



BECOMING A PARTY TO THE MINAMATA CONVENTION ON MERCURY

Introduction

The objective of the Minamata Convention on Mercury is to protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds. In support of this objective, the Convention contains provisions that relate to the entire life cycle of mercury, including controls and reductions across a range of products, processes and industries where mercury is used, released or emitted. It also addresses the direct mining of mercury, its export and import, its safe storage and its disposal once as waste. Identifying populations at risk, boosting medical care and better training of health-care professionals in identifying and treating mercury-related effects will also contribute to implementing the Convention.

The Minamata Convention was adopted on 10 October 2013 and opened for signature for one year on that day, until 9 October 2014. During this period, 127 states and one regional economic integration organization – the European Union – signed the Convention, bringing to 128 the total number of its signatories.

The Convention entered into force on 16 August 2017, which was, as specified in its Article 31, the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession. For that purpose, any instrument deposited by a regional economic integration organization is not counted as additional to those deposited by its member States.

The text of the Minamata Convention is available in Arabic, Chinese, English, French, Russian and Spanish at: <http://mercuryconvention.org/Convention>. The six language versions of the Convention text are equally authentic.

What is the difference between signature, ratification, acceptance, approval or accession?

The signature is the formal expression of intent to be bound and become a Party but it does not prejudice ratification. The signature does not bear any legal obligation as such, however, a State is expected to refrain from acts that would defeat the object and purpose of a treaty it has signed, even if that treaty has not entered into force.

Ratification, acceptance, approval, and accession are similar means by which a State establishes its consent to be bound by a treaty, depending on domestic legal or policy requirements.

Accession has the same legal effect as ratification, acceptance or approval and was opened from the day the Convention was closed for signature – on 10 October 2014. Unlike ratification, acceptance or approval, which are preceded by signature to create binding legal obligations under international law, accession requires only one step, namely, the deposit of an instrument of accession.



How does a country become a Party to the Minamata Convention?

In order to become a Party to the Minamata Convention, a State or a regional economic integration organization must demonstrate, through a concrete act, its willingness to undertake the legal rights and obligations contained in the Convention. In other words, it must express its consent to be bound by the Convention. A State can express this consent in several ways. In practical terms, under the Minamata Convention, a State must lodge with the depositary – the Secretary-General of the United Nations – its instrument of ratification, acceptance, approval or accession.

Usually ratification involves two distinct procedural acts:

- The first act relates to the constitutional (internal) laws of a State and to the procedure that must be fulfilled before the State can assume the international obligations enshrined in the Minamata Convention. While the required process is defined by laws of each State and therefore unique to that State, this often involves approval by the national parliament.
- The second act deals with the external (international) level, which is the process through which the State indicates its consent to be bound by the Convention.

The usual main steps to be undertaken for becoming a Party to an international treaty, including the Minamata Convention, may be summarized as follows:

1. **Carry out a national situation analysis and collect information:** The lead ministry/authority responsible for the Convention (such as the national authority or ministry involved in negotiating or implementing the Convention) prepares an analysis of the domestic situation of becoming a Party to the Convention, of the steps to be taken, including any legislative or administrative actions that will be necessary for its implementation, and collects all relevant documentation. This information would be shared with other relevant authorities (e.g., other ministries) as part of the process of carrying out the steps listed below.
2. **Make necessary national arrangements:** The lead ministry/authority should prepare the necessary arrangements at the national level to allow for policy coordination among the different concerned bodies and stakeholders to be involved in the process as well as the necessary legislative, administrative and institutional arrangements.
3. **Contact authority responsible for issuing the instrument of ratification (or acceptance, approval or accession) and identify the signatory of the instrument:** The lead ministry/authority should consult with the government authority responsible for drafting ratification instruments and related documents (the “ratification package”) for international agreements. This is usually a legal unit within the Ministry of Foreign Affairs. The authority responsible for preparing the ratification package would identify who, at the national level, can take a decision on or approve ratification/accession of the Convention, recognizing that this decision might involve more than one part of the national governmental structure.

The decision or approval would provide the basis for the issuance of an instrument of ratification, acceptance, approval or accession for the Convention. The instrument must be signed by the Head of State, Head of Government or Minister for Foreign Affairs.

4. **Identify and undertake the processes leading to domestic approval of the ratification (or acceptance, approval or accession):** The office of the authority or authorities vested with the power to decide on ratification (or acceptance, approval or accession) can advise on the steps that would lead to such domestic approval.



Provided that there is the political will to proceed, the office of such authority or authorities can indicate the necessary documentation and decision-making processes that have to be completed before the instrument can be signed and deposited with the Depositary.

In addition to obtaining necessary approvals of the authority or authorities (such as the administration of the head of State or head of Government, and the parliament or other bodies as may be relevant), such processes might include, if so required by relevant national laws and depending upon the specific circumstances of that State, passing new legislation, regulations and/or policies or revising the existing ones, a review by judicial bodies, and/or engagement of civil society.

Early consultation and cooperation among the responsible and interested entities is encouraged to enhance and facilitate the decision-making process.

5. **Determine the declarations or statements that may be necessary:** As part of the above decision-making process, the Government will need to determine the declarations and/or notifications it needs and wishes to make at the time of deposit of its instrument of ratification, acceptance, approval or accession.

Some declarations may be included in the instrument of ratification itself (or acceptance, approval or accession) namely the declaration regarding the means of dispute settlement as per Article 25, paragraphs 2 and 3 or the declaration on the entry into force of any amendment to an annex as per Article 30, paragraph 5, while other relevant notifications may be submitted to the Secretariat of the Convention.

Optional and mandatory declarations impose legal obligations on the declarant and therefore must be signed by the Head of State, Head of Government or Minister for Foreign Affairs or by a person having full powers for that purpose issued by one of the above authorities.

Under the Minamata Convention, notifications to be transmitted in writing to the Secretariat include:

- Notifications under Article 3, paragraphs 6, 7 and 9. The general notification of consent to import as per Article 3, paragraphs 6 and 7, may be done at any time while the notification of application of Article 3, paragraph 9 may be done until the end of the second meeting of the Conference of the Parties.
- Notification regarding the implementation of different measures or strategies to address products listed in Part I of Annex A, as per Article 4, paragraph 2. If the Party wishes to notify the implementation of different measures or strategies, the declaration must be done at the time of ratification or upon entry into force of an amendment to Annex A for it.
- Notification to register exemptions from the phase out dates in Annexes A and B as per Article 6, paragraph 1. If an exemption is desired, such notification must be submitted on becoming a Party to the Convention, or for products or processes that are added by an amendment to Annexes A or B, no later than the date upon which the applicable amendment enters into force for the Party.
- Information on the number and types of facilities within its territory that use mercury or mercury compounds for processes listed in Annex B and the estimated annual amount of mercury or mercury compounds used in those facilities as per Article 5, paragraph 5. Parties shall endeavour to identify these facilities and shall submit the above information to the Secretariat no later than three years after the date of entry into force of the Convention for it.



- Notification that artisanal and small-scale gold mining and processing is more than insignificant, as per Article 7, paragraph 3. Such notification must be done at any time the Party determines such activity is more than insignificant in its territory.
- Information on measures to implement the Convention as per Article 30, paragraph 4. There is an encouragement for such information to be transmitted at the time of ratification (acceptance, approval or accession).

Since a notification does not have a legal effect similar to a declaration, it does not need to be signed by the Head of State, Head of Government or Minister for Foreign Affairs or by a person having full powers. It should be noted that some of the above notifications are made following a particular choice by the State while others are obligations on any Party with a particular national situation (such as facilities present in the territory which use processes listed in Annex B, or Parties which have artisanal and small-scale gold mining and processing that is more than insignificant).

Furthermore, each Party is to designate a national focal point for the exchange of information as per Article 17, paragraph 4. In order to make such national focal point known to other Parties, the Party should notify the Secretariat about the designated national focal point, and the Secretariat, as per Article 24, paragraph 2(d), assist Parties in exchanging such information.

6. **Prepare and sign the instrument:** Following the completion of the domestic legislative procedures, where necessary for the approval of the Convention, and following the completion of the necessary national decision-making processes, the government office responsible for doing so will prepare the instrument of ratification, acceptance, approval or accession and any instruments of declaration. In the practice of many countries, this responsibility belongs to the Ministry of Foreign Affairs. The authority entitled to do so will then sign the instrument. The instrument must be signed by the Head of State, Head of Government or Minister for Foreign Affairs.
7. **Lodge the instrument with the Depository:** An instrument of ratification, acceptance, approval or accession to the Convention becomes effective only when it is deposited with the Secretary-General of the United Nations at UN Headquarters in New York. This is customarily done through the Permanent Mission of the relevant State to the UN in New York. The date of deposit is normally recorded as that on which the instrument is received at UN Headquarters. States are advised to deliver such instrument to the Treaty Section, Office of Legal Affairs of the UN directly to ensure that the action is promptly processed.

The usual steps for depositing the instrument may be summarized as follows:

- Prepare the instrument of ratification, acceptance, approval or accession, as applicable, in the language as required by the laws and procedures of that State;
- E-mail or fax a copy to the UN Treaty Section for review, preferably including a courtesy translation into English or French of instruments in other languages;
- Deliver the original instrument by hand or mail to the Treaty Section - Full Powers are not required for the person delivering the instrument;
- If the instrument is e-mailed or faxed for immediate deposit, deliver the original instrument to the Treaty Section as soon as possible thereafter.

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Summary of the key steps of becoming a Party



The UN Treaty Handbook, available in the 6 UN languages on the UN Treaty section website contains further information on these issues, including model instruments.

See: https://treaties.un.org/Pages/Resource.aspx?path=Publication/TH/Page1_en.xml

When did the Minamata Convention enter into force?

The Minamata Convention entered into force on 16 August 2017, which was the 90th day after the date of deposit of the 50th instrument of ratification, acceptance, approval or accession.

For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after that date, the Convention will enter into force on the 90th day after the date of deposit of its instrument of ratification, acceptance, approval or accession.

The updated list of signatories and of States having deposited their instrument of ratification, acceptance, approval or accession is available at: <http://mercuryconvention.org/Countries>

Are there financial obligations resulting from becoming a Party to the Minamata Convention?

Parties to the Minamata Convention are obliged to adhere to its obligations, which include in Article 13 a requirement for each Party to provide, within its capabilities, resources in respect of those national activities that are intended to implement the Convention, in accordance with its national policies, priorities, plans and programmes. Article 13 also defines a financial mechanism to support developing country Parties and Parties with economies in transition in implementing their obligations.

The Parties also have financial commitments to support the operation of the Convention, its Conference of the Parties (COP), and the Secretariat. These financial commitments will be decided by the COP to the Convention, in accordance with its financial rules.



What are the benefits of becoming a Party to the Minamata Convention?

Becoming a Party to the Minamata Convention implies the requirement for compliance with a number of obligations, but also creates certain benefits, including for developing country Parties and Parties with economies in transition, in terms of technical and financial assistance.

There are a number of benefits at the national but also at the international level of becoming a Party to the Convention, since mercury is a global issue that requires concerted global action for effective protection of human health and the environment. Among the main advantages, one may consider that joining the Convention allows each State to:

- Protect its own people's health and environment, by benefiting from the global efforts to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds;
- Ensure protection from unwanted exports of mercury and mercury products;
- Contribute to achieving its commitment to sustainable development goals;
- Access capacity-building, technical assistance and technology transfer. The financial mechanism established under Article 13 of the Convention aims at providing adequate, predictable, and timely financial resources to support developing country Parties and Parties with economies in transition in implementing their obligations. Article 14 of the Convention specifies the provisions relating to capacity building, technical assistance and technology transfer to these Parties;
- Facilitate partnerships and cooperation to support the implementation of certain obligations, for example on the issue of mercury wastes, interim storage, contaminated sites or artisanal and small-scale gold mining;
- Improve access to useful technologies, data, information, especially through regular exchange of information and expertise;
- Improve information, awareness-raising and public education;
- Improve research and development, including in terms of mercury-free alternatives;
- One other important aspect to note is that Parties are able to influence the development and implementation of the Convention through participation in the decision-making process of the Conference of the Parties.

When undertaking a national situation analysis, a State may also examine its domestic circumstances with regard to mercury (in terms of mercury use, treatment, emissions or releases, etc.) to allow for an assessment of the potential impact that could result from the implementation of the Convention's obligations.

In addition, it may also consider the potential risks of not becoming a Party, including by analysing how the implementation of the Convention may impact non-Parties in terms for example of restrictions on trade in mercury, as well as the risks for those States to face "dumping" within their territories of unwanted mercury or mercury added products.

Finally, becoming a Party to the Minamata Convention may improve the likelihood for recipient countries to benefit from funding under the Special Programme to support institutional strengthening at the national level to enhance the implementation of the Basel, Rotterdam and Stockholm conventions, the Minamata Convention and the Strategic Approach to International Chemicals Management, for which terms of reference were adopted at the first session of the United Nations Environment Assembly of UNEP in 2014.