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**Seventeenth Meeting of the Parties to  
the Montreal Protocol on Substances that  
Deplete the Ozone Layer**

Dakar, 12–16 December 2005

Item 4 (o) of the provisional agenda of the preparatory segment\*

**Discussion on Montreal Protocol issues:  
Proposal by the European Community for amendment  
of the Montreal Protocol**

**Proposal by the European Community for amendment of the  
Montreal Protocol**

**Note by the Secretariat**

The annex to the present note contains a proposed amendment to the Montreal Protocol submitted by the European Community, preceded by an introductory note from the European Community transmitting the proposed amendment to the Convention Secretariat. The text of the annex, with slight technical modifications in the first two introductory paragraphs, is reproduced as received from the European Community and as it was considered by the Open-ended Working Group of the Parties to the Montreal Protocol at its twenty-fifth meeting. It has not been formally edited by the Secretariat.

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\* UNEP/OzL.Pro.17/1.  
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## Annex

### **Proposal by the European Community for amendment of the Montreal Protocol**

#### **Transmitted note**

The European Commission and the Presidency of the European Union are herewith submitting on behalf of the European Community and its Member States, in accordance with the procedure set out in Article 9 of the Vienna Convention, a proposal for an amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

The proposed amendment, which has already been presented and discussed informally with Parties over the last two years, would allow the Protocol to be modified with a view to making ozone depleting substances (ODS) that have yet to be controlled controlled substances, within the meaning of Article 1 (4) of the Protocol, more quickly than would be the case under present rules and procedures. Power would be given to apply control measures with respect to those substances.

The European Community believes that such an amendment would be fully in line with the fundamental principles of the Montreal Protocol. The proposed amendment would, thereby, usefully contribute to achieving its final objective of protecting the stratospheric ozone layer by taking appropriate and timely measures to control global emissions of all ODS, with the ultimate objective of eliminating such substances. In this connection, such an amendment would not alter in any way the current assessment process for determining the ozone-depletion potential of a substance, as described in Article 6 of the Montreal Protocol.

In pursuit of that goal, the Protocol includes a provision whereby substances identified as ozone-depleting may be added to the Protocol annexes listing the “controlled substances” to which the Protocol’s control measures apply. However, experience has shown that the procedure for adding new ODS to the lists of controlled substances is extremely long and unwieldy, often taking longer than 12 years for 80 per cent of the Parties to ratify, with the result that the Protocol’s overall goal of protecting the ozone layer is put at risk and unnecessarily delayed as a result of inadequate procedures.

All Parties support the overall objective of ensuring that ODS that has yet to be controlled does not undermine the significant environmental achievements of the Montreal Protocol. The European Community believes that its proposed amendment meets many of the procedural and legal concerns that have been raised in exploratory discussions at the meeting of the Parties over the last two years.

#### **Proposal for expedited amendment of the Montreal Protocol**

Any amendment to the Montreal Protocol is required to be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed to be adopted. In order to ensure that this procedural requirement is met, the European Community and its Member States are re-submitting their proposal, for expedited amendment to the Montreal Protocol, which was first set out in document UNEP/OzL.Pro.16/16 as discussed at the sixteenth Meeting of the Parties. The proposal is set out in Appendix I.

For the time being, the text of the proposed amendment submitted by the European Community and its Member States remains the same as the proposed amendment submitted last year, but this does not reflect any inflexibility: indeed the European Community and its Member States hope to continue the dialogue started in Prague last year, and to work together with other Parties to agree a text that meets everyone’s concerns.

The proposed amendment would provide a procedure for expedited amendment (referred to below as “modification”) of the Protocol.

The purpose of this note is to describe the effect of the proposed amendment.

Appendix II sets out Article 2(10) of the Protocol, as it would be amended, and the new Article 2(10*bis*) that would be inserted into the Protocol, if the proposal was adopted and entered into force.

### **Purposes of amendment**

The proposed amendment would allow the Protocol to be modified with a view to making new substances “controlled substances” within the meaning of Article 1(4) of the Protocol. Powers would be given to apply control measures with respect to those substances.

Moreover it is proposed that there might be a more general power to modify the Protocol to deal with matters arising out of or related to the control of those new substances. This power could be used by the MOP, for example, to introduce new trade measures relating to the new substances by the modification of Article 4, or to introduce new reporting requirements relating to the new substances by the modification of Article 7.

### **If the amendment were adopted there would then be three ways of changing the wording of the Protocol, namely-**

- “adjustment” pursuant to Article 2(9) of the Protocol;
- “amendment” pursuant to Article 9 of the Convention; and
- “modification” pursuant to the new provisions introduced in Article 2(10) and (10*bis*) of the Protocol.

### **The procedure for modification**

The modification procedure would be as follows -

- any decision to modify the Protocol would be adopted in the same way that an amendment to the Protocol would be adopted; and
- the modification decision would enter into force for Parties within two years; except that
- the decision would not enter into force for those Parties that had, within that same period of time, notified the depositary (i.e. the Secretary General of the UN – see Article 20 of the Vienna Convention) that they were unable to accept the decision.

Any such Party could subsequently agree to be bound by the modification, if it so wished, by a further notification to the depositary.

### **Comments on the procedure**

The procedure is designed in particular to -

- introduce procedural requirements relating to the entry into force of modifications which are lighter, and therefore more expeditious, than the current procedural requirements relating to the entry into force of amendments, and also to
- incorporate adequate procedural safeguards, so that no Party need be bound by a decision to modify the Protocol until it is in a position to comply with its obligations arising under the modification.

The proposal should not disrupt the business of the MOP. In appropriate cases amendments and modifications could be set out in the same instrument, so that what constituted an amendment for one set of Parties would constitute a modification for the rest of the Parties. Parties that agreed to be bound by the new modification procedure would simply be bound by (what was for them) a modification more quickly than the remaining Parties would be bound by (what was for them) an amendment.

**Should the proposed procedure for modification of the Protocol be part of a package of amendments?**

It is the normal practice for the MOP to adopt packages of amendments, so that all adopted amendments are contained in one legal instrument.

This proposal should be excepted from that practice, so that it would be separated from any other amendments adopted by the relevant MOP.

This is because it would be inappropriate to link an amendment providing for modification to other amendment(s) relating to control measures. If there was such a link, Parties that could not accept the procedure for modification would not be able to agree to be bound by the associated control measures, and could, in due course, be penalised by any trade sanctions for breach of those control measures.

## Appendix I

### Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer

#### Article 1: Amendment

##### A. Article 2, paragraph 10

In paragraph 10 of Article 2 of the Protocol-

For the words:

Article 9 of the Convention

there shall be substituted:

paragraph 10bis of this Article

In subparagraph (a), after the word:

any

there shall be added:

new

In subparagraph (a), for the words:

added to or removed from any annex to this Protocol, and

there shall be substituted:

made controlled substances,

The following word shall be added at the end of subparagraph (b):

and

The following subparagraph shall be inserted after subparagraph (b):

(c) Whether any further modifications should be made to the Protocol to deal with matters arising out of or related to decisions made pursuant to subparagraphs (a) and (b).

The following paragraph shall be added after paragraph 10:

10 *bis*. The following procedure shall apply to the proposal, adoption and entry into force of any decision to modify the Protocol under paragraph 10.

(a) A decision to modify the Protocol shall be proposed and adopted according to the procedure laid down in Article 9, paragraphs 1 to 4 of the Convention.

(b) A decision to modify the Protocol shall be binding on the expiry of a period of two years after its adoption for all Parties that have not within that period notified the depositary in writing that they are unable to accept the decision.

(c) Any Party that has notified the depositary pursuant to subparagraph (b) may subsequently notify the depositary that it is able to accept the decision. In that case the decision shall become binding on that Party, either from the moment of that latter notification or after the expiry of a period of two years after the adoption of the decision, whichever is later.

**Article 2: Relationship to the 1999 Amendment**

No State or regional economic integration organization 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 Eleventh Meeting of the Parties in Beijing, 3 December 1999.

**Article 3: Entry into force**

1. This Amendment shall enter into force on 1 January 2007 provided that at least twenty instruments of ratification, acceptance or approval of the Amendment have been deposited by States or regional economic integration organizations 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 organization shall not be counted as additional to those deposited by member States of such organization.
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.

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## Appendix II

### Article 2: Control Measures

10. Based on the assessments made pursuant to Article 6 of this Protocol and in accordance with the procedure set out in paragraph 10 *bis* of this Article, the Parties may decide:

- (a) whether any new substances, and if so which, should be made controlled substances,
- (b) the mechanism, scope and timing of the control measures that should apply to those substances; and
- (c) whether any further modifications should be made to the Protocol to deal with matters arising out of or related to decisions made pursuant to subparagraphs (a) and (b).

10 *bis*. The following procedure shall apply to the proposal, adoption and entry into force of any decision to modify the Protocol under paragraph 10.

- (a) A decision to modify the Protocol shall be proposed and adopted according to the procedure laid down in Article 9, paragraphs 1 to 4 of the Convention.
  - (b) A decision to modify the Protocol shall be binding on the expiry of a period of two years after its adoption for all Parties that have not within that period notified the depositary in writing that they are unable to accept the decision.
  - (c) Any Party that has notified the depositary pursuant to subparagraph (b) may subsequently notify the depositary that it is able to accept the decision. In that case the decision shall become binding on that Party, either from the moment of that latter notification or after the expiry of a period of two years after the adoption of the decision, whichever is later.
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