

## **Written evidence submitted by the UK Environmental Law Association (UKELA)**

### **About UKELA**

1. The UK Environmental Law Association (UKELA) aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's 1,400 members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. The Association attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.
2. UKELA has for some years taken an active interest in the impact on UK environmental regulation of a possible withdrawal from the EU (Brexit). The Association adopted a neutral position prior to the referendum, but issued a public position statement following the vote.<sup>1</sup> In particular, UKELA considers it imperative that the UK's current environmental legislation is preserved pending proper review, full and open consultation on options for change and the involvement of Parliament as far as possible. The Association considers preservation is critically important in order to ensure ongoing compliance with international law, regulatory stability and continued protection of the environment.
3. UKELA has issued a series of reports on Brexit and Environmental Law in the course of summer/autumn 2017. These are available on our website.<sup>2</sup>

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<sup>1</sup> <https://www.ukela.org/UKELAposition>

<sup>2</sup> <http://www.ukela.org/brexitactivity>

### **International law focus of this evidence**

4. Our evidence for this inquiry focuses on the international law context for regulation of F-gases after Brexit. We refer to points made in our report *Brexit and Environmental Law: The UK and International Environmental Law after Brexit* concerning issues and challenges arising from UK's international environmental commitments after Brexit.<sup>3</sup>
5. Note also that as lawyers our comments are limited to the legal mechanisms that deliver the polices, rather than the policies themselves. We cannot comment on how F-gas reduction targets impact on business in terms of costs, work etc. These comments should be seen as limited to the legal framework needed post-Brexit, rather than policy-related questions.

### **UK's current legal obligations concerning F-gases**

#### **Obligations under International Law**

6. Two international agreements include commitments for reducing F-gases: the Kyoto Protocol and the Kigali Amendment to the Montreal Protocol (for the purpose of these submissions we have focused on the implementation of the Montreal Protocol, although we have included references to the Kyoto Protocol where these are considered relevant).
7. The 1987 Montreal Protocol on substances that deplete the Ozone Layer to the 1985 Vienna Convention for the Protection of the Ozone Layer ("the Montreal Protocol" and "the Vienna Convention", respectively) regulates over

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<sup>3</sup> <https://www.ukela.org/content/doclib/320.pdf>

200 ozone depleting substances in order to reduce their abundance in the atmosphere. Parties to the Montreal Protocol undertake to communicate statistics on annual production, imports and exports of the substances listed in Annex A, as well as to promote research and development activities and information exchange.

8. F-gases will be included in the list of ozone depleting controlled substances regulated by the Montreal Protocol when the 2016 Kigali Amendment to the Montreal Protocol (the Kigali Amendment) enters into force. Under the Amendment, F-gases will be phased out under the Montreal Protocol. Parties such as the UK will be required to gradually reduce hydrofluorocarbon (HFC) use by 85 per cent between 2019 and 2036.
9. The Montreal Protocol is a mixed agreement (see paragraph 18 below on the meaning of 'mixed agreements'). The UK signed the Montreal Protocol in 1987, ratified it 1988 and it entered into force in 1989. The EU signed and ratified the agreement in the same years. The EU entered a declaration of competence in relation to the Montreal Protocol (see Annex to this report).
10. The Kigali Amendment will enter into force on 1 January 2019, provided that it is ratified by at least 20 parties to the Montreal Protocol. The Kigali Amendment is likely to also be a mixed agreement. In a press release the UK Government has signalled its readiness for the UK to ratify the Kigali Amendment.<sup>4</sup> On 21 April 2017 the Council of the European Union adopted a decision to conclude the Kigali Amendment on behalf of the EU.<sup>5</sup> The EU also

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<sup>4</sup> <https://www.gov.uk/government/news/uk-leads-the-world-in-new-agreement-to-tackle-global-warming>

<sup>5</sup> <http://data.consilium.europa.eu/doc/document/ST-7725-2017-INIT/en/pdf>

included a draft declaration of competence in relation to the Kigali Amendment (see Annex to this report).

11. The 1997 Kyoto Protocol to the 1992 UN Framework Convention on Climate Change ("the Kyoto Protocol" and "the UNFCCC", respectively) regulates the reduction in emissions of the main anthropogenic greenhouse gases (GHG); this includes F-gases. The EU's (and Member State's) binding commitments to reduce GHG emissions under the Kyoto Protocol prompted the EU to adopt instruments to control F-gases.
12. The Kyoto Protocol is a mixed agreement. The UK signed the Kyoto Protocol in 1998, ratified it in 2002 and it entered into force in 2005. The EU signed and approved the Protocol in the same years. The EU entered a declaration of competence in relation to the Kyoto Protocol (see Annex to this report).

### **Obligations under EU law**

13. The EU has adopted two main instruments to control emissions of F-gases.
14. The first instrument is Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 ("the EU F-gas Regulation"). In broad terms, the EU F-gas Regulation: lays down rules on the containment, use, recovery and destruction of F-gases; bans the sale of certain products containing F-gases; and sets an overall yearly limit on the climate impact of HFCs, which will be gradually reduced between 2015 and 2030. Recital 5 of the EU F-gas Regulation refers to the Montreal Protocol.

15. The EU F-gas Regulation is directly applicable in all Member States under Art 288 TFEU. This means that the Regulation is currently binding in its entirety and directly applicable without the need for domestic transposing legislation, save in relation to enforcement and penalties. Domestically, the Fluorinated Greenhouse Gas Regulations 2015 (SI 2015/310) (“the FGHG Regs”) make provision for enforcement and penalties that apply to England, Scotland and Wales (and to a certain extent, Northern Ireland, but see Regulation 1 and the Fluorinated Greenhouse Gases Regulations (Northern Ireland) 2015/425). For more information on the FGHG Regs, see the Explanatory Memorandum which accompanied them.<sup>6</sup>
16. Art 21(1) of the EU F-gas Regulation empowers the Commission to adopt delegated legislation concerning the updating of Annexes I, II and IV on the basis of new Assessment Reports adopted by the IPCC or new reports of the Scientific Assessment Panel (SAP) of the Montreal Protocol on the global warming potential of the listed substances.
17. The second EU instrument to control F-gases is the Mobile Air Conditioning Directive 2006/40/EC (“the MAC Directive”). The MAC Directive regulates the emissions from air-conditioning systems in motor vehicles. It prohibits the use of F-gases with a global warming potential of more than 150 times greater than carbon dioxide (CO<sub>2</sub>) in new types of cars and vans introduced from 2011, and in all new cars and vans produced from 2017.
18. Domestically the MAC Directive is implemented through a range of measures. Article 6(3) is implemented by the Motor Vehicles (Refilling of Air Conditioning Systems by Service Providers) Regulations 2009/2194. Article 6(1) and (2) are implemented by amendments made to the Road Vehicles

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<sup>6</sup> [http://www.legislation.gov.uk/ukxi/2015/310/pdfs/ukxiem\\_20150310\\_en.pdf](http://www.legislation.gov.uk/ukxi/2015/310/pdfs/ukxiem_20150310_en.pdf)

(Construction and Use) Regulations 1986/1078 in England and Scotland, and amendments made to the Motor Vehicles (Construction and Use) Regulations (Northern Ireland) 1999. Further provisions are set out in amendments made to the Motor Vehicles (Type Approval for Goods Vehicles) (Great Britain) Regulations 1982/1271.

## **Impact of withdrawal from the EU on the UK's legal obligations**

### **Uncertain status of UK's international law obligations after Brexit**

#### **i) General comment on mixed agreements**

19. Many international environmental agreements contain elements falling within both EU competence and Member State competence. Where the subject matter of an international agreement straddles both competences of the EU and Member States, both the Union and Member States will therefore be parties. As a consequence both the UK and the EU have entered into such agreements. They are termed "mixed agreements". Mixed agreements have frequently been used to ensure Member State support even in areas where strictly the EU appears to have exclusive legal competence.<sup>7</sup>

20. As noted above, the Montreal Protocol, the Kyoto Protocol and (in all likelihood) the Kigali Amendment are (or will be) mixed agreements.

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<sup>7</sup> J Weiler, *The Constitution of Europe* (Cambridge, Cambridge University Press, 1999) 177. See also, P Koutratis and C Hillion (eds) *Mixed Agreements Revisited: The EU and Its Member States in the World* (Oxford and Portland, Hart, 2010)

21. The effect of Brexit on these agreements is the least legally straightforward of all categories of international environmental agreement (the other categories being EU-only and UK-only agreements). The primary reason is that there is a lack of consensus, both in academia and in practice, as to whether the UK will remain bound by mixed agreements after Brexit. There has been no statement to date from the UK Government which resolves this disagreement.

22. We set out the crux of the arguments in our report *Brexit and Environmental Law: the UK and International Environmental Law after Brexit*:

38 The question of whether the UK will automatically remain a party to international environmental agreements entered into as mixed agreements is complex and spans a range of practice areas; however, the issue is particularly prevalent in the field of environmental law where a vast amount of obligations and standards derive from mixed agreements. Summarising the range of opinions, UKELA Brexit Task Force Co-Chair Professor Richard Macrory said in evidence to the House of Lords Energy and Environment Sub-Committee:

*"I wrote an article recently on this subject and consulted three different groups of international lawyers. One said that we would definitely still be bound, because we have just assumed all the competences—nothing more. The second said, "No, no, you will have to renegotiate"; and the third said that it was all very difficult."*

39. A House of Commons Library report gave a similar view on the uncertain future status of mixed agreements. However, it concluded that: "[o]n balance, most analysts believe that both exclusive and mixed agreements will fall on exit day, and will have to be renegotiated after Brexit, or possibly in parallel with negotiations on the withdrawal agreement." A paper published by the Centre for European Policy Studies similarly argues that "leaving the EU would mean that the UK ceases to be bound by the 'EU-only' elements of mixed agreements", but that "it could if it wanted to[,] and the other parties agreed to it, remain bound by the 'mixed' elements of such agreements because they were signed and ratified by the UK as a contracting party in its own right".

40. On the other hand, the House of Lords Energy and Environment Sub-Committee leaned toward the position that the UK will remain bound by mixed agreements post-Brexit. The Committee cites the evidence of the Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs that:

*"It is my understanding that as the UK is already a party in its own right it absolutely will stick to the commitments, and is obliged to, once we leave."*

23. The more pessimistic interpretation raises a number of practical problems, principally because mixed agreements do not accurately delineate between Community and Member States competences. Although declarations of competence are recorded in the EU Treaties Office database, these are couched in general terms.

24. The UK Government has made a number of statements concerning continued compliance with international law commitments after Brexit which align with the more optimistic interpretation: these are explored below.

**ii) Concerns about the UK Government's position concerning mixed agreements**

25. UKELA also favours the view that after withdrawing from the EU the UK will assume all the competences previously resting with the EU, and would be therefore be bound automatically by all mixed agreements. Nevertheless, it is apparent that these are uncharted legal waters, and it remains the case that legal views differ. For this reason we are concerned that the UK Government's position retains ambiguities.

26. The Government's general line has been that the UK will continue to honour its international commitments and follow international law (see statements at

paragraphs 3-5 of our report). Specifically, the Factsheet on Environmental Protection, published alongside the European Union (Withdrawal) Bill ("the Withdrawal Bill") answers the question "Will the UK continue to meet its international environmental commitments?", with reference to five mixed agreements, including the Montreal Protocol:

*"The UK will continue to play an active role internationally as demonstrated by the UK ratifying the Paris Agreement on Climate Change. We will continue to uphold our obligations under international environmental treaties such as the Montreal and Gothenburg Protocols, the Stockholm Convention, the Convention on Biological Diversity (CBD) and the Convention on International Trade in Endangered Species (CITES)." (emphasis added)*

27. However, this does not fully resolve the issue, as the reference to 'our obligations' is ambiguous. UKELA maintains the opinion that the question as to what constitutes the UK's post-Brexit international environmental obligations has yet to be adequately answered by the UK Government.
28. If the Government considers that the UK will remain a party to each and every mixed agreement, then the legal foundations of this remain unclear. In recent months the Parliamentary Under Secretary for Environment, Food and Rural Affairs, made a written statement to the House of Commons in response to written questions from Caroline Lucas MP on this subject. Dr Lucas asked "what the legal position will be of international environmental agreements ratified jointly by the EU and the UK after the UK leaves the EU". Dr Coffey replied "The UK will continue to be bound by international Multilateral Environmental Agreements (MEAs) to which it is party. We are committed to upholding our international obligations under these agreements and will continue to play an active role internationally following our departure from the EU".<sup>8</sup>

29. UKELA has no reason to doubt the Government's political commitment to remaining party to these agreements. However it remains our view that the Government's statements to date contain legal ambiguities. As we noted in our international report:

42. ... it is not clear whether [the Government] is implying that the UK will continue to be bound by those parts of the mixed agreement where it has existing competences, or whether post-Brexit it will be automatically bound by the whole agreement. Furthermore, depending on the basis of the Government's understanding, its view may not be the same as that held by other international actors responsible for reciprocal obligations. The fact that there is a current lack of clarity as to whether a sizeable proportion of international obligations will remain extant necessarily complicates any attempt to anticipate the effect of Brexit on environmental law. We recommend that the Government makes a clear statement of its understanding of the position and legal status of mixed international environmental agreements after Brexit, the basis for this understanding, and whether it understands the UK to be automatically bound by the whole agreement (on the assumption that it will have acquired all the competences now held by the EU). (emphasis original)

30. For the avoidance of doubt, UKELA is of the view that as a matter of law the UK would remain bound by the Montreal Protocol (and the Kyoto Protocol, and ultimately the Kigali Amendment). This is because of the inclusion of 'REIO clauses' at clause 13 of the Vienna Convention, and Article 24 of the Kyoto Protocol. REIO clauses allows regional economic integrated organisations, such as the EU, which have competence over the agreement's subject matter and a treaty-making capacity, to become parties to the agreement. Under these clauses a regional organisation and its member states may decide on their respective responsibilities, and enter a declaration of

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<sup>8</sup> Written questions 9693, asked on 8 September 2017, answered on 18 September 2017 [edited]. <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-09-08/9693/>

competence accordingly. When a member state withdraws from a regional organisation, as the UK is poised to do in withdrawing from the EU, there would appear to be no alternative to the state assuming full responsibility for the performance of its obligations. Nevertheless, this view is based on an analysis which may or may not be shared by other parties to the Protocol – this ambiguity can only be resolved by a clear and unequivocal statement from HMG which can be confirmed with the other parties.

31. If, contrary to our opinion, the UK were not automatically bound by the Montreal Protocol, then the UK Government would need to renegotiate the agreement with existing parties and/or re-ratify it without reference to the REIO. As we state at paragraphs 23-24 of our report, the procedure under section 20 of the Constitutional Reform and Governance Act 2010 will have to be followed, because the power given to Ministers by clause 8 of the Withdrawal Bill to remedy or prevent any breach of international obligations arising from Brexit does not appear (in its present form) to give the minister any powers which would displace or supplement the requirements.

**iii) Specific comment in relation to F-gases**

32. The practical implications of the ambiguity in relation to F-gases are as follows. First, it is unclear what the Government considers to be the extent of its obligations under the Montreal Protocol and the Kyoto Protocol after Brexit. As noted above, the Government's statements to date are imprecise as to its understanding of the position and legal states of these agreements after Brexit. Specifically, it is unclear whether the UK Government considers that it will be bound by the entirety of each Protocol, or only those parts which the EU did not declare competency.

33. Second, other parties to the Montreal Protocol and the Kyoto Protocol are likely to also be concerned about the UK's future status. It is unclear whether existing parties to these agreements will consider it necessary for the UK to renegotiate and/or re-ratify the agreement without reference to the REIO. We are not aware of any clarification from the Government, the Secretariats to each agreement or other states in relation to this.
34. Third, there are important and complex trade implications to the continued implementation of these international agreements. In particular trade restrictions may be placed on the import or export of controlled substances to or from the UK under Article 4 of the Montreal Protocol. This would not be because UK F-gas policy diverges from EU F-gas policy, but because of uncertainty about whether the UK is still party to the Protocol. Even if this were not the case, and the UK remains party to the protocol, if doubt remains then uncertainty in the business community may indirectly generate disruptions to trade. It is imperative that they are resolved as soon as possible.
35. Fourth, there may be confusion as to the requirements and process of reporting data and progress, for instance under Articles 7 of the Montreal Protocol. Similarly, it may be unclear how the registry system which tracks and records transactions by Parties under the Kyoto mechanisms will continue to apply to the UK.
36. Fifth, given the Commission's role in dealing with much of the detail at Meetings of the Parties there may be confusion as to which positions adopted by the EU the UK will continue to be bound by, particularly in relation to any representations made before Exit Day, while the UK remains a member of the EU.

37. Finally, the cumulative effect of these ambiguities and uncertainties may well be that the UK suffers reputational damage as a leader on environmental protection.

**Issues for maintaining compliance with the Montreal Protocol and Kigali Amendment, assuming they continue to apply after Brexit**

**i) Maintaining compliance on Exit Day**

38. The question as to what constitutes 'maintaining compliance' is dictated by the status of mixed agreements, and therefore the extent of the UK's obligations (see paragraphs 44-45 of our report). Assuming that we are correct in our assertion that the UK remains bound by the entirety of the Montreal Protocol and the Kyoto Protocol (see paragraph 30, above) then the UK will need to maintain the current framework for the implementing these agreements, unless and until these frameworks are amended in a way which is compliance with the UK's obligations.

39. Further legislation may be needed to ensure these frameworks continue to operate effectively as retained EU law. In particular we draw attention to the interaction between parallel EU and domestic legal regimes. As we note in our report:

46 Notwithstanding the broad powers given to Ministers under clause 8 of the Withdrawal Bill to make regulations to "prevent or remedy any breach... of the international obligations of the United Kingdom" particular attention will have to be given to those instances where a mixed agreement is implemented by both EU legislation and parallel domestic statutory instruments addressed as different elements of an international environmental agreement, reflecting the different competences of the UK and the EU [...] Of particular concern will be the

interaction between the preserved and converted legal regimes, and the institutions which have relevant functions under them.

40. As noted above, the UK's current obligations for addressing F-gases under the Montreal Protocol are implemented by a combination of the directly applicable EU F-gas Regulation and domestic FGHG Regulations. Clause 3 of the Withdrawal Bill (as introduced to Parliament, HC Bill 5) provides for direct EU legislation such as the F-gas Regulation to form part of domestic law on Exit Day. Clause 2 will preserve the domestic FGHG Regulations as EU-derived domestic legislation. The Government is currently consulting on how changes to the EU F-gas Regulations are enforced in England and Scotland and marine areas, however we do not consider that the changes being consulted on are material to the present issue.

41. Detailed consideration will have to be given to whether legislative amendments are needed to ensure this regime continues to be operable after Brexit. For instance, the registration requirement may not be operable for producers and importers after Exit Day. The replications or repatriation of the electronic registry for quotas for placing HFCs on the market under Article 17 of the EU F-gas Regulation will need to be reconsidered. Other areas where amendment should be considered include the reporting requirements under Article 19, which currently apply to producers, importers and exporters. These are likely to become inoperable after Brexit, and consideration will have to be given to the policy (as well as technical) implications of amending the retained EU legislation. Notwithstanding these specific issues, the overall structure of the regime, so far as it relates to the implementation of international obligations, should survive the UK's withdrawal from the EU.

42. However, the same is not true for the MAC Directive. Directives are not direct EU legislation for the purposes of clause 3, and would not form part of UK law after Exit Day. Instead, the domestic legislation that transposes the MAC Directive will be saved by Clause 2 of the Withdrawal Bill (as 'EU-derived domestic legislation'). We have noted in paragraph [17] above domestic legislation that transposes Article 6 of the Directive. We have not been able to locate legislation transposing other relevant provisions, and in particular Article 4(2) of the MAC Directive for Member States to ensure that manufacturers supply information on the type of refrigerant used in air-conditioning systems fitted to new motor vehicles when granting whole vehicle type-approval. If it is the case that this provision has not been properly transposed, then that transposition gap would continue after Brexit, as the Directive itself will cease to be binding on the UK.

## **ii) Compliance after Exit Day**

43. In order to ensure ongoing compliance with international law after Exit Day, the UK will need to keep its implementing measures up-to-date. Currently, Art 21(1) of the F-gas Regulation empowers the Commission to adopt delegated legislation concerning the updating of Annexes I, II and IV (lists of FGHGs, and the method for calculating the global warming potential of a mixture). These updates are currently directly applicable in the UK without the need for changes to domestic legislation. After Brexit, UK and devolved governments will have to make separate provision to update the lists/methods in the Annexes as and when needed. This is reasonably simple (if fiddly) to resolve through the enacting of new legislative measures. However, there remains the possibility that, if adequately legislative changes are not enacted, that the UK will fall out-of-synch with EU member states and other parties to the Montreal

Protocol, and for countries within the UK to fall out-of-synch with each other if the matter is dealt with on a devolved basis. We are not suggesting that the UK does not intend implement changes to the Montreal Protocol (as any changing standards will be driven by the Meetings of the Parties to which the UK is and will continue to be party) but rather that the legislative framework will need reconsideration, to keep the UK in-step with its international obligations.<sup>9</sup>

44. These risks may be more acute if UK/devolved governments have to rely on primary legislation to enact changes. Secondary legislation (such as regulations) would be a more flexible means of making changes, however there would need to be relevant regulation-making powers. The Withdrawal Bill does not address this issue, as the regulation-making powers (clauses 7 and 8) will cease to be available two years after Exit Day, and can only be used to deal with matters 'arising from the withdrawal of the UK from the EU' which arguably does not cover these circumstances (clauses 7 and 8).

45. It is theoretically possible that if the UK does not maintain compliance with the Montreal Protocol then it may be referred to the Implementation Committee under the Non-Compliance Procedure of the Montreal Protocol, adopted at the Meeting of the Parties pursuant to Article 8. It should be noted that the procedure is based on a non-confrontational, conciliatory and co-

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<sup>9</sup> We note also that there may be policy reasons to continue to align the UK's standards with those of the EU. While UKELA supports the phasing out of F-gases as quickly as possible, having policies that depart from those in the rest of the EU once we are not part of it will place a burden on businesses as they will have to comply with differing regulations for domestic business and business that takes place in the EU. For example, a supermarket that operates across the EU might face regulations in the UK that covered different refrigerant gases and had different targets and reporting mechanisms which would clearly be undesirable. As F-gases are a relatively small proportion of the UK's climate change gases this might be considered a disproportionate burden for the value to the UK in reducing GHGs.

operative mechanism designed to encourage and assist Parties to achieve compliance; and the level of non-compliance required to attract the most severe penalty - suspension of rights – would have to be egregious. This outcome would be catastrophic, but it is also highly improbable.

46. The more realistic challenge is for domestic regulators to take over the enforcement of the legal regime. To do so they will need to have a clear legislative framework, be properly resourced, and be given sufficient powers. The Commission's role in enforcing compliance under EU law will be lost (under Art 17(1) TEU the Commission has a duty to ensure that EU law is applied, and possesses powers under Art 258 TFEU to bring infringement proceedings against Member States for failure to comply with their obligations). We are of the view that new measures will be needed to fill this enforcement gap. See our report on *Brexit and Environmental Law: Enforcement and Political Accountability Issues*.<sup>10</sup>

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<sup>10</sup> <https://www.ukela.org/content/doclib/317.pdf>

## **Annex**

### **EU Declaration of Competence: Montreal Protocol**

Declaration by the European Economic Community in conformity with Article 13 (3) of the Vienna Convention for the protection of the ozone layer concerning the extent of its competence with respect to the matters covered by the Convention and by the Montreal Protocol on substances that deplete the ozone layer.

In accordance with the relevant Articles of the EEC Treaty, the Community has competence to take action relating to the preservation, protection and improvement of the quality of the environment.

The Community has exercised its competence in the area covered by the Vienna Convention and the Montreal Protocol in adopting Council Decision 80/372/EEC of 26 March 1980 concerning chlorofluorocarbons in the environment (;), Council Decision 82/795/EEC of 15 November 1982 on the consolidation of precautionary measures concerning chlorofluorocarbons in the environment and Council Regulation (EEC) N° 3322/88 of 14 October 1988 on certain chlorofluorocarbons and halons which deplete the ozone layer. The Community may well exercise its competence in the future by adopting further legislation in this area.

In the field of research in the environment, as referred to by the Convention, the Community has a certain competence by virtue of Council Decision 86/234/EEC of 10 June 1986 adopting multiannual R& D programmes in the field of the environment (1986 to 1990).

### ***Draft* EU Declaration of Competence: Kigali Amendment**

The following States are at present Members of the European Union: the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland.

In accordance with the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof, the Union has competence for entering into international agreements, and for implementing the obligations resulting therefrom, which contribute to the pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment;
- protecting human health;
- prudent and rational utilisation of natural resources;
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

The Union has exercised its competence in the area covered by the Vienna Convention and the Montreal Protocol by adopting legal instruments, in particular Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (recast)<sup>1</sup>, replacing earlier legislation for the protection of the ozone layer, and of Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006<sup>2</sup>. The Union is competent for the performance of those obligations from the Vienna Convention and the Montreal Protocol regarding which the provisions of Union legal instruments, in particular those mentioned above, establish common rules and if and insofar as such common rules are affected or altered in scope by provisions of the Vienna Convention or the Montreal Protocol or an act adopted in implementation thereof; otherwise the Union's competence continues to be shared between the Union and its Member States.

The exercise of competences by the European Union pursuant to the Treaties is, by its nature, subject to continuous development. The Union therefore reserves the right to adjust this Declaration.

In the field of research, as referred to by the Convention, the Union has competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence does not result in Member States being prevented from exercising theirs.

### **EU Declaration of Competence: Kyoto Protocol**

Declaration by the European Community made in accordance with article 24(3) of the Kyoto Protocol

The following States are at present members of the European Community: the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland.

The European Community declares that, in accordance with the Treaty establishing the European Community, and in particular Article 175(1) thereof, it is competent to enter into international agreements, and to implement the obligations resulting therefrom, which contribute to the pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment;
- protecting human health;
- prudent and rational utilisation of natural resources;
- promoting measures at international level to deal with regional or worldwide environmental problems.

The European Community declares that its quantified emission reduction commitment under the Protocol will be fulfilled through action by the Community and its Member States within the respective competence of each and that it has already adopted legal instruments, binding on its Member States, covering matters governed by the Protocol.

The European Community will on a regular basis provide information on relevant Community legal instruments within the framework of the supplementary information incorporated in its national communication submitted under Article 12 of the Convention for the purpose of demonstrating compliance with its commitments under the Protocol in accordance with Article 7(2) thereof and the guidelines thereunder.