



EIA BRIEFING TO THE INFORMAL MEETING ON FACILITATING IMPLEMENTATION OF THE MONTREAL PROTOCOL

BACKGROUND

Following revelations of unexpected CFC-11 emissions in 2018 and reports of record atmospheric HFC-23 concentrations and other unexpected emissions, legitimate questions have been raised as to whether the Montreal Protocol's institutions and controls are fit for purpose, not only to sustain the phase-out of ozone depleting substances (ODS) but also to address the unique challenges of the hydrofluorocarbons (HFC) phase-down.

In response to unexpected emissions of CFC-11, the Parties to the Montreal Protocol and the Executive Committee to the Multilateral Fund generated a number of documents and analyses which identified a range of vulnerabilities in the Protocol's institutions.

In particular, the Secretariat's 2019 document on "*Possible ways of dealing with illegal production of and illegal trade in controlled substances under the Montreal Protocol, identifying potential gaps in the non-compliance procedure, challenges, tools, ideas and suggestions for improvement*" identified institutional processes to be strengthened, kickstarting discussions that have been ongoing since 2020.¹

Through multiple Open-Ended Working Group (OEWG) meetings and Meetings of Parties (MOPs), as well as a 2023 workshop set up under *Decision XXXIV/8: Strengthening Montreal Protocol institutions, including for combating illegal trade*, the parties produced a list of "suggested elements to be included in draft decisions", which can be summarised as:²

1. preventing illegal trade, including defining, controlling, monitoring and reporting
2. licensing and quota systems, addressing both the international and national levels, capacity-strengthening and ensuring compliance
3. implementation and enforcement systems, addressing both the international (institutions, mechanisms, recommendations and the role of the Implementation Committee) and national levels (practices for implementation, domestic measures, capacity-strengthening and ensuring compliance)
4. reporting systems and practices under Article 7 and information needed outside the scope of Article 7 – international and national level issues
5. assessment of opportunities to strengthen the Montreal Protocol.

Subsequent decisions have so far focused on facilitating the exchange of information on preventing illegal trade and addressing gaps in the global coverage of atmospheric monitoring of controlled substances.³

The informal meeting on facilitating implementation of the Montreal Protocol, which will take place ahead of the 37th Meeting of the Parties (MoP37) in Nairobi, is an opportunity to advance these and other issues and formulate a series of concrete actions to strengthen the effective implementation and enforcement of the Montreal Protocol.

According to the provisional programme, the informal meeting aims to facilitate discussions with "a view to sharing knowledge and insights, and exploring next steps in further strengthening the Protocol's institutions" specifically in four areas:

- (a) Import and export licensing systems;
- (b) Illegal trade;
- (c) Data collection and reporting systems;
- (d) Capacity enhancement.⁴

In this briefing, EIA examines the first three issues in turn, with suggested recommendations for next steps, areas for capacity enhancement and additional areas to be covered in future.

IMPORT AND EXPORT LICENSING SYSTEMS

Article 4B of the Montreal Protocol requires parties to establish and implement licensing systems for the import and export of new, used, recycled and reclaimed controlled substances.

When the Protocol was amended to include this requirement in 1997, Decision IX/8 established that the licensing system should assist with both the collection of sufficient information to facilitate compliance with reporting requirements and decisions of the parties and the prevention of illegal traffic of controlled substances.⁵

In 2005, due to concern over illegal trade – which had reached an estimated 10-20 per cent of the legal trade⁶ – the parties approved funding for a feasibility study on transboundary trade under Decision XVII/16. The resulting report, *ODS Tracking. Feasibility study on developing a system for monitoring the transboundary movement of controlled ozone-depleting substances between the Parties*, reviewed licensing systems in 20 countries.

It found that the systems used for licensing varied widely, that there had been little assessment of their effectiveness and it identified many reasons why systems may fail to perform as intended.⁷ Following that study, Decision XIX/12 listed eight specific measures that parties may consider to improve implementation and enforcement of their licensing systems in order to combat illegal trade in ODS more effectively:

1. participating in an informal prior informed consent (iPIC) procedure or similar process
2. establishing quantitative restrictions, for example import and/or export quotas
3. establishing permits for each shipment and obliging importers and exports to report domestically on the use of such permits
4. monitoring transit movements of ODS, including those passing through duty-free zones, for instance by identifying each shipment with a unique consignment reference number
5. banning or controlling the use of non-refillable containers
6. establishing minimum requirements for labelling and documentation
7. cross-checking trade information, including through private-public partnerships
8. including other relevant recommendations from the ODS tracking study.⁸



This year, in response to decision XXXVI/9, the Secretariat has published an updated summary of common features of licensing systems.⁹ The latest note by the Secretariat summarises common features from a review of 100 licensing systems. It demonstrates that the recommendations of Decision XIX/12 have not been implemented. Key inconsistencies among the licensing systems include:

- only 70 explicitly mention that exports require a licence, despite the fact that this is a compliance requirement under Article 4B
- only about one quarter manage transit trade, including transshipment and through free trade zones
- only 25 are fully electronic licensing systems that are integrated with customs clearance processes
- only 29 issue per-shipment licences
- only 79 mention mandatory reporting.

The Secretariat note does not provide information on bans of non-refillable or disposable cylinders, although these are in place in some parties, including the EU, Canada, Australia, Türkiye and India.¹⁰

Disposable cylinders are widely used in the illegal refrigerant trade.¹¹ They raise safety concerns for personnel handling refrigerants due to their weaker structure compared to refillable cylinders¹² as well as the lack of any guarantee as to the composition of the contents, which may include dangerous mixes of refrigerants.¹³ Moreover, some refrigerant remains in disposable cylinders after use. Known as the 'heel', this is estimated to be between 2.94-5 per cent of the original charge and is usually emitted during disposal.¹⁴

A global ban on disposable cylinders would therefore greatly enhance efforts to prevent illegal trade and significantly improve lifecycle refrigerant management (LRM). Based on the EU experience, such a ban must be accompanied by measures to ensure the return of refillable containers to avoid them being treated as disposable, one-way containers.¹⁵

The Secretariat notes the increasing relevance of e-commerce in the trade of refrigerants and products containing ODS and HFCs. While import/export-based licensing systems are pivotal in controlling trade in ODS and HFCs, the onus on border control means they do not support monitoring of HFCs within the domestic supply chain to the end user.

E-commerce and online trading platforms offer fluorinated gas (F-gas) smugglers access to large international markets. The ease with which they facilitate trade has increased incentives for illegal F-gas smuggling. EIA's experience in investigating illegal F-gas trade in Europe reveals that suspected non-quota HFCs are widely available across a range of online trading platforms and websites.¹⁶

Further measures to facilitate tracing of HFCs along the supply chain are therefore essential to prevent illegal trade. Developments in digital tracing methodologies mean it is feasible to use supply chain tracking to ensure that HFCs throughout the distribution network are quota compliant. This is already in place for a number of commodities, such as timber, and could be applied to HFCs.¹⁷

The significant disparities in the way that the Parties to the Montreal Protocol are setting up and running licensing systems demonstrates that the guidance recommended through multiple decisions (e.g. Decision VII/9, Decision VIII/26 and Decision IX/8) has not been adopted by most parties. Fundamentally, there is no independent means of verifying whether a party's licensing system meets the requirements under the Montreal Protocol because parties are only required to report on the establishment of a licensing system – there is no provision for confirmation, review or oversight.¹⁸ However, the information available demonstrates that robust minimum requirements or modalities for the implementation and operation of a licensing system should be adopted.

SUGGESTED NEXT STEPS

Licensing can be strengthened by amending Article 4B to require prior notification and consent and modernised to account for new technologies, such as a central database linking all licensing systems, potentially using QR codes and blockchain technology to track controlled substances through the supply chain.

EIA urges the parties to further develop **best practice and minimum requirements for licensing systems**, which would include:

- a fully electronic, single window, per shipment system that monitors all ODS and HFC trade, including transit movements (transshipments) of ODS and HFCs, identifying each shipment with a unique consignment reference number



- imports and exports of all controlled substances including recycled and reclaimed, polyols, exempted uses such as feedstocks and stockpiles
- Harmonised Commodity Description and Coding System (HS) codes directly linked to licensing requirements in application forms and customs electronic systems
- the use of additional national codes of up to 12 digits to improve monitoring and reporting of HFC blends and hydrofluoroolefins (HFOs)
- minimum requirements for labelling and documentation
- bans of disposable cylinders with proof of take-back mechanisms on refillable cylinders required.

EIA further recommends that the parties consider:

- a global ban on disposable cylinders. The Technology and Economic Assessment Panel (TEAP) should be requested to assess the environmental and economic impact of a global ban on disposable cylinders
- the establishment of formal prior informed consent (PIC) with a central database linking all licensing systems
- periodic review and verification of national licensing systems
- a review of available technologies and benefits of national, regional and global supply chain tracking of Montreal Protocol controlled substances, to enhance prevention of illegal trade and improve data collection and market transparency on HFCs and HFC blends, as raised by parties in recent Executive Committee meetings.

ILLEGAL TRADE

The illegal trade in chlorofluorocarbons (CFCs) emerged in the mid-1990s and has remained a key challenge for the Montreal Protocol in the implementation of successive ODS phase-outs.¹⁹ The 10th Operation Demeter, a global customs initiative, reported a 115 per cent increase in seizures of ODS and HFCs, compared to Demeter IX.²⁰

The HFC phase-down under the Kigali Amendment brings significant new challenges, not least because of the growth of the global refrigerant market, which is projected to increase from \$27.2 billion in 2025 to \$36.7 billion by the end of 2030.²¹ In 2013, at the start of the hydrochlorofluorocarbon (HCFC) freeze, A5 countries reported consumption of 434,867 tonnes of just eight individual HCFCs, with more than 96 per cent of the consumption being HCFC-22 and HCFC-141b.²²

In contrast, in 2023, as Group 1 A5 Parties prepared for the 2024 HFC freeze, A5 countries reported consumption of 644,832 tonnes of 58 individual HFCs and HFC blends, with global warming potentials (GWPs) varying from 124-14,800.²³ The plethora of HFC blends (122 individual HFC blends with ASHRAE designated R numbers are listed on the ozone website²⁴) poses considerable challenges for enforcement.

Most A5 parties (Group 1) are required to reduce HFC consumption by 10 per cent by 2029, while the remaining countries (Group 2) will freeze consumption in 2028. These milestones coincide with the final stages of the HCFC phase-out. This conjunction of events sets the scene for significant illegal trade in HCFCs and HFCs, potentially exacerbated in the context of HCFCs by the ongoing large-scale production of HCFC-22 for feedstock purposes, which could be illegally diverted to the refrigerant market.

EIA investigations in the EU indicate that the methodologies used to smuggle HFCs mirror those used to smuggle CFCs and HCFCs (e.g. misdeclaration, mislabelling, concealment, transshipment abuse and diversion).²⁵ A review of enforcement cases in the US shows similar combinations of methodologies for smuggling HFCs, HCFCs and CFCs.²⁶

However, the potential scale of the market and the growth in online trading bring significant additional challenges. In 2022, the European F-gas industry estimated that illegal trade could account for as much as 30 per cent of the market, resulting in lost profits of up to €640 million a year.²⁷ Based on recent investigations, EIA calculates that illegally smuggled HFCs can yield profits of more than €20,000 per tonne when sold on EU markets.



In addition to a strong legislative framework and traditional enforcement activities (e.g. risk profiling, intelligence gathering and inspections with adequate refrigerant identifiers), there is therefore a need to diversify the tools available to governments and develop innovative ways to crack down on illegal trade.

The use of financial investigations alongside F-gas regulatory enforcement can significantly enhance enforcement outcomes and has been historically used in the US since the illegal trade began in the 1990s. For example, in 1996, the largest environmental excise tax case at the time was a \$22 million dollar excise tax fraud scheme for CFC-12.²⁸ National authorities in the EU are increasingly applying customs and tax laws to seize illegal gases and prosecute offenders.

According to EIA estimates, the illegal trade in HFCs across Europe between 2018-20 may have resulted in the loss of approximately €77 million per year in Value Added Tax (VAT) and customs duties.²⁹ In March this year, Romania's Directorate General for Anti-Fiscal Fraud prosecuted two companies for damages amounting to about €2 million related to the sale of F-gases without the proper application of taxes.³⁰ The significant tax evasion uncovered in just these two cases underscores the scale of the issue and illustrates how financial investigations can both identify offenders and support the imposition of stronger penalties.

The availability of online retail platforms that allow traders to access broad international markets while maintaining relative anonymity has greatly facilitated the illicit trade in HFCs and ODS. For example, the first conviction with charges related to the American Innovation and Manufacturing (AIM) Act involved cross-border smuggling of HFCs and HCFCs concealed in vehicles, which were then offered for sale on various informal online platforms.³¹ Policies aimed at increasing the transparency of sellers not only support the consumer but also help enforcement agencies identify and trace suspects.



Seized HCFC refrigerant, smuggled in disposable cylinders labelled as HFC-134a. Thailand customs, Bangkok, 2012.

Under the EU's Digital Services Act, online platforms are required to make traders' contact details, including addresses and phone numbers, publicly accessible.³² However, it remains unclear how consistently or effectively these requirements are being enforced.

HFC quotas have traditionally controlled imports rather than domestic sales, leaving a regulatory gap once gases enter national markets. Linking HFC quotas to specific quantities of HFCs throughout the supply chain would be a crucial next step in detecting the sale of illegal F-gases after they have been smuggled into a country.



In 2019, a market survey of car repair shops by the regional government of Hessen, Germany, found that about 25 per cent of HFC-134a used in the region was illegal. The study revealed weak quota traceability in the HFC-134a supply chain due to a lack of legal requirements, with 68 per cent of respondents unaware whether or not the gas they purchased was covered by quota.³³

In 2021, Germany amended its Chemical Act to require all supply chain actors to provide documentation proving their HFCs are linked to quota.³⁴ While this is a good first step, a more comprehensive refrigerant traceability scheme could integrate a digital platform with GPS tracking to create a verifiable chain of custody for the HFCs and associated quota as they move through the supply chain, potentially on a global level.

EIA believes that the scale and impact of illegal trade in HFCs could surpass levels that occurred during the CFC phase-out. Lessons learnt from combating illegal ODS trade, including the establishment of effective licensing and reporting systems, remain vital for addressing this challenge. However, while emerging technologies have created new incentives for illegal trade, they also offer valuable tools to combat it.

In addition to strengthening licensing systems, EIA urges parties to adopt innovative approaches that target online sales and enhance traceability throughout the supply chain. To support these efforts, parties to the Montreal Protocol should recognise the need for additional capacity building, particularly in A5 countries, to ensure effective implementation and enforcement.

SUGGESTED NEXT STEPS

In addition to relevant recommendations outlined under licensing and data collection/reporting systems, EIA recommends that the parties:

- improve reporting of illegal trade, including the methodologies used and enforcement activities undertaken, including penalties applied
- explore new tools available for monitoring and controlling the trade in controlled substances, including PIC, supply chain tracking, financial investigations and controlling online trade
- request the Executive Committee to consider additional finance to A5 parties to support enforcement of the Kigali Amendment, including support for digital and other tools to strengthen monitoring and supply chain tracking, and a series of regional customs workshops to share experiences and strengthen cross-border collaboration
- request UNEP to survey experiences of regional ozone networks and provide recommendations for promoting regional cooperation to address illegal trade.

DATA COLLECTION AND REPORTING SYSTEMS

Data collection and reporting is the foundation of good governance. There are numerous issues of concern with the current reporting framework and compliance with mandatory and voluntary requirements.

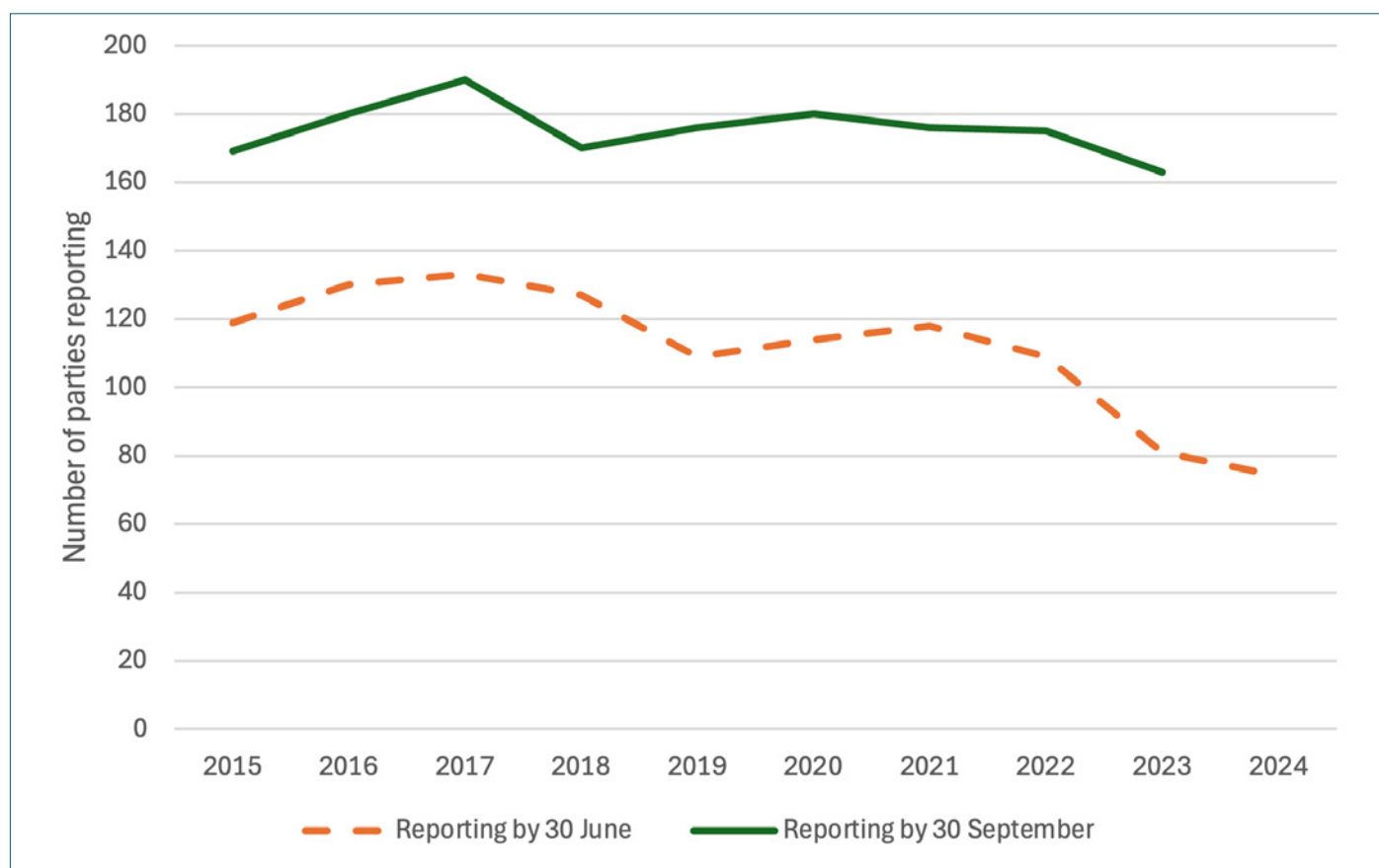
In its analysis of systemic issues in relation to compliance, produced in response to Decision XXXVI/9,³⁵ the Secretariat highlights a number of challenges with data collection and reporting systems under the Montreal Protocol.

DATA REPORTING UNDER ARTICLE 7

Parties are required to report statistical data on the production, import and export of controlled substances, as well as amounts used for feedstocks and amounts destroyed, by 30 September of the following year. Decision XV/15 in 2003 encouraged parties to forward data by 30 June each year, to assist the Implementation Committee in making recommendations to the Meeting of the Parties. In 2023, 17.7 per cent of parties did not make the September deadline, the lowest compliance in the past 10 years, while the number of parties reporting by 30 June has decreased year-on-year since 2021 (see Figure 1).



Figure 1: Timeliness in reporting of annual data under Article 7(3) of the Montreal Protocol.³⁶



VOLUNTARY REPORTING

Multiple decisions have requested parties to report on illegal trade and on source countries for imports and destination countries for exports. This information is critical for detecting trade anomalies and understanding and preventing illegal trade.

However, the requests have not been fulfilled by all parties: since 2019, between 79 and 87 parties (representing 17.9-37.5 per cent of imports by weight) have failed to report the source of their imports each year³⁷ and the Secretariat acknowledges that the number of illegal trade cases that have been reported is low compared to the potential scale of the trade.³⁸

DATA REPORTING UNDER ARTICLE 9

Under Article 9 of the Montreal Protocol, parties are required to cooperate in promoting public awareness and "promoting, directly or through competent international bodies, research, development and exchange of information on:

- (a) best technologies for improving the containment, recovery, recycling, or destruction of controlled substances or otherwise reducing their emissions;
- (b) possible alternatives to controlled substances, to products containing such substances, and to products manufactured with them; and
- (c) costs and benefits of relevant control strategies.³⁹

Parties are required to submit a summary of the activities conducted in this regard every two years, which could provide valuable information on implementation with respect to two issues that have dominated the Montreal Protocol's agenda in recent years, namely LRM and feedstock emissions.

However, over the past 10 years only a handful of countries have submitted these reports and none since 2020, when only Lithuania reported. The Secretariat's analysis of systemic issues notes that in the 10-year period of review, only five Article 9 data submissions from a total of three parties were received. This is despite a repeated Implementation



Committee recommendation that Article 9 contains a legal obligation, captured in Decisions XVII/24 (in 2005) and XX/13 (in 2008) which reiterated that parties should submit these reports.⁴⁰ Despite the emphasis of Article 9 on alternatives to controlled substances, **not one of the fluorochemical producer countries has submitted a report** since 2009, when Mexico submitted its last report.⁴¹

EIA has raised on multiple occasions the concern that no parties are reporting under Article 9 of the Montreal Protocol, despite this being a legal obligation. As demonstrated by the Secretariat's comparative review of multi-lateral environmental agreements, most treaties require national reports which provide more comprehensive information on implementation than the narrow production and consumption-related data required under the Montreal Protocol.

This reporting failure deprives parties of vital information on best practices, alternatives and research needs, precisely the areas where rapid progress is needed to address refrigerant life-cycle management and feedstock emissions. The contrast with other environmental treaties, where robust reporting is the norm, highlights how the Montreal Protocol is falling behind. Immediate reactivation of Article 9 reporting, with compliance consequences for persistent failure, is critical to restore credibility.

TRANSPARENCY IN DATA REPORTED

In addition to the concerns raised by the Secretariat in regard to data reporting by parties, EIA is concerned over the lack of transparency in the data being published by the Ozone Secretariat. Data on controlled substances are not provided by substance but are amalgamated by annex. Data are also not published by tonnage, only by ODP-tonnes or CO₂-equivalent-tonnes. Thus, for a country's consumption of Annex F controlled substances, which lists 18 unique HFCs with GWPs ranging from 53 to 14,800, the information available to the public is one data point.

This renders the information practically meaningless to the outside observer and contrasts with the approach of the Multilateral Fund, which reports Country Programme data for individual A5 parties in tonnes, by substances (including blends) and by sector. Information on prices of controlled substances and their alternatives in A5 parties is also shared. This inequitable situation obscures understanding of the production and use of controlled substances in non-A5 countries.

DATA REPORTING ON EXEMPT USES

The lack of comprehensive reporting on exempt uses has led to a significant gap in our understanding of the use of controlled substances as feedstocks, including phased-out substances. This is a critical implementation challenge that the Montreal Protocol must address. In 2023, 222,190 tonnes of 'phased-out' CFCs (Annex A1) were produced, with 99.7 per cent produced for feedstock use. Based on these figures, the production of CFCs is now 50 per cent higher than it was in 1998, some 25 years ago and 12 years before A5 countries actually phased out CFCs.⁴²

Fluorochemical production is a significant source of ODS and HFC emissions, contrary to the erroneous assumptions underpinning the exemption of feedstock production and use from control under the Montreal Protocol. According to recent scientific publications, almost 200 MtCO₂e emissions per year are linked to the use of controlled substances as feedstocks, the production of which has increased 66 per cent over the past decade.⁴³

Currently the TEAP is unable to adequately assess feedstock emissions and advance solutions due to an almost complete absence of data. EIA believes parties should reconsider mandatory reporting of production and consumption of controlled substances for feedstock uses and require comprehensive data on end products, their quantities, manufacturing locations and the processes used.

SUGGESTED NEXT STEPS

There is a clear need to strengthen reporting requirements, improve reporting compliance and verification and enhance transparency in the sharing of reported data. Next steps should include immediate implementation of the obligation to report under Article 9 and consideration of broadening mandatory reporting to include:

- sources of imports and destinations of exports
- illegal production and use
- comprehensive data on feedstock uses of controlled substances, including quantities and types of end products, manufacturing locations and processes used
- annual or biennial implementation reports providing broader information on national implementation activities (see comparative review, next section).



POTENTIAL GAPS IN THE NON-COMPLIANCE PROCEDURE

Decision XXXVI/9: *Further strengthening Montreal Protocol institutions – next steps* took note of the information provided by the Ozone Secretariat to the 34th MoP which identified “potential gaps in the non-compliance procedure, challenges, tools, ideas and suggestions for improvement”. Although the non-compliance procedure has not been included as a specific area for discussion at this meeting, there are multiple elements that cross-over with illegal trade and other implementation areas and as a foundation for ensuring compliance its importance should not be overlooked.

In the information provided to the 34th MoP, the Ozone Secretariat identified a number of gaps in the non-compliance procedure.⁴⁴ For example, the following issues have not been defined, or treated as compliance issues:

- illegal production (the Implementation Committee only considers reported production that exceeds control limits)
- illegal trade (other than contravening the ban on trade with non-parties)
- illegal consumption (including the potential diversion of controlled substances from the uses for which they were licensed or permitted, e.g. feedstocks and other exemptions)
- polyols (there is no agreed definition or consistent approach to dealing with them).

The Secretariat also carried out a comparative review of implementation and compliance related mechanisms under the Montreal Protocol with the following multilateral legal regimes: CITES (1973), Aarhus Convention (1998), Basel Convention (1989), Cartagena Protocol (2000), Stockholm Convention (2001), Nagoya Protocol (2010), Trade Policy Review Mechanism (1994), Kyoto Protocol (1997), Rotterdam Convention (1998), Human Rights Council (2006), Minamata Convention (2013) and Paris Agreement (2015). Figure 2 provides a summary of key measures examined.

The review reveals some obvious shortcomings in the approach of the Montreal Protocol that should be addressed, including the following.

REPRESENTATION

All the multilateral environmental agreements (MEAs) have broader representation than the Montreal Protocol, which has just 10 parties represented in the Implementation Committee. The relevant committees in most have at least 15 members (Basel Convention, Cartagena Protocol, Stockholm Convention, Minamata Convention, Nagoya Protocol, Rotterdam Convention) or more (Kyoto Protocol – 20, Human Rights Council – 47, Paris Agreement – 20).

TRANSPARENCY AND PARTICIPATION

Most regimes have experts serving in personal capacities (e.g. Basel, Cartagena, Kyoto, Human Rights Council, Minamata, Aarhus Convention, Paris Agreement, Rotterdam) and most have meetings open to observers – only the Montreal Protocol and Basel Convention are closed.

SCOPE AND SYSTEMIC ISSUES

The Implementation Committee does not examine systemic issues relating to compliance or wider implementation issues, unlike almost all other MEAs reviewed. Moreover, certain issues are not addressed as compliance issues – this includes illegal production, consumption and trade.

DECISION-MAKING

Decision-making authority rests with the MoP, which historically has always acted by consensus. In many other treaties, the compliance body can make decisions or competency is shared (e.g. Basel Convention, Cartagena Protocol, Kyoto Protocol, CITES, Nagoya Protocol, Paris Agreement).



MANDATORY REPORTING OF ILLEGAL TRADE

Reporting of illegal trade, production and use are voluntary. Basel Convention mandates reporting of confirmed cases of illegal trafficking, as does Cartagena Protocol, while the Rotterdam Convention has mandatory Prior Informed Consent (PIC).

VERIFICATION

Reporting is not independently verified by third party technical experts, unlike the process in the Kyoto Protocol and Paris Agreement.

REVIEW OF THE NON-COMPLIANCE PROCEDURE

The non-compliance regime was first adopted on an interim basis at the second MoP (June 1990, London) by Decision II/5, in accordance with Article 8,⁴⁶ and with Annex III outlining the procedure.⁴⁷ At the fourth MoP in 1992, the non-compliance procedure was permanently established through Decision IV/5, including an indicative list of measures that might be taken in event of non-compliance.⁴⁸

In 1997, parties decided to review the non-compliance procedure, establishing an Ad Hoc Working Group of Legal and Technical Experts on Non-Compliance, composed of seven A5 and seven non-A5 Party representatives, to develop recommendations “on the need and modalities for the further elaboration and the strengthening” of the procedure.⁴⁹ Based on the review, the non-compliance procedure was amended at the 10th MoP in 1998. Decision X/10 required the parties “To consider, unless the Parties decide otherwise, the operation of the non-compliance procedure again no later than the end of 2003”.⁵⁰

In 2002, at the 14th MoP, a group of parties introduced a conference room paper containing a draft decision to strengthen the non-compliance procedure; however, the proposal was withdrawn due to lack of consensus over the package of measures.⁵¹ No further review has since taken place, thus the commitment under Decision X/10 to consider the operation of the non-compliance procedure is now more than 20 years overdue.

SUGGESTED NEXT STEPS

Parties should undertake a review, within a defined timeframe, of the Montreal Protocol’s non-compliance procedure. This should include the role and processes of the Implementation Committee (e.g. to consider wider systemic implementation and compliance issues), interpretation and definitions (e.g. define illegal production, use and trade) and mechanisms and measures for preventing illegal trade (including a review of previous recommendations⁵² and best practice measures).



Figure 2 : Summary of comparative information on implementation- and compliance-related mechanisms in selected multilateral legal regimes.⁴⁵

	Number of Parties	Number of Parties represented in the compliance body	Is specific expertise required in the compliance body?	Does the compliance body address general and systemic implementation and compliance issues?	Is participation open to observers?	Does reporting include wider aspects of implementation?	Is reporting of illegal trade mandatory?
MONTREAL PROTOCOL (1987) on substances that deplete the ozone layer (to the Vienna Convention)	198	10	No expertise is specified	No	No	No - Article 9 requires reporting of summaries of research, development and public awareness but Parties do not report	No
CITES (1973) Convention on International Trade in Endangered Species of Wild Fauna and Flora	185	18-19	No expertise specified	Monitors and assesses overall compliance	Yes - unless the members of the Standing Committee decide otherwise	Periodic implementation reports and biennial reports on enforcement measures	Yes
BASEL CONVENTION (1989) on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	191	15	Experts serve in personal capacities	Yes - reviews general issues of implementation and compliance	No	No	Yes - and PIC is mandatory
KYOTO PROTOCOL (1997) to the United Nations Framework Convention on Climate Change	192	20	Experts serve in personal capacities	Facilitates implementation through financial and technical assistance	Yes - unless the Compliance Committee decides otherwise	Yes - periodic supplementary information submitted and undergoes independent 3rd party review	N/A
ROTTERDAM CONVENTION (1998) on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	167	15	Experts serve in personal capacities	Yes - examines systemic issues relating to general compliance	Yes - unless the Compliance Committee decides otherwise	No	No, but PIC is mandatory
CARTAGENA PROTOCOL (2000) on Biosafety (to the Convention on Biological Diversity)	173	15	Experts serve in personal capacities	Yes - reviews general issues of compliance	Yes - unless the Compliance Committee decides otherwise	Yes - national reports are submitted every four years	Yes
STOCKHOLM CONVENTION (2001) on Persistent Organic Pollutants (POPs)	186	15	Members have expertise and specific qualifications	Yes - examines systemic issues of general compliance and implementation	Yes	Yes - national reports contain information on measures taken to implement	No
NAGOYA PROTOCOL (2010) on Access to Genetic Resources (to the Convention on Biological Diversity)	142	15	Experts serve in personal capacities	Yes - examines systemic issues of general non-compliance	Yes - unless the Compliance Committee decides otherwise	Yes - periodic national reports in addition to information from indigenous and local communities	N/A
MINAMATA CONVENTION (2013) on Mercury	153	15	Experts serve in personal capacities	Yes - examines systemic issues of implementation and compliance	Yes - unless the Compliance Committee decides otherwise	Yes - national reports on measures taken, the effectiveness of measures and challenges encountered	N/A
PARIS AGREEMENT (2015) under the United Nations Framework Convention on Climate Change	195	20	Experts serve in personal capacities	Yes - identifies and addresses systemic implementation and compliance issues	Yes - unless the Implementation and Compliance Committee decides otherwise	Yes - information related to NDCs, climate change impacts, technology transfer and capacity-building - subject to independent third party review	N/A



CONCLUSION

As we approach a decade of the Kigali Amendment and the 40th anniversaries of the Vienna Convention and the Montreal Protocol, EIA reminds the parties that lasting success requires constant vigilance.

The informal meeting on facilitating implementation of the Montreal Protocol on 2 November offers the chance for parties to explore how we can ensure that the Protocol's institutions, processes and compliance systems are robust, transparent and equipped to meet the challenges of the next 40 years.

EIA urges the parties to set in motion a series of measures – outlined in this briefing – that will strengthen the systems that keep the Montreal Protocol credible, accountable and capable of protecting our planet for generations to come.

The 37th Meeting of the Parties offers an opportunity to pair celebration with purpose – to reinforce the foundations of this remarkable treaty so it continues to stand as a model of international cooperation, scientific integrity and environmental ambition for decades to come.

References

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2. UNEP (2023). Issues for Discussion by and Information for the Attention of the Thirty-Fifth Meeting of the Parties to the Montreal Protocol (Note by Secretariat). UNEP/OzL.Pro.35/2. Paragraphs 93-96 and Annex II. [Available here](#).
3. Decision XXXV/12: Further strengthening Montreal Protocol institutions, including for combating illegal trade, available [here](#), encouraged Parties to inform the Secretariat of illegal trade methodologies, while Decision XXXV/14: Enhancing the global and regional atmospheric monitoring of substances controlled by the Montreal Protocol on Substances that Deplete the Ozone Layer, [available here](#), requested an update of the information provided under Decision XXXIII/4, including providing a list of potential monitoring station locations; and options for sustainable funding to establish new regional monitoring capacities. Decision XXXVI/1: Enhancing regional atmospheric monitoring of substances controlled by the Montreal Protocol on Substances that Deplete the Ozone Layer, [available here](#), sets in motion a series of measures to evaluate potential sites for monitoring regional emissions of controlled substances.
4. Informal meeting on facilitating implementation of the Montreal Protocol Nairobi, 2 November 2025. Concept note and Provisional programme. [Available here](#)
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46. Article VIII: Non Compliance. The Parties, at their first meeting, shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in noncompliance.
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