



Convention on the Conservation of Migratory Species of Wild Animals (CMS)

Secretariat provided by the United Nations Environment Programme (UNEP)

How to become a member of CMS and CMS-related Agreements

The purpose of this fact sheet is to provide responsible authorities of States with some basic advice on how their countries can join the Convention and its related Agreements.

1.0 Introduction

The Convention on the Conservation of Migratory Species of Wild Animals (CMS) aims to conserve terrestrial, marine and avian migratory species throughout their range. It is an intergovernmental treaty, concluded under the aegis of the United Nations Environment Programme, concerned with the conservation of wildlife and habitats on a global scale. CMS provides a global platform for cooperation on the conservation and sustainable use of migratory animals and their habitat. The Convention was adopted in Bonn, Germany, on 23 June 1979, and entered into force on 1 November 1983.

CMS brings together the States through which migratory animals pass, the Range States, and lays the legal foundation for internationally coordinated conservation measures throughout a migratory range.

2.0 How to become a Party to the Convention

Generally, a State becomes a Party to an international convention when it deposits its instrument of ratification, acceptance, approval or accession to the convention with the depositary (Vienna Convention on the Law of Treaties, 1969, Art. II (b)).¹

All CMS signatory States can join the Convention by ratification (Art. XVI²). All States that are not signatory States can become a Party to the Convention by accession (Art. XVII), since CMS was closed for signature on 22 June 1980.

Accession is the act whereby a State undertakes to become a party to a treaty already negotiated and signed by other States, but which, after a certain date, has been closed for signature. It has the same legal effect as ratification.

CMS enters into force for the acceding country on the first day of the third month after the country has deposited its instrument of accession to the Convention with the Depositary (Art. XVIII (2)). In the case of CMS, the Depositary is the Government of the Federal Republic of Germany (Art. XVI).

The following guidelines concentrate on the process of accession.

¹ Vienna Convention: Art. II (b): "Ratification", "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty"; Art. 14 (2): "The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification."

Art. XVI: "This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Government of the Federal Republic of Germany, which shall be the Depositary."

Art. XVII: "After the twenty-second day of June 1980 this Convention shall be open for accession by all non-signatory States and any regional economic integration organization. Instruments of accession shall be deposited with the Depositary."

² Articles quoted are those of the Convention on the Conservation of Migratory Species of Wild Animals (CMS), unless otherwise stated.

2.1 Process of accession

The final provisions of the Convention (Art. XV–XX) deal with obligations related to CMS membership. The process to become a Party typically involves four steps:

Step 1: Gather information on and preliminarily assess the implications of the Convention

The first step is initiating a decision-making process to determine whether the country should become a Party to CMS. The process follows the internal procedural rules of the respective country.

In consultation with other ministries involved, the lead ministry/authority for CMS (e.g., a ministry involved in implementing the Convention) may wish to prepare a document that addresses all implications of accession to CMS, including its complementarities, as an informative basis for the decision-making process. It could include a cost-benefit analysis including any legislative, administrative or programmatic actions that will be necessary for its implementation. This information would be shared with those authorities involved in the steps below.

Step 2: Decide to become a Party to CMS

The lead ministry/authority would then normally consult with the Governmental authority responsible for drafting accession instruments for international agreements.

Assuming that there is the political will to proceed, the supreme national authority entitled to decide on accession would be contacted to indicate the necessary documentation and decision-making processes that would have to be completed before the instrument can be signed and deposited. These processes aim at obtaining the necessary approvals from the administration of the Head of State or Head of Government, or through parliamentary debate. In addition to the approvals, such processes may include passing a law or undertaking a legal review or evaluation at different State levels.

Step 3: Prepare and sign the “instrument of accession”

After the conclusion of the internal decision-making process in the respective country, an “instrument of accession” should be prepared (Art. XVII, see Annex 1). In accordance with international treaties and principles, the instrument of accession must be signed by the Head of State, Head of Government or Minister of Foreign Affairs (Art. VII of the Vienna Convention).

Step 3a: Make reservations, if necessary, at the time of accession

A reservation is a formal declaration by a State, at the time it takes the action needed to become a party to a convention, whereby it announces that it does not consider itself bound by some of the convention’s provisions. (see Art. II (1)(d) of the Vienna Convention). A reservation may enable a State to participate in a multilateral treaty that the State would otherwise be unwilling or unable to participate in.

Any CMS Party may enter a specific reservation with regard to the presence of a migratory species on either Appendix I or II (Art. XIV (2)). The Party then will not be obliged to fulfil the obligations of the Convention with regard to the species. Reservations can be withdrawn by notifying the Depositary.

Step 4: Deposit the “Instrument of Accession” with the Depositary

The instrument of accession should be deposited with the Depositary (Art. XVI) represented by the German Federal Foreign Office in Berlin, Germany. This is done through the acceding country’s Ambassador or Deputy Ambassador in Germany (or the embassy which is geographically responsible for Germany).

In the German Federal Foreign Office, the Head of the Task Force for Environmental and Bio-political Issues is the contact point for the handover of the instrument of accession (Werderscher Markt 1, 10117 Berlin, Germany; Tel: +49 30 5000 2781; Fax: +49 30 5000 52781).

Usually, the acceding country's Ambassador (or the Deputy) requests a meeting in the German Federal Foreign Office and hands over the instrument of accession together with a note verbale (see Annex 3 for a model).³

The instrument of accession will be reviewed for completeness after its deposit. If the instrument of accession is found to be in order by the Depositary, the date of deposit will be the date the instrument was received by the Depositary.⁴

CMS enters into force for the acceding country on the first day of the third month after the country has deposited a satisfactory instrument of accession with the Depositary (Art. XVIII (2)).

3.0 How to participate in CMS-related Agreements

CMS is a framework convention under whose auspices a number of species-specific Agreements have been concluded. These are an important means of implementing the parent Convention.

There are three different types of CMS Agreements: First those concluded as treaties under Art. IV (3), second those concluded as treaties under Art. IV (4), and third legally non-binding Memoranda of Understanding, also concluded under Art. IV (4). All CMS Agreements include integral Action Plans, which provide for range-wide and country specific actions. There are different ways to become a member to these Agreements, depending on whether it is a treaty or a Memorandum of Understanding.

3.1 Agreements adopted as treaties under Art. IV (3) and (4)

Article IV (3) Agreements are restricted to species listed in Appendix II of the Convention. The object must be to restore the migratory species concerned to a favourable conservation status or maintain it in such a status (Art. V (1)). They should cover the whole of the range of the migratory species concerned and be open to accession by all Range States⁵ of that species, whether or not they are Parties to the Convention (Art. V (2)). Regional Economic Integration Organizations can also become members.

Article IV (4) Agreements may be concluded for any population or any geographically separate part of the population of any species or lower taxon of wild animals, members of which periodically cross one or more national jurisdictional boundaries.

Examples of Art. IV (3) Agreements are the African-Eurasian Waterbird Agreement (AEWA), the Agreement on the Conservation of Populations of European Bats (EUROBATS), and the Agreement on the Conservation of Albatrosses and Petrels (ACAP). Examples of agreements concluded under

³If your country does not have an embassy in Germany, the most appropriate way of getting the instrument of accession to the Depositary would be for your foreign office to send or bring it to the Ambassador of the Federal Republic of Germany in the German embassy closest to your country. This procedure, however, should be pre-arranged with the respective German embassy. By no means should the instrument be sent or brought to any Honorary Consul.

⁴ If your country deposits the instrument of accession with its local German embassy, once the instrument is transmitted to the German Foreign Office in Berlin, and then found to be in order, the date of deposit would be the date that the local German embassy received the instrument from your country's representative.

⁵ Art. I (1)(h): "Range State in relation to a particular migratory species means any State (and where appropriate any other Party referred to under sub-paragraph (k) of this paragraph) that exercises jurisdiction over any part of the range of that migratory species, or a State flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species.

Art. I (1)(k): "Party means a State or any regional economic integration organization constituted by sovereign States which has the competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention for which this Convention is in force."

Art. IV (4) are the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS), the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS) and the Agreement on the Conservation of Seals in the Wadden Sea.

3.1.1 How to become a Party to CMS Agreements adopted as treaties

Although there are two different types of CMS Agreements concluded under Art. IV (3) and (4) that take the form of a treaty, the process of becoming a member is the same. Agreements concluded under Art. IV (3) and (4) which take the form of treaties provide for *inter alia* new substantive and financial obligations for parties, and create institutions that oversee the Agreement's implementation. A State must therefore agree to be bound by these provisions by ratifying or acceding to the Agreement. Ratification or accession in those cases follows the same principles and steps as for the Convention itself (see Section 2.1).

The easiest way to ratify or accede to those CMS Agreements would be to consider joining all those that are geographically relevant to the country at the same time as joining CMS.

If ratification or accession by a single undertaking is not possible, in order to facilitate the ratification or accession process, legislators could consider enacting a simplified procedure for ratifying or acceding to CMS Agreements.

Where a new law is necessary to ratify or accede to the Convention, it could include a provision for an accelerated, simplified ratification or accession process for CMS Art. IV (3) and (4) Agreements. (see legislation example in Box 1).

The instrument of ratification or accession must be deposited with the appropriate depositary, which will typically vary according to the Agreement and is specified in its formal provisions. The Agreement's date of entry into force for the ratifying or acceding country is defined by the respective Agreement.

Box 1: Legislation Example for Accelerated Ratification or Accession of Art. (3) and (4) Agreements

Appropriate wording for a simplified procedure for ratifying or acceding to Article. IV (3) and (4) Agreements taking the form of treaties could be along the lines of the Swiss Accession Law. The wording used in Article 2, paragraph 2 of the Swiss Accession Law is very straightforward (the Council of Ministers being the Swiss Cabinet):

“The Council of Ministers is authorized to sign, to ratify or to accede to regional Agreements concluded under the auspices of the Convention”.

3.2 Memoranda of Understanding

CMS also provides for more expedient, legally non-binding international instruments to achieve immediate conservation objectives: Memoranda of Understanding (MoUs). MoUs are specifically based on Art. IV (4) and Resolution 2.6 of the Second Meeting of the CMS Conference of the Parties. They are open for signature to all Range States, even if they are not a Party to the Convention.

The aim of an MoU is to initiate and to co-ordinate short-term conservation measures for migratory species critically endangered with extinction to be taken by the Range States at the administrative and scientific levels, often in collaboration with specialized NGOs. In most cases these measures are based on already existing commitments elaborated by internal legislation and/or national programmes

within the Range States. A primary objective of MoUs is to coordinate these individual national actions across a migratory range.

MoUs are straightforward and un-bureaucratic in order to reach their objective of restoration of the concerned species to a favourable conservation status or to maintain such a status. They should not need to be ratified or acceded to, because they do not impose new, additional substantive or financial obligations to their signatories. They are typically agreements between the governmental institutions in the Range States responsible for the species' conservation.⁶ An MoU, and more specifically its integral Action Plan, describes the actions to be taken collectively and measures to be implemented in each country.

3.2.1 How to become a signatory to CMS Memoranda of Understanding

The steps to become an MoU signatory are very straight-forward and less formal than for the Convention itself or an Agreement:

Decide to become signatory after reviewing the MoU. The governmental institution that would be responsible for the conservation of the species, and therefore for the implementation of the MoU, first needs to decide to become a signatory. This would usually be for example either the Ministry of Environment, the Ministry of Agriculture or of Fisheries depending on the species concerned. National procedural rules may require consultation of other governmental authorities or even an authorisation of the respective Minister.

Sign the MoU. The competent official of the responsible governmental institution signs the MoU in the presence of a CMS official at a mutually agreed time and place. Most often the responsible official is the Minister of the respective ministry competent for the species. In case the Minister is not able to sign in person, his or her designee may sign on their behalf. But unless this person is the deputy Minister, they would need a written authorization (a letter of credentials) from the competent Minister to sign the MoU in his or her place (see Annex 4 for model letter of credentials). In most cases, credentials demonstrating powers to sign on behalf of the government are not necessary to sign an MoU, unless the MoU is between the Range States themselves.⁷ In addition, according to the Vienna Convention on the Law of the Treaties, the Ambassador of a country has the power to sign MoUs. However, practices may differ because of national procedural rules or if the MoU is between States.

The original version of the MoU is signed and kept by the CMS Secretariat, which acts as the MoU Depository.

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⁶ An exception to this is, for example, the CMS Marine Turtles MoU for the Indian Ocean and South-east Asia which is agreed between States.

⁷ See for example the CMS Marine Turtles MoU for the Indian Ocean and South-east Asia.

Annex 1 - Model Instrument of Accession to the Convention or Agreement

(To be signed by the Head of State, or Head of Government, or Minister for Foreign Affairs)

INSTRUMENT OF ACCESSION

WHEREAS the Convention on the Conservation of Migratory Species of Wild Animals was adopted in Bonn, Germany, on 23 June 1979 and came into force on 1 November 1983;

AND WHEREAS Article XVII of the Convention provides that after the 22 June 1980 this Convention shall be open for accession by all non-signatory States;

NOW THEREFORE, the Government of [*name of State*], having considered the aforesaid Convention, **HEREBY ACCEDES** thereto and undertakes faithfully to observe all its provisions and to carry out all the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this Instrument of Accession and have affixed thereto the seal of [*official office title of the signing authority*] of [*name of State*].

DONE at [place], on [date]

(Seal)

(Signature)

(Title)

Annex 2 – Model Instrument of Full Powers for the Signature of the Instrument of Accession to the Convention or an Agreement*

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

FULL POWERS

I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs],

HEREBY AUTHORISE [name and title] to sign the instrument of accession to [title and date of treaty, convention, agreement, etc.] on behalf of the Government of [name of State].

Done at [place] on [date].

[Signature]

* Applicable in cases where someone other than the Head of State, Head of Government or Minister of Foreign Affairs has signed the Instrument of Accession. In the case where an Agreement is still open for signature or ratification, this model could be modified as appropriate.

Annex 3 – Model Note Verbale Transmitting the Instrument of Accession

Sample

Embassy of
(Address)

No.
Ref.:

NOTE VERBALE

The Embassy of presents its compliments to the Federal Foreign Office and, with reference to the Convention on the Conservation of Migratory Species of Wild Animals, adopted at Bonn on 23 June 1979, has the honour to advise that the accession thereto of (*Name of State*) has been approved by (*Legislative Body*) , promulgated by (*Title of Head of State*) , and published as State law in the (*Name of Official Gazette*) , on (*Date*)

The Embassy of herewith respectfully submits to the Federal Foreign Office the instrument of accession of (*Name of State*) to the above-mentioned Convention in accordance with Article XVII.

The Embassy of avails itself of this opportunity to renew to the Federal Foreign Office the assurances of its highest consideration.

[Place and Date]

Stamp

Federal Foreign Office
Division AS-U
Werderscher Markt 1
10117 Berlin
Germany

Annex 4 – Model Letter of Credentials for the Signature of an MoU

In the name of the Ministry of [*name of Ministry*]**, the undersigned [*name of the Minister*], does hereby authorize:

[*Full Name of Representative*], [*Title*], [*Organization*]

to sign the Memorandum of Understanding on [*Name of MoU*], on behalf of the Ministry.

In witness whereof, I have signed this letter of credentials and have affixed hereto my official seal.

Done in [City], Date

Signature

Official Seal

** In most cases the Minister whose agency is directly responsible for implementation of the Memorandum of Understanding.