

Mini Course on Regional Economic Integration Organizations

Course Workbook



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Learning Objectives

- Explain the importance of REIOs to environmental governance
- Describe the specific legal and political context of REIOs as parties to MEAs
- Illustrate how REIO membership can work in terms of competence and voting rights

Introduction

Regional organizations have proven essential to international environmental action, given the transboundary nature of so many environmental threats and the necessity of international cooperation. One specific form of regional organization that has arisen is the Regional Economic Integration Organization (REIO).¹ The term REIO has a specific **legal meaning** within the context of treaty membership – namely, a REIO is an organization that has received the competences normally reserved to its Member States with respect to the matters governed by the treaty in question. This transfer of competences gives the REIO a degree of international legal personality, allowing it to become a Party to a treaty (as opposed to an observer).

In practice, at present the only example of an organization meeting the legal characteristics of an REIO is the European Union (EU). REIOs are particularly important in the field of international environmental law. The EU, as a REIO, has become a **party** to a large number of multilateral environmental agreements (MEAs). Today, many MEAs include a **REIO clause**, outlining the conditions under which a REIO may become **party to the agreement**, often including a provision on voting procedure (either the REIO or its Member States vote) and a general requirement to inform the MEA of its competence vis-à-vis the environmental field regulated by the MEA (see case-study below).²

¹ Some non-economic agreements refer, in clauses otherwise identical to traditional REIO clauses, to “Regional Integration Organizations (RIOs).” dropping the word “economic” (see Art 44 of the Convention on the Rights of Persons with Disabilities).

² For example, concerning Minamata:

<http://www.mercuryconvention.org/Countries/Parties/tabid/3428/language/en-US/Default.aspx#decl-EU>

Legal Definition (some examples)

- Ex. **Rotterdam Convention Article 2(h)**;³ **Minamata Convention Article 2(j)**⁴
(Definitions): “Regional economic integration organization’ means an organization constituted by sovereign States of a given region to which its Member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Convention.”
- Ex. **CITES Article XXI(2)**: “[...] regional economic integration organizations constituted by sovereign States which have competence in respect of the negotiation, conclusion and implementation of international agreements in matters transferred to them by their Member States and covered by this Convention.”⁵
- See also **UNEP Glossary of Terms for Negotiators of MEAs**: “Party” Refers to a State (or regional economic integration organization such as the European Union) that has ratified, acceded to, or otherwise formally indicated its **intent to be bound** by an international agreement, and for which the agreement is in force. Also called a “Contracting Party.”⁶

Elements of Legal Personality

Where an MEA allows for REIO membership, it typically includes in its text broad provisions for REIO signature, ratification, and voting. However, as between the EU and its Member States, matters such as competence, voting, representation, and credentials are a matter of **internal cuisine**. The below elements are described with reference to the EU model simply because there is presently no other REIO practice. The following section informs as to the general rules, rather than entering into specific practical details.

For a more detailed and practical understanding of the EU model, students are advised to consult the *Vademecum on the External Relations of the EU*.⁷

- **Competence**: The following is a summary of how external competence is attributed within the Union following the Lisbon Treaty.
 - **Exclusive REIO competence**: The REIO retains sole power to negotiate an international agreement and represent its Member States. Power is derived from the States through treaty provisions or internal rule-making. Under the EU model, when the EU exercises exclusive competence, only the EU can legislate

³ See: <https://www.informea.org/en/treaties/rotterdam-convention/text>

⁴ See: <https://www.informea.org/en/treaties/minamata-convention-mercury/text>

⁵ <https://www.informea.org/en/treaties/convention-international-trade-endangered-species-wild-fauna-and-flora/text>

⁶ [UNEP Glossary of Terms for Negotiators of MEAs](#).

⁷ See: <http://ec.europa.eu/transparency/regdoc/rep/2/2011/EN/2-2011-881-EN-1-0.Pdf>.

and adopt other kinds of legally binding acts, such as the conclusion of international agreements. Member States cannot act, even if the EU has not yet acted or has decided not to do so. Exclusive competence can be explicit (set out in the treaties constituting the EU – the TEU and TFEU) or implied (conditions set out under Article 3(2) TFEU).⁸ Stakeholders agree internally beforehand on the European Commission's negotiating directives.

- Ex. The Commission represented the EU in negotiating the 1995 UN agreement on Fish Stocks, under the "Common Fisheries Policy."
- **Shared competence:** Division of competence depends on the treaty article under which action is being taken and on secondary legislation (EU directives, regulations, and decisions). Under the EU model, in general terms, EU competence is "shared" between the EU and its Member States when the EU has competence to legislate and adopt legally binding acts in specific areas, while each Member State remains competent to act as long as the EU has not exercised its competence (principle of pre-emption).
 - Ex. Negotiations on the Basel Convention Hazardous Waste; Rotterdam Convention on Prior Informed Consent; Stockholm Convention on Persistent Organic Pollutants.
- **Sole national competence:** REIO Member States retain exclusive power to negotiate and represent themselves. Under the EU model, competences not conferred upon the Union in the treaties constituting the EU remain with the Member States (principle of conferral). Member States thus retain sole national competence on a limited number of issues in external negotiations; it is for the Member States to present their views on these issues.
- **Voting:** Where the EU is a party to an MEA alongside some or all of its Member States, the rules typically preclude simultaneous voting. Therefore, it will either be the EU who votes for its Member States (of which there are 28, as of 8 May 2019) which are Parties to the MEA in question, or the individual Member States voting on their own behalf, although typically all following a previously agreed position. Who votes will depend on the **internal** allocation of competences between the EU and its Member States on the subject matter of the treaty.
 - An example of a typical REIO clause can be found in the Minamata Convention:⁹
 - Article 2(g): "'Party' means a State **or** regional economic integration organization that has consented to be bound by this Convention and for which the Convention is in force."

⁸ In so far as the conclusion of an international agreement may affect common rules or alter their scope, or when its conclusion is necessary to enable the Union to exercise its internal competence.

⁹ Note Minamata follows the example of others Conventions of the Parties, such as Stockholm Convention, where in 2015 the EU voted and its vote counted for 26 votes (number of EU Parties to Stockholm Convention at the time). There are presently 28 Member States counting thus for 28 votes.

- Article 2(h): “Parties present and voting’ means Parties present and casting an affirmative or negative vote at a meeting of the Parties.”
 - Article 28(2): “A regional economic integration organization, on matters within its competence, shall exercise its right to vote with a number of votes equal to the number of its member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.”
- **Representation**
 - REIO clauses do not specify who shall represent the REIO, this is matter which flows from the internal attribution of competences.
 - Under the EU model, Article 17 of the TEU, with the exception of Common Foreign and Security Policy (CFSP)¹⁰ and other cases provided for in the treaties constituting the EU (in particular Article 138 TFEU), the **European Commission ensures the external representation of the Union**. This concerns matters of **Union competence**.
 - In matters of **sole national competence**, Member States retain their competence in external negotiations, and it is for the Member States to present their views on these issues. Member States can choose their form of representation. For example, they may decide to have their interests represented by the Member State holding the Presidency of the Council of Ministers or the Commission.
 - In either case, external representation is guided by the Principles of “unity of representation” and “sincere cooperation” (see Vademecum Section 1.2).
 - **Credentials**
 - The rules of procedure of recent conventions normally foresee that the REIO manages its own credentials by its competent authority.
 - Ex. **Minamata Convention**, Rules of Procedure, Rule 19: “The credentials shall be issued either by the Head of State or Government or by the Minister of Foreign Affairs or, in the case of a regional economic integration organization, by the competent authority of that organization.”

Case Study

Prior to the adoption of the Minamata Convention, the EU had a well-developed mercury strategy. However, as EU action alone proved to be insufficient to address the mercury problem, the European Commission considered the negotiation of a legally binding instrument

¹⁰ The EEAS (External Action Service) ensures representation for CFSP.

on mercury under the auspices of UNEP as a priority for further work. The EU played an instrumental role in the international negotiations on mercury, launched by the Governing Council of UNEP in February 2009 and concluded successfully in January 2013.¹¹ The Convention entered into force on 16 August 2017, triggered by the ratification of the EU and several of its Member States on 18 May 2017.

In accordance with Article 30(3) of the Minamata Convention, the EU declared the extent of its competence in its instrument of ratification, acceptance, approval or accession. The EU declared itself competent to preform obligations under the Minamata Convention regarding which EU legal instruments establish common rules, and insofar as these common rules are affected or altered in scope by the Convention or an act adopted in implementation thereof.¹²

Conclusion

In practice, REIO clauses, allowing REIOs to become parties to MEAs, have often been negotiated by, and apply to, the EU.¹³ Their approval by respective Conferences of the Parties, or as the result of inter-governmental negotiations, suggests the value that a REIO can bring to MEAs.

The EU as an international legal actor is often described as *sui generis*, not quite comparable with any other legal entity – it is not simply an international organization, nor is it a federation or super-State. The EU is at present unique in its degree of political and economic integration, and its international legal personality – or its ability to take on international legal rights and obligations akin to a State.¹⁴

The fact that these clauses apply to REIOs, however, leaves open the possibility of other regional economic organizations or instruments in the future attaining a similar level of integration and legal personality, and being able to join MEAs as a party.¹⁵

There also exist a number of organizations that have as their purpose regional economic integration, and have played an increasingly important role in environmental governance as **conveners** and **agenda-setters**. Prominent examples include Mercosur, ASEAN, CIS, Caricom, the AU, the Arab League, and ECOWAS. While they do not fit within the specific legal definition of REIOs explored in this mini-course, in terms of transferred competences and membership in MEAs, their role is important, given the regional nature of many environmental challenges, and the nexus between trade, environment, and sustainability.

¹¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0017&from=EN>

¹² <http://www.mercuryconvention.org/Countries/Parties/tabid/3428/language/en-US/Default.aspx#decl-EU>

¹³ EU is now a signatory to over 60 MEAs. [Vogler](#).

¹⁴ [Esa Paasivirta, The Responsibility of Member States of International Organizations, 12 Int'l Org. L. Rev. 448 \(2015\); CMS, manual for the National Focal Points for CMS and its Instruments.](#)

¹⁵ [ILC, Summary Record.](#)