulation.
2. Undertakings shall take all necessary precautions to prevent and minimise any unintentional release of ozone depleting substances listed in Annex I during production, including inadvertently produced in the course of the manufacture of other chemicals, equipment manufacturing process, use, storage and transfer from one container or system to another or transport.
3. Undertakings operating equipment containing ozone depleting substances listed in Annex I, shall ensure that any detected leakage is repaired without undue delay, without prejudice to the prohibition to use the ozone depleting substances.
4. Undertakings referred to in paragraph 3 shall retain records on the quantity and type of ozone depleting substances added and the quantity recovered during maintenance, servicing and final disposal of the equipment or system. They shall also retain records of other relevant information including the identification of the company or technician which performed the maintenance or servicing, as well as the dates and results of the leakage checks carried out. These records shall be retained for a minimum period of five years and shall be made available, upon request, to the competent authority of a Member State and to the Commission.
5. Member States shall establish the minimum qualification requirements for the personnel carrying out activities referred to in paragraph 3.

## **Chapter VI**

### **Lists of ozone depleting substances and reporting**

#### *Article 22*

##### **Amendments to the lists of ozone depleting substances**

1. The Commission is empowered to adopt delegated acts in accordance with Article 29 to amend Annex II to include in that Annex any substances that are not covered by this Regulation but have been found by the Scientific Assessment Panel ('SAP'), established under the Protocol, or by another recognised authority of equivalent stature to have a significant ozone-depleting potential.
2. The Commission is empowered to adopt delegated acts in accordance with Article 29 to amend Annex I to include in that Annex any substances that fulfil the conditions set out in paragraph 1, and are exported, imported, produced or placed on the market in significant quantities and, if appropriate, to determine possible exemptions from the restrictions set out in Chapters I, II, or IV.
3. The Commission is empowered to adopt delegated acts in accordance with Article 29 to amend Annexes I and II as regards the global warming potential and the ozone depleting potential of the listed substances, where it is necessary in the light of new Assessments Reports by the Intergovernmental Panel on Climate Change or new reports of the SAP, established under the Protocol.

#### *Article 23*

##### **Reporting by the Member States**

1. Each year by 30 June [*OP: Please insert the year of application of this Regulation*] Please add year of application of the Regulation], Member States shall report the following information in an electronic format to the Commission, for the previous calendar year:
  - (a) the quantities of halons installed, used and stored for critical uses, pursuant to Article 9(1), the measures taken to reduce their emissions and an estimate of such emissions, and progress in evaluating and using adequate alternatives;
  - (b) cases of illegal trade, in particular those detected during the checks carried out pursuant to Article 26, including the imposition of penalties referred to in Article 27 where applicable.
2. The Commission may, if appropriate, by means of implementing acts, determine the format for the submission of the information referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2).
3. The Commission is empowered to adopt delegated acts in accordance with Article 29 to amend paragraph 1 of this Article where it is necessary in view of the decisions of the Parties to the Protocol.

#### *Article 24*

#### **Reporting by undertakings**

1. Each year by 31 March [*OP: Please insert the year of application of this Regulation*], each undertaking shall report, via an electronic reporting tool, to the Commission the data listed in Annex VI for each ozone depleting substance for the previous calendar year.

Member States shall also have access to the electronic reporting tool of the undertakings falling under their jurisdiction.

Prior to reporting, undertakings shall register in the licensing system.
2. The Commission and the competent authorities of the Member States shall take appropriate measures to protect the confidentiality of the information submitted to it in accordance with this Article.
3. Where necessary, the Commission shall, by means of implementing acts, establish the format and means of the reporting referred to in Annex VI. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2).
4. The Commission is empowered to adopt delegated acts in accordance with Article 29 to amend Annex VI, where it is necessary in view of the decisions of the Parties to the Protocol.

## **Chapter VII**

### **Enforcement**

#### *Article 25*

#### **Cooperation and exchange of information**

1. The competent authorities of Member States, including customs authorities, market surveillance authorities, environmental authorities and other authorities with inspection functions shall cooperate with each other, with authorities from other Member States, with the Commission, and if necessary, with administrative authorities of third countries in order to ensure compliance with this Regulation.

When cooperation with customs authorities is needed to ensure a proper implementation of the customs risk management framework, competent authorities shall provide all necessary information to customs in accordance with Article 47(2) of Regulation (EU) No 952/2013.

2. When customs authorities, market surveillance authorities or any other competent authority of a Member State have detected an infringement of this Regulation, that competent authority shall notify the environmental authority or if not relevant any other authority responsible for the enforcement of penalties in accordance with Article 27.
3. Member States shall ensure that their competent authorities are able to efficiently have access to and exchange between them any information necessary for the enforcement of this Regulation. Such information shall include customs related data, information on ownership and financial status, any environmental violations, as well as data recorded in the licensing system.

That information shall also be made available to competent authorities of other Member States and to the Commission when needed to ensure the enforcement of this Regulation.

4. Competent authorities shall alert competent authorities of other Member States when they detect infringement of this Regulation that may affect more than one Member State. Competent authorities shall, in particular, inform competent authorities of other Member States when they detect a relevant product on the market that is not compliant with this Regulation, to enable that it is seized, confiscated, withdrawn or recalled from the market for disposal.

The Customs Risk Management System shall be used for the communication between the customs authorities.

Customs authorities shall also exchange any relevant information related to infringement of the provisions of this Regulation in accordance with Regulation (EC) No 515/97 of the European Parliament and of the Council<sup>34</sup> and shall request assistance from the other Member States and the Commission where necessary.

#### *Article 26*

#### **Obligation to carry out checks**

1. The competent authorities of Member States shall carry out checks to establish whether undertakings comply with their obligations under this Regulation.
2. The checks shall be carried out following a risk-based approach, which takes into consideration, in particular, the history of compliance of undertakings, the risk of non-compliance of a specific product with this Regulation, and any other relevant

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<sup>34</sup> Regulation (EC) No 515/97 of the European Parliament and of the Council of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

information received from the Commission, national customs authorities, market surveillance authorities, environmental authorities and other authorities with inspection functions or from competent authorities of third countries.

Competent authorities shall also conduct checks when they are in possession of evidence or other relevant information, including based on substantiated concerns provided by third parties, concerning potential non-compliance with this Regulation.

The competent authorities of the Member States shall also carry out the checks that the Commission considers necessary to ensure compliance with this Regulation.

3. Checks referred to in paragraphs 1 and 2 shall include on-site visits of establishments with the appropriate frequency and verification of relevant documentation and equipment.

Checks shall be carried out without prior warning of the undertaking, except where prior notification is necessary in order to ensure the effectiveness of the checks. Member States shall ensure that undertakings afford the competent authorities all necessary assistance to enable those authorities to carry out the checks provided for by this Article.

4. The competent authorities shall keep records of the checks indicating in particular their nature and results, as well as on the measures taken in case of non-compliance. Records of all checks shall be kept for at least five years.
5. At the request of another Member State, a Member State may conduct checks or other formal investigations of undertakings suspected of being engaged in the illegal movement of substances and products and equipment covered by this Regulation and which are operating on the territory of that Member State. The requesting Member State shall be informed about the result of the check.
6. In carrying out the tasks assigned to it by this Regulation, the Commission may request all necessary information from the competent authorities of the Member States and from undertakings. When requesting information from an undertaking the Commission shall at the same time forward a copy of the request to the competent authority of the Member State within the territory of which the undertaking's seat is situated.
7. The Commission shall take appropriate steps to promote an adequate exchange of information and cooperation between competent authorities of the Member States and between competent authorities of the Member States and the Commission. The Commission shall take appropriate steps to protect the confidentiality of information obtained under this Article.

## Chapter VII

### Penalties, committee procedure and exercise of delegation

#### *Article 27*

##### **Penalties**

1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, by 1 January [*OP please insert = 1 year following the entry into force of this Regulation*], notify the Commission of those rules and of

those provisions and shall notify it, without delay, of any subsequent amendment affecting them.

2. Without prejudice to the obligations of Member States under Directive 2008/99/EC, Member States shall, in accordance with national law, provide for competent authorities to have the power to impose appropriate administrative penalties and take other administrative measures in relation to these infringements.
3. Member States shall ensure that the level and type of penalties are appropriate and proportionate and are applied considering at least to the following criteria:
  - (a) the nature and gravity of the infringement;
  - (b) the intentional or negligent character of the infringement;
  - (c) any previous infringements of this Regulation by the undertaking held responsible;
  - (d) the financial situation of the undertaking held responsible;
  - (e) the economic benefits derived or expected to be derived from the infringement.
4. The Member States shall ensure that their competent authorities are able to at least impose the following penalties in case of infringements of this Regulation:
  - (a) fines;
  - (b) confiscation or seizure of illegally obtained goods or of revenues gained by the undertaking from the infringement;
  - (c) suspension or revocation of the authorisation to carry out activities as these fall under the scope of this Regulation.
5. In cases of unlawful production, import, export, placing on the market, or use of ozone depleting substances listed in Annex I or of products and equipment containing those substances or whose functioning relies upon those substances, Member States shall envisage maximum administrative fines of at least five times the market value of the concerned substances or products and equipment concerned. In case of a repeated infringement within a five-year period, the Member States shall envisage maximum administrative fines of at least eight times the market value of the concerned substances or products and equipment concerned.

In cases of infringements of Article 21(1), the potential impact on the climate shall be reflected by taking into account the carbon price in the determination of an administrative fine.

#### *Article 28*

##### **Committee procedure**

1. The Commission shall be assisted by the Committee on ozone depleting substances. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

#### *Article 29*

##### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 7(4), Article 8(7), Article 9(3), Article 16(13), Article 18, Article 19(2), Article 20(8), Article 22, Article 23(3) and Article 24(4) shall be conferred on the Commission for an indeterminate period of time [*from the date of application of the Regulation*]
3. The delegation of power referred to in Article 7(4), Article 8(7), Article 9(3), Article 16(13), Article 18, Article 19(2), Article 20(8), Article 22, Article 23(3) and Article 24(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 7(4), Article 8(7), Article 9(3), Article 16(13), Article 18, Article 19(2), Article 20(8), Article 22, Article 23(3) and Article 24(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

## **Chapter VIII**

### **Transitional and final provisions**

#### *Article 30*

##### **Review**

By 1 January 2033, the Commission shall publish a report on the implementation of this Regulation.

#### *Article 31*

##### **Repeal**

Regulation (EC) No 1005/2009 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and read in accordance with the correlation table in Annex VIII.

#### *Article 32*

##### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Articles 16(14), 16(15) and 17(5) of this Regulation shall apply from:

- (a) [[1 March 2023] date = the application date specified in Regulation of the European Parliament and of the Council establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013 in the Annex for the part concerning ozone depleting substances] as regards the customs procedure release for free circulation as referred to in Article 201 of Regulation (EU) No 952/2013 and export;
- (b) [[1 March 2025] date = the application date specified in Regulation of the European Parliament and of the Council establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013 in the Annex for the part concerning ozone depleting substances] as regards import procedures other than the procedure referred to in point (a).

Done at Strasbourg,

*For the European Parliament*  
*The President*  
[...]

*For the Council*  
*The President*