
Becoming a Party to the Protocol to Eliminate Illicit Trade in Tobacco Products

I. Introduction

Due to the legal relationship between the Protocol and its “parent” treaty, the WHO Framework Convention on Tobacco Control (FCTC), a State¹ can become a Party to the Protocol only if it is a Party to the Convention. The rationale is the legal relationship between the two which determines that the provisions of the Protocol build on those of the Convention. The process for becoming a Party is the same for the Protocol as for the Convention.

II. Signature

The Protocol was open for signature from 10 January 2013 until 9 January 2014. By that date, 54 Parties to the WHO FCTC had signed the Protocol. Signature is the first step in the process of becoming a Party, the second step being ratification, acceptance or approval. Signature allows a State to formally express its support for the Protocol, while allowing it to undertake the necessary preparations domestically before consenting to be bound by it.

Since 10 January 2014, the Protocol can no longer be signed.

III. Becoming a Party if the Protocol has been signed: ratification (acceptance, approval)

Any WHO FCTC Party that had signed the Protocol by 9 January 2014 is positioned to ratify, accept, or approve it, thereby becoming a Party to the Protocol. In practical terms, acceptance and approval can essentially be considered synonymous with ratification, and have the same legal effect². The legal process referred to as ratification takes place at two levels, which are often confused because the same term “ratification” is frequently used for both. In practice, it is however very important to distinguish them.

“Domestic” ratification is the process by which a State’s authorities prepare for “international” ratification. This domestic process is determined by the national constitution and legislation of a given State, and is therefore *different for every State*. Most national legal systems require formal approval of an international treaty by a high-level political authority, for example the national parliament. Depending on the legal system of the State, the domestic process may or may not include that all national legislation required to implement the Protocol has to be enacted prior to ratification. Before proceeding to international ratification, the domestic process must be completed.

“International” ratification follows upon “domestic” ratification. It represents the State’s formal commitment to the international community to be bound by the Protocol. It follows an internationally defined procedure, which is therefore *the same for all States*. The commitment to be bound is expressed through the instrument of ratification, acceptance or approval, which normally consists of a one-page

¹ When reference is made to “State”, this document equally refers to regional economic integration organization, as applicable.

² “Formal confirmation” is the procedure by which a regional economic integration organization (e.g., the European Union) becomes a Party to the Protocol.

document. The instrument must be signed (State seal is not necessary) by the Head of State, Head of Government or Minister of Foreign Affairs. Further, the instrument needs to be mailed or hand-delivered to the Depositary of the Protocol, the Treaty Section of the United Nations Secretariat in New York. Attached is a model instrument for your consideration. The date of receipt of the instrument of ratification, acceptance or approval by the UN Treaty Section is the official date of deposit. As of 28 November 2014, 5 States had become Parties to the Protocol³ by ratification.

For prompt action by the UN Treaty Section, it is advised that courtesy translation in English or French of the ratification instrument be provided. If the instrument of ratification, acceptance or approval is not hand-delivered, it is suggested that a representative of the State's Permanent Mission in New York call the UN Treaty Section to follow-up and enquire about its receipt (phone: +1 (212) 963-5047, fax: +1 (212) 963-3693).

IV. Becoming a Party if the Protocol has not been signed: accession

If a State has not signed the Protocol by 9 January 2014, it may become a Party by means of accession. Accession has the same legal effect as ratification, acceptance or approval. However, unlike ratification, which must be preceded by signature to create binding obligations under international law, accession requires only one step, namely, the deposit of an instrument of accession with the UN Treaty Section.

Following are examples of scenarios when a State may decide to accede to the Protocol: 1) A State that has not participated in the negotiations on the Protocol wants to become a Party some years after the Protocol has closed for signature; 2) A State becomes independent some years after the Protocol is closed for signature; and, 3) A State's political process is too polarised to allow it to sign within the given timeframe; with a different political constellation some years later, accession becomes possible.

V. Entry into force

The Protocol will enter into force on the 90th day following the date of deposit of the 40th instrument of ratification, acceptance, approval, formal confirmation or accession⁴. If the Protocol is already in force by the time a given State submits its instrument of ratification (or acceptance or approval), or its instrument of accession, the Protocol will enter into force for that State 90 days after the receipt of the instrument by the Treaty Section. Although forty is the minimum number of ratifications required for entry into force of the Protocol, from a public health perspective, the objective is to have as many Parties as possible so as to give maximum effect to the Protocol.

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³ Nicaragua, Uruguay, Gabon, Mongolia and Austria.

⁴ Article 45 of the Protocol.