

Manual of European Environmental Policy

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This section is the text of the Manual as published in 2012. It is therefore important to note the following:

- The contents have not been updated since 2012 and no guarantee is given of the accuracy of the contents given potential subsequent developments.
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Farmer, A.M. (2012) (Editor). Manual of European Environmental Policy. 1043pp. Routledge, London.

International conventions

International conventions (treaties or agreements) are the means by which sovereign nation states place obligations on one another. They can be between two nations (bilateral) or several nations (multilateral). The terms of a treaty or convention is often negotiated in secrecy before being adopted and opened for signature by negotiating parties. Conventions are formally agreements between the sovereigns of nation states, thus depending on the constitutional practices of individual nations, the signing of conventions by Ministers or officials is not always sufficient for them to take effect and they usually have to be ratified by the 'sovereign'. The constitutions of some countries require conventions to be approved by the parliament. For a convention to be applicable to the territories associated with, but not an integral part of sovereign states (e.g. the French collectivités territoriales), it must first be ratified on their behalf by the sovereign state.¹ Multilateral conventions frequently require ratification by a given number of parties before they take effect. Conventions are often promoted and drafted by international organizations provided with a permanent staff (e.g. the Council of Europe; the United Nations Environment Programme). Some conventions may also establish a secretariat or commission to service the convention (e.g. CITES). The obligations undertaken by a nation state in acceding to a convention are a matter for that nation state itself to implement and in general conventions have no directly effective enforcement mechanism.

Although the EU is not a nation state, it is a party or has sought to be a party to a number of international conventions that cover a wide field of environmental concerns. With a view to participation by the EU, conventions will normally include a clause stating that accession is open not only to nation states but also to 'regional economic integration organisations'. Where an EU Member State is a party in its own right to a particular convention, EU participation will not involve additional obligations. EU participation may nevertheless mean that Member States lose the freedom to negotiate additions (in the form of amendments or protocols) to the particular convention independently.²

According to Article 216 of the Treaty on the Functioning of the European Union (TFEU), the EU 'may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope'. Agreements that are concluded by the EU are binding on the EU's institutions on its Member States (Article 216 TFEU). The general policy adopted by the Commission is to seek EU participation where it can establish EU competence. Problems frequently arise over whether the EU has competence, the extent of that competence when it is agreed it exists, and the loss of independence resulting from the EU becoming a party to a particular convention.² Competence can be a complex matter, but, according to rulings of the European Court of Justice (notably Case C-22/70 ERTA), where the EU has adopted measures which cover the same aspects as those in a convention, or just some of those aspects, there will be competence. Thus, the EU's external powers expand without the express approval of the Member States simply in the course of developing the EU's internal powers. The legal basis for the EU to conclude agreements in the environmental field is provided by Article 191(4) TFEU (former Article 174(4) of the EC Treaty).

The procedure (set out in Article 218 TFEU, former Article 300 EC Treaty) for concluding agreements is different from that relating to the adoption of internal measures. The process usually starts with the Commission seeking Council authority to open negotiations on behalf of the EU to either become party to an existing convention or to take part on behalf of the EU in negotiations leading to a new convention. Decisions to sign and conclude agreements are in principle taken by the Council acting by qualified majority voting (QMV) (Article 218 TFEU, former Article 300(2) EC Treaty) (see section on EU institutions). However, when an agreement covers a field for which unanimity is required for the adoption of internal rules, then the Council must act unanimously. With the exception of agreements that relate to the common foreign and security policy, the Council is to adopt a decision concluding an agreement only after obtaining the consent of the European Parliament in a number of cases including agreements that cover fields to which either the ordinary legislative procedure or the special legislative procedure apply. In other cases, the Council is to adopt its decision after consulting the European Parliament. The means by which the EU is understood to ratify a convention is a Council Decision although the actual wording of the Decision is such that it does no more than authorise a conclusion. It is sometimes necessary, as in the case of the Montreal Protocol, for Member States and the Community to ratify a Convention simultaneously in order to prevent the possibility of conflicting obligations arising.

Brief overviews of the international conventions relevant to the EU in different environmental policy areas are provided in related thematic chapters of this Manual.

References

1. Coffey C and Pienkowski M 1998 Biodiversity Law in the EC's associated territories ECOS Vol 19 No1.
2. Haigh N 1991 The European Community and International Environmental Policy *International Environmental Affairs* Vol 3 No 3.