



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.07.1999
COM (1999) 392 final

99/0157 (CNS)

Proposal for a

COUNCIL DECISION

**concerning the conclusion of the amendment to the Montreal Protocol on
substances that deplete the ozone layer**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. This note sets out the background to the draft decision by which the Community would ratify and become a Party to the 1997 Montreal Amendment to the Montreal Protocol.
2. The original Montreal Protocol was agreed in September 1987 and ratified by the Community in 1988. An amendment is necessary whenever the Parties wish to introduce new provisions into the Protocol. Each new amendment requires ratification by at least 20 Parties before it enters into force. Further, each Party needs separately to ratify each amendment before being bound by the control measures contained therein. The Community ratified the London amendment in 1991 and the Copenhagen amendment in 1994. It is now an appropriate time to ratify the Montreal amendment.
3. The Montreal amendment introduces three new controls into the Montreal Protocol regime:
 - (1) A ban on imports and exports of methyl bromide with any State not Party to the Montreal Protocol. In the case of methyl bromide, a "state not party" is any state which has not ratified the Copenhagen amendment. The purpose of this control measure is both to encourage Parties to ratify the Copenhagen amendment and to prevent methyl bromide going to states which are not bound by any control measures for that substance.
 - (2) A ban on exports (except for destruction) of used, recycled and reclaimed controlled substances from Parties which are in non-compliance with the control measures in the Montreal Protocol. This would prevent any Party continuing to produce controlled substances after the phaseout date (i.e. a Party in non-compliance) from exporting new substances disguised as recovered or recycled substances. It would also keep recovered substances in the domestic market where they could help reduce demand for new substances.
 - (3) A mandatory licensing system for imports and exports of controlled ozone-depleting substances. This will help to improve monitoring and control of international trade in ozone-depleting substances, leading to more accurate data reporting, less illegal trade and fewer instances of non-compliance.
4. The Commission negotiated these amendments on behalf of the European Community during the Ninth meeting of Parties to the Montreal Protocol in September 1997. Negotiations were conducted in line with the negotiating mandate for that meeting received from the Council and the provisions of the amendment are consistent with the Community's ozone protection policy. The legal measures necessary to implement these new controls are included in the proposed new Community ozone regulation. The Council reached a common position on this new regulation on 23 February 1999 (Common Position (EC) No. 19/1999, O.J. C123 of 4 May 1999).
5. The substantive terms of the Montreal amendment concern trade measures with third parties. This puts the measures clearly within the scope of

Community competence and it is therefore appropriate and necessary for the Community to ratify the amendment. By June 1999, 10 Parties, including Germany and Luxembourg among the Member States, had ratified the amendment. Community ratification will help in the drive to achieve the twenty ratifications necessary for the amendment to enter into force.

Proposal for a

COUNCIL DECISION

concerning the conclusion of the amendment to the Montreal Protocol on substances that deplete the ozone layer

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 174 (4) in conjunction with the first sentence of Article 300 (2) and first subparagraph of Article 300 (3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament¹,

- (1) Whereas the Community, in view of its responsibilities for the environment has, by Decision 88/540/EEC² become a party to the Vienna Convention for the protection of the ozone layer and the Montreal Protocol on substances that deplete the ozone layer, and by Decision 91/690/EEC³ has approved the first amendment to the said Protocol and by Decision 94/68/EC has approved the second amendment to the said Protocol;
- (2) Whereas recent evidence indicates that for the adequate protection of the ozone layer a higher degree of control of trade in ozone depleting substances is required than is provided by the Montreal Protocol as amended in 1992; whereas the same evidence indicates that there should be additional monitoring and control of trade in controlled ozone-depleting substances and in particular on methyl bromide;
- (3) Whereas a third amendment to the Montreal Protocol introducing these controls has been adopted in Montreal in September 1997; whereas the Commission, on behalf of the Community, took part in the negotiation and agreement of this amendment;
- (4) Whereas the Community has adopted measures in the area covered by the amendment and should therefore undertake international commitments in that area;

¹ OJ reference when available

² OJ L 297, 31.10.1988, p.8

³ OJ L 377, 31.12.1991, p.28

- (5) Whereas it is necessary for the Community to approve the third amendment to the Montreal Protocol because its provisions relate to trade in controlled substances between the Community and other Parties, the implementation of which is the responsibility of the Community;

HAS DECIDED AS FOLLOWS:

Article 1

The third amendment to the Montreal Protocol on substances that deplete the ozone layer is hereby approved on behalf of the Community.

The text of this amendment is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person or persons empowered to deposit the instrument of approval of this third amendment on behalf of the Community with the Secretary-General of the United Nations in accordance with Article 13 of the Vienna Convention for the Protection of the Ozone Layer as read in conjunction with Article 3 of the third amendment to the Montreal Protocol.

Article 3

This decision shall be published in the *Official Journal of the European Communities*.

Done at Brussels,

For the Council
The President

**AMENDMENT TO THE MONTREAL PROTOCOL ADOPTED BY THE
NINTH MEETING OF THE PARTIES**

ARTICLE 1: AMENDMENT

A. Article 4, paragraph 1 qua.

The following paragraph shall be inserted after paragraph 1 *ter* of Article 4 of the Protocol:

1 qua. Within one year of the date of entry into force of this paragraph, each Party shall ban the import of the controlled substance in Annex E from any State not party to this Protocol.

B. Article 4, paragraph 2 qua.

The following paragraph shall be inserted after paragraph 2 *ter* of Article 4 of the Protocol:

2 qua. Commencing one year after the date of entry into force of this paragraph, each Party shall ban the export of the controlled substance in Annex E to any State not party to this Protocol.

C. Article 4, paragraphs 5, 6 and 7

In paragraphs 5, 6 and 7 of Article 4 of the Protocol, for the words:

and Group II of Annex C

there shall be substituted:

, Group II of Annex C and Annex E

D. Article 4, paragraph 8

In paragraph 8 of Article 4 of the Protocol, for the words:

Article 2G

there shall be substituted:

Articles 2G and 2H

E. Article 4A: Control of trade with Parties

The following Article shall be added to the Protocol as Article 4A:

1. Where, after the phase-out date applicable to it for a controlled substance, a Party is unable, despite having taken all practicable steps to comply with its obligation under the Protocol, to cease production of that substance for domestic consumption, other than for uses agreed by the Parties to be essential, it shall ban

the export of used, recycled and reclaimed quantities of that substance, other than for the purpose of destruction.

2. Paragraph 1 of this Article shall apply without prejudice to the operation of Article 11 of the Convention and the non-compliance procedure developed under Article 8 of the Protocol

F. Article 4B: Licensing

The following Article shall be added to the Protocol as Article 4B:

6. Each Party shall, by 1 January 2000 or within three months of the date of entry into force of this Article for it, whichever is the later, establish and implement a system for licensing the import and export of new, used, recycled and reclaimed controlled substances in Annexes A, B, C and E.
7. Notwithstanding paragraph 1 of this Article, any Party operating under paragraph 1 of Article 5 which decides it is not in a position to establish and implement a system for licensing the import and export of controlled substances in Annexes C and E, may delay taking those actions until 1 January 2005 and 1 January 2002, respectively.
8. Each Party shall, within three months of the date of introducing its licensing system, report to the Secretariat on the establishment and operation of that system.
9. The Secretariat shall periodically prepare and circulate to all Parties a list of the Parties that have reported to it on their licensing systems and shall forward this information to the Implementation Committee for consideration and appropriate recommendations to the Parties.

ARTICLE 2: RELATIONSHIP TO THE 1992 AMENDMENT

No State or regional economic integration organisation may deposit an instrument of ratification, acceptance, approval or accession to this Amendment unless it has previously, or simultaneously, deposited such an instrument to the Amendment adopted at the Fourth Meeting of the Parties in Copenhagen, 25 November 1992.

ARTICLE 3: ENTRY INTO FORCE

1. This Amendment shall enter into force on 1 January 1999, provided that at least twenty instruments of ratification, acceptance or approval of the Amendment have been deposited by States or regional economic integration organisations that are Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. In the event that this condition has not been fulfilled by that date, the Amendment shall enter into force on the ninetieth day following the date on which it has been fulfilled.
2. For the purposes of paragraph 1, any such instrument deposited by a regional economic integration organisation shall not be counted as additional to those deposited by member States of such organisation.

3. After the entry into force of this Amendment, as provided under paragraph 1, it shall enter into force for any other Party to the Protocol on the ninetieth day following the date of deposit of its instrument of ratification, acceptance or approval.