

EU4Climate Regional Project, Armenian Component

**Background Analysis of the National
Legislation in the Sector of Ozone Depleting
Substances Regulation and identified list of
Legal Acts for Elaboration**

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The objective of this report to assess the needs for alignment of national legislation with EU climate acquis per the RA-EU Comprehensive and Enhanced Partnership Agreement (CEPA) and to identify ozone layer depletion related legal acts subject to consequent development and/or amendment.

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Introduction

The analysis was carried under the UNDP/ARM/IC/2020/244 Services Agreement signed on 21.09.2020 by the order of UNDP. According to the contract, the contract owner shall be provided with a background analysis of the national legislation on ozone-depleting substances, a list of defined draft legal acts, as well as consultative meetings with stakeholders shall be organized, and final drafts of legal acts shall be provided.

The relevancy for the order derives from the Comprehensive and Extended Partnership Agreement¹ (hereinafter referred to as the «Comprehensive Agreement») between the European Union, the European Atomic Energy Community and its Member States, as well as the Roadmap for its implementation (hereinafter referred to as the «Roadmap»), which has been approved by the decision of the Prime Minister of Armenia on June 1, 2019 N 666-L².

Comparative methodology, methodology of structural general analysis of legal acts, multilateral and bilateral formal meetings, telecommunications (telephone, Whatsapp, Viber, Skype, Zoom) oral inquiries and (or) discussions were used for the analysis. The enumeration of defined presumable legal acts is part of this analysis, and the draft acts are presented as annexes to the analysis.

International and Interstate Legal Documents

International legal documents ratified by the state, as well as interstate agreements, are an integral part of Armenia's legal system. The legislation of the Republic of Armenia on ozone depleting substances also includes international treaties in accordance with the Law on the Protection of the Ozone Layer³. These include the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, and all amendments to the Protocol ratified by the Republic of Armenia⁴.

The latest amendment to the protocol is the Kigali Amendment, which was ratified by Armenia on March 27, 2019⁵.

The other document, which includes provisions to be implemented in the field, is the Comprehensive Agreement mentioned above. This Agreement has not entered into force, but under Paragraph 5 of Article 385, the Parties may apply the Agreement in whole or in part, as applicable. Some provisions are temporary for the parties from

¹ https://www.mfa.am/filemanager/eu/CEPA_ARM_1.pdf, Article 54 (j)

² <https://www.arlis.am/DocumentView.aspx?DocID=131232>, Annex, page 127

³ <https://www.arlis.am/DocumentView.aspx?DocID=140706>, Article 2

⁴ <https://www.arlis.am/DocumentView.aspx?DocID=76866>,

<https://www.arlis.am/DocumentView.aspx?DocID=76867>

⁵ <https://www.arlis.am/DocumentView.aspx?DocID=129642>

June 1, 2018. These are Annexes I-VII to the Agreement⁶, which set out the Rules of Procedure of the Parliament and Council of Europe: Regulation No 1005/2009 of 16 September 2009 (hereinafter referred to as the «Rules of Procedure»).

In the meantime, the English language texts in this study were of only ancillary non-legal significance, with the exception of the English version of the Comprehensive Agreement⁷.

Legal acts regulating the field in Armenia

The main legal act regulating the field in Armenia is the Law on Protection of the Ozone Layer, the subject of which is the restrictions on production, import, export and transit of ozone depleting substances and their alternative greenhouse gases, hydrofluorocarbons, in the Republic of Armenia and associated therewith relations with countries that have ratified relevant international treaties concluded within the framework of the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer.

Further regulatory legal acts are by-laws presented below:

- Government Decision N 291-N of March 15, 2007 «On Recognition of the Authorized State Body in the Field of Ozone Depleting Substances»;
- Government Decision N 90-N of February 5, 2015 «On the Lists of Certain Goods - Movement of Which through the RA Customs Territory - are Banned and Subject to Restrictions, Approving Export and Import Licenses and Application Forms, Defining Requirements for Issuing Certain Export and Import Licenses and «Making Amendments to the N327-N Decree of the RA Government, March 15, 2007»»;
- Government Decision N 327-N of March 15, 2007 «On the Approval of ODS List and ODS Global Quota Establishment»;
- Government Decision N 591-N of May 17, 2007 «On the Approval of Quota Establishment Procedure for Ozone Depleting Substances Import»;
- Government Decision N 1565-N of December 27, 2007 «On the Approval of the ODS Recording Procedure»;
- Government Decision N 771-N of June 21, 2007 «On the Approval of ODS Import, Export, Transit Shipment Permit Form and its Issuing Procedure»;
- Government Decision N 1524-N of December 25, 2014 «On Approving List of Products Banned or Subject to Restrictions for Transportation on Customs Area of the Republic of Armenia, Establishment of Competent

⁶ https://www.mfa.am/filemanager/eu/CEPA_ARM_1.pdf

⁷ https://eur-lex.europa.eu/resource.html?uri=cellar:fab8df35-a1e2-11e7-a56f-01aa75ed71a1.0019.02/DOC_7&format=PDF

Bodies and Approval of the Framework Procedure for Issue of Licenses and Import Permits»⁸.

Legal Background for a Comprehensive Agreement and Approximation of Armenian Legislation

Comprehensive Agreement and Roadmap list a number of mandatory measures to be implemented by Armenia (there is a discrepancy between these two documents)⁹ as presented below:

- Adoption of national legislation and designation of competent authority/ies;
- Establishment of a ban on the production of controlled substances, except for specific uses and, until [1 January 2019], of hydrochlorofluorocarbons (HCFC) (Article 4);
- Definition of the conditions for the production, placing on the market and use of controlled substances for exempted uses (as feedstock, process agents, for essential laboratory and analytical uses, critical uses of halons) and individual derogations, including emergency uses of methyl bromide (Chapter III)
- Establishment of a licensing system for the import and export of controlled substances for exempted uses (Chapter IV) and reporting obligations for undertakings (Articles 26 and 27)
- Establishment of obligations to recover, recycle, reclaim and destruct used controlled substances (Article 22);
- Establishment of procedures for monitoring and inspecting leakages of controlled substances (Article 23);
- Establishment of a ban on the placing on the market and use of controlled substances, except for reclaimed HCFC which might be used as refrigerant until 1 January 2030 (Articles 5 and 11).

The requirements listed in Annex IV (also in the road map) to the Comprehensive Agreement are governed by the provisions of Regulation 1005/2009¹⁰. The regulation concerns public relations arising in the field of ozone depleting substances (instead, the term "controlled substances" is used). The arrangements follow the logic of Article 54 of the Agreement and have been the basis for the development of the Roadmap section related to the field.

As a result of the comparative and structural analysis of the sectoral legal regulations of Armenia, Article 54 of the Agreement, the Roadmap and the EU Regulation, below

⁸ The listed by-laws are available in Armenian legal information system – www.arlis.am

⁹ There are some substantive-editorial (technical) deviations among the measures reflected in the agreement and in point 131 of the roadmap annex approved by the Prime Minister, therefore the Comprehensive Agreement was taken as a basis during the analysis.

¹⁰ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:286:0001:0030:EN:PDF>

are presented the measures, which are either subject for approximation or not, with their justifications:

- 1. Domestic legislation has been in force since November 27, 2006 with the adoption of the Law on Substances that Deplete the Ozone Layer (The law is now entitled «On the Protection of the Ozone Layer» HO-218-N, amended by the law HO-148-N on March 4, 2020). The Ministry of Environment was recognized as a state competent body (Government Decision N 291-N of March 15, 2007). This means that this measure based on the roadmap is no longer relevant for implementation.**
- 2. The Law on the Protection of the Ozone Layer and the by-laws adopted for its implementation already regulate both the field of ozone depleting substances and hydrofluorocarbons. Article 4 of the law prohibits the production of ozone depleting substances in Armenia, and recent amendments to the law also cover hydrofluorocarbons. In addition, Government Decree No. 1368-N of August 20, 2020, approves the list of these gases. As for the recognition of the state authorized body for hydrofluorocarbons, the process has been initiated and the draft of the relevant legal act has been submitted to the government (information provided by the National Ozone Unit of the Ministry of Environment).**
- 3. This requirement refers to the adoption of a legal institute (mechanisms) that deals with the production, marketing, use of ozone-depleting substances for feedstock purposes, technological agents, applications essential for laboratory-analytical activities. Armenia has never produced those substances, their production is banned by law, Armenia has not used them for the purposes stated in the Agreement and the EU Regulation, having no technological and professional capacity. Therefore, harmonization of these legal regulations cannot take place for the simple reason that Armenia does not have similar legal regulations at all. It is not possible to adopt the existing legal regulations of the European Union to the reality that does not exist in Armenia (there are no such public relations in Armenia and grounds for their origin, consequently, legal regulations) or to adopt something that has no relation with the economy.**
- 4. There is a procedure for import and export of ozone depleting substances in Armenia (The draft of the government decision on the e-licensing procedure has been put into circulation, as per the communication received from the National Ozone Unit), which, however, does not provide for legal regulations on exceptional substances due to the reasons mentioned in the previous paragraph.**
- 5. According to the head of the National Ozone Unit of the Ministry of Environment, the state does not have the technological-professional potential to meet this obligation, the provision of legal regulations will be**

artificial and unrealistic. At the same time, the latter informed that during the discussion of the draft road-map this stance has been presented, which, however, was not considered for unknown reasons. In addition, the head of the National Ozone Unit informed that with appropriate EU funding, technological and professional capacity building, it could be possible to meet the requirements in the future.

6. In order to establish leakage control and inspection procedures for ozone-depleting substances, it will be necessary to:
 - a. Make amendment to the law (Definition of concepts of leakage, leakage monitoring, discharge, recycling, envisaging the authority of the government to establish an appropriate procedure, definition of a requirement for the implementation of leakage monitoring obligations for undertakings and a ban on the import of substances in disposable containers).
 - b. Adoption of a government decision (approval of the procedure) on leakage monitoring in the field of ozone depleting substances, the procedure for recording results, and the approval of the log-book.
 - c. Amendment to the Code on Administrative Offenses (Definition of administrative responsibility for undertakings).
7. Make amendments to the law to introduce the concept of reclaimed HCFCs, as well as to amend the Government Decision N 327-N of March 15, 2007 to ban the import and use of virgin ozone depleting substances from 2030.