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2017/0016 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the conclusion of the agreement to amend the Montreal Protocol on substances that  
deplete the ozone layer adopted in Kigali**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The proposal is for a Council Decision, to be adopted pursuant to Article 218(6) of the Treaty on the Functioning of the European Union (TFEU), on the conclusion on behalf of the European Union, of the Kigali Amendment to the Montreal Protocol on substances that deplete the ozone layer. The European Union had approved the Vienna Convention for the protection of the ozone layer, the Montreal Protocol and the four previous amendments to the Protocol<sup>1</sup>.

At the 28th Meeting of the Parties to the Montreal Protocol, which took place in Kigali, Rwanda, from 10<sup>th</sup> to 15<sup>th</sup> October 2016, the text of an amendment was adopted, adding a step-wise reduction of the consumption and production of hydrofluorocarbons (HFCs) to the control measures of the Montreal Protocol in view of reducing the contribution of these substance to climate change. Although not ozone depleting, these greenhouse gases were mainly introduced to replace ozone depleting substances that are phased out under the Montreal Protocol.

The Kigali Amendment will enter into force on 1 January 2019, provided that at least 20 parties have deposited their instruments of ratification. However, to underline the European Union's commitment to the amendment and to encourage developing countries to take early action, an early approval should be envisaged, also in view of the intention of other major parties to ratify as early as possible.

- **Consistency with existing policy provisions in the policy area**

With the adoption of Regulation (EU) No 517/2014 on fluorinated greenhouse gases in 2014, the European Union has anticipated at domestic level the phase-down of HFCs now agreed under the Montreal Protocol. The implementation of the EU phase-down started in 2015 with a freeze and a first reduction step in 2016. The enforcement mechanisms in place ensure compliance of the European Union with the obligations under the Montreal Protocol until 2030 when the last reduction step under the current Regulation applies. The reduction schedule beyond 2030 is to be determined on the basis of a review starting in 2022, pursuant to Article 21(2) of Regulation (EU) No 517/2014.

- **Consistency with other Union policies**

The 2030 climate and energy policy framework for the EU sets an ambitious economy-wide target of reducing greenhouse gas emissions at least 40% domestically by 2030, as well as renewable energy and energy efficiency targets. Implementing the 2030 energy and climate framework is a priority in follow up to the Paris Agreement. As it is acknowledged that any

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<sup>1</sup> 91/690/EEC: Council Decision of 12 December 1991 concerning the conclusion of the amendment to the Montreal Protocol on substances that deplete the ozone layer as adopted in June 1990 in London by the Parties to the Protocol, OJ L 377, 31.12.1991, p. 28;

94/68/EC: Council Decision of 2 December 1993 concerning the conclusion of the amendment to the Montreal Protocol on substances that deplete the ozone layer, OJ L 33, 7.2.1994, p. 1;

2000/646/EC: Council Decision of 17 October 2000 concerning the conclusion of the amendment to the Montreal Protocol on substances that deplete the ozone layer, OJ L 272, 25.10.2000, p. 26;

2002/215/EC: Council Decision of 4 March 2002 concerning the conclusion of the Fourth Amendment to the Montreal Protocol on substances that deplete the ozone layer, OJ L 72, 14.3.2002, p. 18.

technology used to replace HFC in pursuing the objectives of the Kigali Amendment is at least as energy efficient as the technology replaced, the foreseen HFC phase-down is consistent with the energy policy. Moreover, it is expected that the re-design of refrigeration and air-conditioning systems induced by the necessary replacement of the refrigerants will lead to significant improvements of the energy efficiency, thus making a positive contribution to reaching the targets.

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

The proposal is made under Article 192(1) together with Article 218(6) TFEU. Article 218 TFEU lays down the procedure for the negotiation and conclusion of agreements between the European Union and third countries or international organisations. In particular, paragraph 6 thereof provides for the Council, on a proposal from the Commission as negotiator, to adopt a decision authorising the conclusion of an agreement on behalf of the European Union.

In accordance with Article 191 and 192(1) TFEU, the European Union shall contribute to the pursuit, *inter alia*, of the following objectives: preserving, protecting and improving the quality of the environment; promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

The envisaged phase-down of HFCs is implemented through Regulation (EU) No 517/2014 that will have to be revised at a later stage in order to ensure compliance with the Kigali Amendment beyond 2030. This can only be achieved through Union legislation. Until 2030, the last year for which the Regulation determines a reduction step, the phase-down schedule is stricter than the future control measures under the Montreal Protocol. A full impact assessment had been carried out. At this stage, no changes to the Regulation are envisaged that may affect companies.

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## COUNCIL DECISION

### **on the conclusion of the agreement to amend the Montreal Protocol on substances that deplete the ozone layer adopted in Kigali**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) At the 28th meeting of the Parties to the Montreal Protocol on substances that deplete the ozone layer<sup>2</sup> ('the Montreal Protocol'), which took place in Kigali, Rwanda, from 10th to 15th October 2016, the text of an amendment to that Protocol ('the Kigali amendment') was adopted, adding a stepwise reduction of the consumption and production of hydrofluorocarbons to the control measures of the Montreal Protocol.
- (2) A stepwise reduction of the consumption and production of hydrofluorocarbons is necessary to reduce the contribution of those substances to climate change and to prevent their unlimited introduction, in particular in developing countries.
- (3) The Kigali amendment is a necessary contribution to the implementation of the Paris Agreement as regards its objective to keep the global temperature increase well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1,5°C above pre-industrial levels.
- (4) The Kigali amendment should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The amendment to the Montreal Protocol on substances that deplete the ozone layer, adopted in Kigali on 15 October 2016, is hereby approved on behalf of the Union.

The text of the amendment is attached to this Decision.

#### *Article 2*

The President of the Council shall designate the person or persons empowered to proceed, on behalf of the Union, to the deposit of the instrument of approval with the Secretary-General of the United Nations provided for in Articles 13(1) and 20 of the Vienna Convention for the

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<sup>2</sup> OJ L 297, 31.10.1988, p. 21.

protection of the ozone layer<sup>3</sup> in order to express the consent of the Union to be bound by the agreement.

*Article 3*

This Decision shall enter into force on the date following that of its adoption.

Done at Brussels,

*For the Council  
The President*

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<sup>3</sup> OJ L 297, 31.10.1988, p. 8