

COMMISSION DECISION**of 31 January 2005****determining a mechanism for the allocation of quotas to producers and importers of hydrochlorofluorocarbons for the years 2003 to 2009 according to Regulation (EC) No 2037/2000 of the European Parliament and of the Council***(notified under document number C(2005) 134)***(Only the Dutch, English, Estonian, Finnish, French, German, Greek, Italian, Lithuanian, Polish, Slovenian, Spanish and Swedish texts are authentic)**

(2005/103/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer⁽¹⁾, and in particular Article 4(3)(ii) thereof,

Whereas:

- (1) Community measures, in particular those contained in Council Regulation (EC) No 3093/94 of 15 December 1994 on substances that deplete the ozone layer⁽²⁾ which was replaced by Regulation (EC) No 2037/2000, have led over several years to a reduction of overall consumption of hydrochlorofluorocarbons (HCFCs).
- (2) In the context of that reduction, quotas for individual producers and importers were fixed based on historical market shares and calculated by reference to the ozone depleting potential of those substances.
- (3) Since 1997 the market for those substances in respect of different uses has been stable. Almost two-thirds of the HCFCs were used for the production of foam until this use of HCFCs was banned on 1 January 2003.
- (4) In order not to disadvantage users of HCFCs making non-foam products from 1 January 2003, which would occur if the allocation system were to be based on historical market share of the use of HCFCs for foam products, it is appropriate to provide for a new allocation mechanism for the use of HCFCs after that date for the manufacture of non-foam products. For 2004 to 2009, the allocation system considered most appropriate was that based solely on the average, historical market share of HCFCs used for non-foam production.
- (5) While it is appropriate to limit the quotas available to importers to their respective percentage market share in 1999, provision should also be made to reallocate to registered HCFCs importers any import quota which has not been claimed and allocated in a given year.
- (6) Commission Decision 2002/654/EC of 12 August 2002 determining a mechanism for the allocation of quotas to producers and importers for hydrochlorofluorocarbons for the years 2003 to 2009 under Regulation (EC) No 2037/2000 of the European Parliament and of the Council⁽³⁾ should be amended in order to take account of the increased quota for hydrochlorofluorocarbons (Group VIII) in Annex III to Regulation (EC) No 2037/2000, as amended by the 2003 Act of Accession and the historical market share of undertakings in the Member States that acceded on the 1 May 2004.

⁽¹⁾ OJ L 244, 29.9.2000, p. 1. Regulation as last amended by Commission Regulation (EC) No 2077/2004 (OJ L 359, 4.12.2004, p. 28).

⁽²⁾ OJ L 333, 22.12.1994, p. 1.

⁽³⁾ OJ L 220, 15.8.2002, p. 59.

- (7) In the interests of legal clarity and transparency, Decision 2002/654/EC should therefore be replaced.
- (8) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 18(1) of Regulation (EC) No 2037/2000,

HAS ADOPTED THIS DECISION:

Article 1

Definitions

For the purposes of this Decision, the following definitions shall apply:

- (a) 'market share for refrigeration' means the average market share of sales of hydrochlorofluorocarbons for refrigeration applications of a producer in the years 1997, 1998 and 1999 as a percentage of the total market for refrigeration applications;
- (b) 'market share for foam production' means the average market share of sales of hydrochlorofluorocarbons for foam production of a producer in the years 1997, 1998 and 1999 as a percentage of the total market for foam production; and
- (c) 'market share for solvent uses' means the average market share of sales of hydrochlorofluorocarbons for solvent uses of a producer in the years 1997, 1998 and 1999 as a percentage of the total market for solvent uses.

Article 2

Basis for the calculation of quotas

The indicative quantities assigned for the consumption of hydrochlorofluorocarbons for refrigeration, foam production and solvents from the producers share of the calculated levels set out in Article 4(3)(i)(d) and (e) of Regulation (EC) No 2037/2000, shall be as set out in Annex I to this Decision.

The market shares for each producer in the respective markets shall be as set out in Annex II⁽¹⁾.

Article 3

Quotas for producers

1. For the years 2004 to 2007, for each producer the quota of the calculated level of hydrochlorofluorocarbons set out in Article 4(3)(i)(e) of Regulation (EC) No 2037/2000 which it places on the market or uses for its own account shall not exceed the sum of the following:

- (a) the producer's market share for refrigeration of the total indicative quantity assigned for refrigeration in 2004;
- (b) the producer's market share for solvents of the total indicative quantity assigned for solvents in 2004.

⁽¹⁾ Annex II is not published because it contains confidential commercial information.

2. For the years 2008 and 2009, for each producer the quota of the calculated level of hydrochlorofluorocarbons set out in Article 4(3)(i)(f) of Regulation (EC) No 2037/2000 which it places on the market or uses for its own account shall not on a pro rata basis exceed the sum of the following:

- (a) the producer's market share for refrigeration of the total indicative quantity assigned for refrigeration in 2004;
- (b) the producer's market share for solvents of the total indicative quantity assigned for solvents in 2004.

Article 4

Quotas for importers

The calculated level of hydrochlorofluorocarbons that each importer may place on the market or use for its own account shall not exceed, as a percentage of the calculated level set out in Article 4(3)(i)(d), (e) and (f) of Regulation (EC) No 2037/2000, the percentage share assigned to it in 1999.

Any amounts, however, which cannot be placed on the market, because importers entitled to do so did not apply for an import quota, shall be reallocated between those importers that have been given an import quota.

The amount unallocated shall be divided between each importer and calculated on a proportional basis by reference to the size of the quotas already determined for those importers.

Article 5

Decision 2002/654/EC is repealed.

References to the repealed Decision shall be construed as references to this Decision.

Article 6

This Decision is addressed to the following undertakings:

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Done at Brussels, 31 January 2005.

For the Commission
Stavros DIMAS
Member of the Commission

ANNEX I

Indicative quantities assigned for 2004 and 2005 in tonnes/Ozone-depleting potential

Market	2004	2005
Refrigeration	1 990,61	2 054,47
Foam Production	0,00	0,00
Solvents	64,11	66,17
Total	2 054,72	2 120,64