



BRIEFING NOTE

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RATIFICATION OF THE KIGALI AMENDMENT



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**OZONE
SECRETARIAT**
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1. SCOPE OF THE BRIEFING NOTE

On 15 October 2016, in Kigali, the parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol) reached agreement at their 28th Meeting to phase down consumption and production of hydrofluorocarbons (HFCs). They adopted an amendment (the Kigali Amendment) in Decision XXVIII/1.

This briefing note has been prepared by the Secretariat of the Montreal Protocol to help Parties to the Protocol prepare for ratification, acceptance, or approval of the Kigali Amendment. This note:

- introduces the Montreal Protocol and the Kigali Amendment;
- lists the implications of ratification of the Amendment;
- explains the concepts of ratification and entry into force;
- lists steps to be taken to prepare for ratification and entry into force;
- describes how to ratify; and
- provides in the annex a model instrument of ratification.

The information presented in this note is intended only as a resource for the parties. It is not meant to be exhaustive nor in any way prescriptive. For the sake of brevity, throughout this note, the word “ratification” will be used to cover “ratification, acceptance and approval”¹.

2. INTRODUCTION

The Montreal Protocol and the Kigali Amendment

The Montreal Protocol is a well-established multi-lateral environmental agreement that is successfully preventing massive damage to human health and the environment from excessive ultraviolet radiation from the sun by phasing out the production and consumption of substances that deplete the ozone layer.

The Montreal Protocol has been amended several

¹ Except where acceptance and approval are briefly discussed separately in section 5 of this note.

times, most recently by the Kigali Amendment², which is the fifth in a series of amendments to the Protocol, and was adopted to phase down HFCs, which are frequently used as substitutes for ozone-depleting substances (ODSs). Although HFCs are not ODSs, they are powerful greenhouse gases that have significant global warming potentials (GWPs).

Legal obligations under the Kigali Amendment

The Kigali Amendment is a binding international agreement, or treaty, which is intended to create rights and obligations in international law.

Once the Amendment enters into force for a party³, that party assumes legal obligations under the Amendment.

3. IMPLICATIONS OF RATIFICATION

Key reasons to become a Party to the Kigali Amendment

The Montreal Protocol has put the ozone layer on the road to recovery by phasing out ODSs and in the process has also mitigated climate change. Under the Amendment, parties will phase down production and consumption of HFCs, creating the potential to avoid up to 0.5°C of warming by the end of the century.

All prior amendments and adjustments of the Montreal Protocol have universal support; states⁴ that ratify the Amendment early will lead a trend the rest of the world is likely to follow.

When parties deploy new technologies while implementing the Kigali Amendment, they will be able to gain a competitive advantage in the world market. Alternative technologies are often cost-effective and lead to an improvement in the quality of end products,

² The authentic text of the Kigali Amendment may be found at <https://treaties.un.org/doc/Publication/CN/2016/CN.872.2016-Eng.pdf>.

³ A party to the Kigali Amendment will be a state, which has consented to be bound by the Amendment and for which the Amendment is in force. For the purposes of this note, “state” also includes regional economic integration organisations, which means in practice the European Union.

⁴ For purposes of this note, the term “state” also includes a regional economic integration organization. The EU is a regional economic integration organization.

including in energy efficiency.

Through the Kigali Amendment, the Montreal Protocol takes responsibility for HFCs and plays a leading role in working towards an environmentally sustainable world where no one is left behind, consistent with the 2030 Agenda for Sustainable Development.

Article 5 parties to the Kigali Amendment will have access to financial and technical support provided under the Protocol. There are also a number of other benefits from ratification.

The benefits of becoming a party to the Kigali amendment

Article 5 parties

There are particular incentives for **Article 5 parties** to ratify the Kigali Amendment:

- **The financial mechanism:** Article 10 of the Montreal Protocol establishes a financial mechanism to provide financial and technical cooperation, including the transfer of technologies, to support Article 5 parties' compliance with the Protocol. Part of this package is the Multilateral Fund (MLF), which, amongst other things, meets the agreed incremental costs of Article 5 parties. The 28th Meeting of the Parties made a number of **key decisions about MLF support** for Article 5 parties.
- Article 5 parties "will have **flexibility** to prioritize HFCs, define sectors, select technologies and alternatives and elaborate and implement their strategies to meet agreed HFC obligations, based on their specific needs and national circumstances, following a country-driven approach"⁵; this principle is to be incorporated into MLF guidelines⁶.
- The Executive Committee of the MLF has been requested to develop **guidelines for financing** the phase-down of HFC consumption and production, including cost-effectiveness thresholds⁷.
- The Executive Committee of the MLF has been requested to incorporate, into funding guidelines, principles that will make enterprises eligible for funding for second and third conversions to comply with the Amendment where they have

already made a first conversion⁸ in order to phase out substances in accordance with the Montreal Protocol⁹.

- There will be support for **enabling activities** for institutional strengthening, import and export licencing and quotas, Article 7 reporting, demonstration projects and the development of national strategies for phasing down HFCs¹⁰.
- **High-ambient-temperature exemption:** There is an exemption¹¹ from the HFC phase-down for Article 5 parties from the requirements to phase down HFCs to the extent that a high-ambient-temperature exception applies¹².
- There may also be **other exemptions**¹³, such as for essential uses and critical uses for production or consumption that are necessary to satisfy uses agreed by the parties to be exempted uses. Mechanisms for such potential exemptions will be considered in 2029.
- If an Article 5 party is unable to implement its obligations due to inadequate implementation of the provisions on technology transfer and the financial mechanism, it may start a process that will result in a decision by the Meeting of the Parties on actions to be taken.
- The Implementation Committee¹⁴ operates in a non-judicial, non-confrontational and facilitative manner to support parties' compliance. Customarily, the President of the Implementation Committee attends the meetings of the Executive Committee of the MLF and the Chair and Vice-Chair of the Executive Committee attend the meetings of the Implementation Committee as

5 See paragraph 13 of decision XXVIII/2.

6 See paragraph 14 of decision XXVIII/2.

7 See paragraph 10 of decision XXVIII/2.

8 "First conversions" are conversions to low-GWP or zero-GWP alternatives of enterprises that have never received any direct or indirect support, in part or in full, from the Multilateral Fund, including enterprises that converted to hydrofluorocarbons with their own resources. See paragraph 18, subparagraph (a) of decision XXVIII/2.

9 See paragraph 18 of decision XXVIII/2.

10 See paragraphs 20 and 21 of decision XXVIII/2.

11 See Article 5, paragraph 8 qua and subparagraph (g) of the Montreal Protocol.

12 The high-ambient-temperature exception is currently set out in decision XXXVIII/2.

13 See paragraphs 38 to 40 of decision XXVIII/2.

14 Pursuant to Article 8 of the Montreal Protocol, a non-compliance procedure was adopted by decision IV/5, which has been amended since. The decision established the Implementation Committee.

observers and assist each other^{15, 16}.

- **Extra financial support** will be available to provide support for Article 5 parties that make a fast start to phasing down HFCs. Before the meeting in Kigali, a group of 16 donor countries announced their intent to provide \$27 million to the MLF before the next scheduled replenishment of the Fund. This may be supplemented by energy efficiency funding by a group of philanthropic organizations, which have announced fast-start funding of \$53 million.

Avoidance of trade controls

Article 4 of the Montreal Protocol restricts parties from trading controlled substances with states not party to the Protocol. The Kigali Amendment, when Article 4 enters into force¹⁷, will restrict trade in HFCs between parties and states that are not parties to the Kigali Amendment. This means that there is an incentive for states to ratify the Amendment before the associated trade restrictions enter into force.

Leaving behind obsolete technologies

A Kigali Amendment non-party may operate with technologies that are becoming obsolete, failing to update its processes and facilities and so operating at an economic disadvantage. That would result in the loss of export markets for non-party industries even before the Protocol trade controls apply with respect to HFCs, and would inhibit the use of the latest innovative technology in related fields.

Flexibility in implementation

The Amendment allows parties a degree of flexibility in implementing their obligations: it is designed to give parties sufficient time and opportunities to phase down HFCs in a way that suits their needs and interests, setting their own priorities for particular HFCs, sectors, technologies and alternatives.

The Amendment does not phase out HFCs

¹⁵ Report of the Implementation Committee meeting, UNEP/OzL.Pro./ImpCom/26/5, paragraph 51.

¹⁶ The Secretariat and the Implementing Agencies of the MLF also attend the meetings of the Implementation Committee as observers and provide information on the status of the technical and financial assistance that they are providing to countries that are under consideration by the Committee.

¹⁷ The trade restrictions in the Kigali Amendment enter into force on 1 January 2033, provided that at least 70 Protocol parties have ratified the Amendment. Otherwise the trade restrictions enter into force on the 90th day following the 70th ratification.

completely; it recognises that in some circumstances HFC use will be permitted.

Participation at minimal extra cost

Normally the ratification of an environmental treaty with regular international meetings would incur extra costs for a state for preparing and participating in these meetings. States will, however, not incur significant international meeting costs when they ratify the Kigali Amendment because it is part of the Montreal Protocol and the vast majority of states regularly attend its meetings. Article 5 parties will participate in meetings with the support of the Trust Fund of the Montreal Protocol.

Costs of becoming a party to the Kigali Amendment

The **administrative costs** will include the costs of:

- adapting existing laws or introducing new ones to achieve the HFC phase-down;
- extending the ODS import and export licensing system to cover HFCs;
- putting in place, where appropriate, any practical arrangements that may be required for customs officers to assume extra responsibilities concerning HFCs;
- surveying existing HFC consumption and production;
- developing the resources to report under the Amendment; and
- developing a strategy for HFC phase-down, including monitoring and enforcement.

HFCs are currently used in refrigeration and air-conditioning, aerosols, fire protection equipment and the manufacture of insulation foam, and phasing them down across the economy may be challenging. Whilst parties will wish to manage the phase-down in the most effective and efficient way, costs will inevitably be incurred, although of course support will be available to Article 5 parties by the MLF.

Non-Article 5 parties contribute to the MLF following an adjusted United Nations scale of assessment. Non-Article 5 and Article 5 parties contribute to the Montreal Protocol Trust Fund for the organisation of meetings and the operation of the Secretariat.

4. RATIFICATION AND ENTRY INTO FORCE

Ratification, acceptance and approval

A state may consent to be bound by the Kigali Amendment in the following ways: by ratification, acceptance or approval of the Amendment.

“Ratification” means an international act¹⁸, through which a state establishes, at the international level, its consent to be bound by a treaty. Ratification consists of the execution of an instrument of ratification and, in the case of the Kigali Amendment¹⁹ the deposit of that instrument with the depository²⁰. Acceptance and approval are identical to ratification in legal effect and require identical procedures at the international level²¹.

Entry into force

The Amendment is not legally binding on a party until it enters into force for that party. It is necessary to distinguish between entry into force of the Kigali Amendment and entry into force of the Kigali Amendment for parties that will ratify the Amendment following its entry into force. The Amendment does not have full legal effect until it enters into force. States are not bound by the Amendment until it enters into force for them.

Entry into force of the Amendment

With one exception, the entry into force of the Amendment is governed by its Article IV (1): the Amendment enters into force on 1 January 2019, provided that at least 20 Montreal Protocol parties have ratified it. If there are not enough ratifications by that date, the Amendment enters into force on the 90th day following the 20th ratification.

The exception to this is in Article IV(2): the trade control provisions of the Kigali Amendment enter into force on 1 January 2033, provided that at least 70

18 In this note, the term “ratification” will not be used to cover the national procedures associated with the international act of ratification of a treaty, although in some countries the term is sometimes used to cover national procedures as well.

19 This is also the case with any other multilateral treaty that so provides, including the Montreal Protocol and its amendments.

20 For more explanation of the meaning of “depository”, see section 6 of this note.

21 The use of acceptance or approval was developed in order to enable some states to avoid constitutional requirements to obtain parliamentary authority for consent to be bound by an international agreement.

Protocol parties have ratified the Amendment. If there are not enough ratifications by that date, those trade provisions enter into force on the 90th day following the 70th ratification.

Entry into force for states

Where states ratify the Amendment before it enters into force, they are bound by the Amendment when it enters into force. If a state ratifies the Amendment after it enters into force, the Amendment enters into force for that state on the 90th day following the date of its ratification.

Provisional application

Article V of the Amendment provides for its provisional application, so that any party may declare that it will provisionally apply any of the control measures set out in Article 2J and the corresponding reporting obligations in Article 7. The practical effect of any such declaration will be that the party making it will behave as if the provisions to which the declaration relates are already in force²², during the period between the declaration and the entry into force of the Amendment for that state.

5. STEPS TO PREPARE FOR RATIFICATION AND ENTRY INTO FORCE

Why preparation is needed

From the date the Amendment enters into force for a party, that party has international legal obligations with respect to the other parties. It is essential therefore that a party is in a position to fulfil its obligations as from that date. It will be in breach of its international obligations if it becomes legally bound by the Amendment before it has the necessary domestic provisions and arrangements to give effect to the Amendment.

In particular, pleading insufficiency of domestic law, or inadequate constitutional arrangements is not, in international law, an acceptable excuse for failure to implement the Amendment.

It is therefore important for a state to complete a

22 The provisional application of treaties is governed by Article 25 of the Vienna Convention on the Law of Treaties.

number of preparatory steps before it ratifies the Amendment so that it can be sure it will be able to fulfil its international obligations once the Amendment enters into force for it.

All parties will need to be in a position to comply with the HFC phase-down schedules from the date the Amendment enters into force for them.

Preparatory analysis and collection of information

Before ratification, there should be one or more lead ministries, departments or authorities responsible for implementation of and compliance with the Kigali Amendment. It is possible that the organization identified as the focal point for the Montreal Protocol may play such a role. Alternatively, a different organization may take on the responsibility.

A party planning to ratify the Kigali Amendment should ensure there is:

- an understanding of obligations arising under the Amendment;
- a survey of consumption and production of HFCs; and
- other preparatory analysis.

Understanding the obligations of a party to the Amendment

The key obligations of a party that has ratified the Kigali Amendment are as follows:

- The Montreal Protocol is amended to include a new Annex F, which lists HFCs, separated into two groups²³.
- Article 5 and non-Article 5 parties are required to phase-down²⁴ the production and consumption of the HFCs listed in Annex F.
- Article 5 and non-Article 5 Parties are each divided into two groups with different baseline years and phase-down schedules. The Meeting of

23 Group II substances - only HFC-23 for the time being - will be treated differently from Group I substances for the purposes of reporting on emissions (Article 7, paragraph 3ter, of the Protocol as amended); and application of approved technology to emissions and destruction of substances (Article 2J, paragraphs 6 and 7 of the Protocol as amended).

24 Article 2J and Article 5, paragraph 8 qua

the Parties has decided which Parties fall within those groups²⁵.

- Global warming potential (GWP) values are identified for HFCs (in Annex F) and also for some hydrochlorofluorocarbons (HCFCs, in Annex C) and chlorofluorocarbons (CFCs, in Annex A).
- Carbon dioxide equivalents (CO₂eq) are used to measure production, consumption, imports and exports as well as consumption and production baselines and emissions from HFC-23 which is in group 2 of Annex F.
- Baselines²⁶ are calculated from both HFC and HCFC production and consumption.
- Destruction of HFC-23 emissions to the extent practicable is required using technologies approved by the parties.
- Import and export licencing systems for HFCs must be in place by 1 January 2019²⁷, except that an Article 5 party that decides it is not in a position to meet that deadline may delay until 1 January 2021.
- Trade with states that have not ratified the Amendment must be banned from 1 January 2033.
- High-ambient-temperature parties have an exemption²⁸. Other exemptions²⁹ will be also considered.
- Monitoring and reporting of HFC production and consumption, and HFC-23 emissions where relevant, is required.

A survey of the consumption and production of HFCs

Whilst it is not a requirement to conduct a survey before ratification, a survey of the production and consumption of HFCs will enable a party to put in place many of the practical measures required for compliance with the Amendment. Funding is available

25 Decision XXVIII/2, paragraphs 1 and 2

26 Article 2J, paragraphs 1 to 4; Article 5, paragraph 8 qua, subparagraphs (c) to (g)

27 Or within three months of the date of entry into force if the entry into force is later than 1 January 2019 (Article 4B, paragraph 2 bis).

28 Article 5, paragraph 8 qua, subparagraph (g); decision XXVIII/2, paragraphs 26 to 40

29 Decision XXVIII/2, paragraphs 38 to 40

for Article 5 parties to conduct surveys and many are already implemented under the MLF³⁰.

A survey should, amongst other things:

- help the party concerned to better understand its historical and predicted consumption trends and their distribution by sector and subsector;
- provide the party with a comprehensive overview of its national markets where HFCs have been and will be phased in;
- identify any relevant emissions of HFC-23;
- facilitate the work of collecting data; and
- enable the party to estimate the most commonly used HFCs in all manufacturing and servicing sectors.

Other preparatory analysis

Other preparatory analysis may be helpful at a national level, for example some states may analyse the costs and benefits (on a national level) of ratifying the Kigali Amendment.

The creation of an institutional framework for implementation and compliance

An adequate institutional framework requires a range of different organizations in place at different levels of society to contribute to the delivery of the outcomes required by parties' legal obligations. Basic institutional arrangements for the implementation of obligations under the Montreal Protocol already exist in all parties and include:

- the identification of a focal point;
- the allocation of responsibility for implementation and compliance to one or more Ministries;
- the identification of particular officials to be the policy lead;
- adequate arrangements for licensing and quota systems;
- adequate arrangements for monitoring and reporting of HFC production and consumption and HFC-23 emissions where relevant; and

³⁰ The MLF Secretariat has prepared a guide to be used as a reference in the preparation and finalization of surveys in article 5 countries: see the Guide for Preparation of the Surveys of ODS Alternatives (MLF/IACM.2016/2/21 of 23 August 2016).

- provision for enforcement of laws that implement the Protocol, including one or more authorities that oversee enforcement including the imposition of sanctions and/or the commencement of criminal proceedings where appropriate.

Some states may need assistance to prepare for their implementation of and compliance with the Amendment. They should, as early as possible in the process of planning for ratification, consider what sources of assistance are available to them. Considerable assistance is available for Article 5 parties under the MLF.

It is also prudent to engage the public and civil society in the process of preparation for compliance in order to enlist support for any new measures, to enhance the legitimacy of what is planned and to tap into useful ideas. The private sector also needs to be engaged in order to get its support, increase its preparedness and to use its expertise. Most parties will already have taken steps to reach out to the public, civil society and the private sector and should build on those efforts in order to make sure that there is positive engagement with the Amendment, in particular by:

- undertaking awareness-raising activities;
- identifying and developing a list of stakeholders; and
- establishing a national coordination or steering committee, or some other body that regularly engages with stakeholders.

Preparing and adopting national laws

The Montreal Protocol has been universally ratified by 197 parties. That means that most parties should already have in place laws to implement the control measures required by the Protocol. It follows that for most parties it may simply be necessary to adapt those laws for the purpose of implementing the Kigali Amendment. This simply means extending the regime that already regulates ozone-depleting substances so that it also controls HFCs.

Other measures required

The adaptation or adoption of laws to implement the Kigali Amendment should be supplemented by a number of other measures to achieve the following outcomes:

- an operational HFC import and export licensing system with import and export quotas for HFCs;
- HFC production and consumption sector distribution data, as well as certain HFC-23 emission data; and
- a strategy for phasing down HFCs, divided into stages as appropriate.

6. THE ACT OF RATIFICATION

Once a state is ready, the ratification process itself can begin. That takes a number of steps.

Make contact with those responsible for getting a decision on ratification

Typically, a group of officials (a treaty unit), normally within a Ministry of Foreign Affairs, will be responsible for getting a decision on ratification of treaties and coordinating the steps necessary for ratification. The officials who lead on Kigali Amendment policy should contact the treaty unit to commence the process for ratification.

Find out the national processes leading to ratification and follow them

The treaty unit can advise on the national processes to be followed before formal ratification. In particular, they can explain what documentation needs to be prepared and what decision-making processes should be followed.

There will need to be political authority to ratify. It will depend on a state's national processes who can give that authority. In the process of getting that authority it may be necessary to engage the national parliament; that could be done in a number of ways, for example the national parliament may need to give express authority to ratify, or may need to be consulted as part of the ratification process.

National laws or practices may require the necessary legislative and administrative practices to be in place before authority is given to ratify. Even if national procedures do not require this, it is good practice to ensure that a state can comply with its international

obligations arising under a treaty before that treaty is ratified.

The national processes leading to ratification can be complicated or demanding, and it is important to follow them with care. It is advisable to consult the treaty unit in good time to ensure that the requirements for ratification are well and that the time and necessary resources are available.

Prepare and sign the instrument of ratification

After the completion of domestic legislative procedures and decision-making processes, the treaty unit will prepare the instrument of ratification and any statement or declaration. The treaty unit will also arrange for the necessary signature. An instrument of ratification may be signed by a head of state or government, a minister for foreign affairs or another person formally designated³¹ to do so.

Deposit the instrument of ratification with the depositary

The depositary of the Montreal Protocol is the Secretary-General of the United Nations in New York³². Instruments of ratification must be deposited with the depositary in order to meet the legal requirements for the international ratification procedure³³.

The treaty unit in a state will normally take responsibility for the practical formalities for depositing the instrument of ratification. A model instrument of ratification is included as an Annex to this briefing note.

31 The formal designation is made by a document referred to as "full powers": see Article 2(1)(c) of the Vienna Convention on the Law of Treaties.

32 See Article 20, paragraph 1 of the Vienna Convention for the Protection of the Ozone Layer. The UN Secretary General is also the depositary of the Montreal Protocol.

33 See Article 13 of the Vienna Convention for the Protection of the Ozone Layer.

Annex: Model instrument of ratification (to be signed by the Head of State, Head of Government or Minister of Foreign Affairs)

INSTRUMENT OF RATIFICATION

WHEREAS at the Twenty-Eighth Meeting of the Parties to Montreal Protocol on Substances that Deplete the Ozone Layer, held in Kigali from 10 to 15 October 2016, the Parties adopted, in accordance with the procedure laid down in paragraph 4 of article 9 of the 1985 Vienna Convention for the Protection of the Ozone Layer, a further amendment to the Montreal Protocol.

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister of Foreign Affairs] declare that the Government of **[name of State]**, having considered the above-mentioned amendment, ratifies the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of ratification at **[place]** on **[date]**.

[Signature]