

AUSTRIA

1. SUBSTANTIVE ASPECTS

1.1. Distinction

1.1.1. Does your national legislation differentiate between different categories of treaties? If it does, how are they categorised?

Austrian constitutional law differentiates between treaties requiring parliamentary approval and other agreements that are concluded by the government (“government agreements”), by individual ministers with the approval of the foreign minister or by the foreign minister only (“ministerial agreement”) or by individual ministers only (“administrative agreements”). The Austrian regions are entitled, within their competences, to conclude treaties with states with common borders with Austria or with regions of those states.

1.1.2. What are the criteria for their classification into specific category (subject matter, scope, financial effects, etc.)? Does the form of the instrument lead to a different category of treaty?

“Political treaties” and treaties modifying or complementing existing law enjoy the same status as laws and require parliamentary approval. Agreements below that level (see question 1.1.1) enjoy the status of regulations or – in the case of administrative agreements – the status of internal instructions. Such agreements require a sufficient legal basis in Austrian national law or in treaties adopted with parliamentary approval. They may not be designated as “treaties” and may not require an exchange of instruments of ratification. Otherwise, the choice of a different form (eg conclusion by exchange of notes or letters) does not lead to a different legal qualification.

1.1.3. What is the legal status of treaties not requiring parliamentary approval in the internal hierarchy of norms?

Such agreements enjoy the status of regulations.

1.2. Competence

1.2.1. Which authority is responsible for drafting the text of each category of treaty?

For treaties requiring parliamentary approval, the drafting competence lies with the foreign ministry, unless a law or a regulation of the foreign minister delegate this power to another minister. The same applies to regulation level agreements concluded by the government, whereas the drafting of other such agreements falls within the competence of the concluding ministry.

1.2.2. In the process of drafting a treaty, which authority is responsible for the assessment of the legal character and category of an agreement?

The authority proposing the conclusion of the agreement. However, opinions of the office of the legal adviser of the foreign ministry and/or the constitutional law service of the federal chancellery are often sought in this context.

1.2.3. Which authority has the general responsibility for ratification/approval/confirmation procedures for treaties (is it generally the responsibility of the Parliament and only certain categories are confirmed by the government or vice versa)?

The foreign ministry. The treaty office within the office of the legal adviser of the foreign ministry normally prepares or supervises the preparation of the submissions to the government and to parliament (unless a law or a regulation of the foreign minister delegate this power to another minister). It also prepares, after parliamentary approval, the instruments of ratification and similar documents, for signature by the federal president and counter-signature by the federal chancellor.

1.2.4. What are the responsibilities of the line ministries and the Ministry of Foreign Affairs throughout the procedure of conclusion and ratification of each category of treaty?

Austrian delegations negotiate treaties with full powers of the federal president based on a proposal by the government, government agreements with full powers of the federal chancellor based on a proposal of the government and other agreements with full powers of the competent minister. Delegations negotiating treaties, government agreements and ministerial agreements of the foreign minister are headed by a representative of the foreign ministry (unless a law or a regulation of the foreign minister delegate this power to another minister). Representatives of line ministries participate in such delegations and negotiations according to their specific competences. Submissions to the government and federal president for full powers for negotiating, signing and concluding of treaties are usually made by the foreign minister, but the explicit approval of other ministers is necessary and referred to in the submission if their staff participate in the negotiations and/or if the content of the treaty falls within their specific competence.

1.2.5. What is the competence of autonomous regions/territories for the conclusion of a treaty?

Representatives of the Austrian regions participate in treaty negotiations if their specific competences are concerned. Treaties concluded by Austria affecting the competences of the

Austrian regions require the approval – and not just the non-objection – of the second chamber of the Austrian parliament, the Federal Council.

To the extent that the Austrian regions are entitled to conclude treaties (see question 1.1.1), the federal government has to be informed about the negotiations, and full powers of the federal president have to be obtained prior to the commencement of formal negotiations. The conclusion of such treaties requires the approval of the federal government and full powers of the federal president. As these conditions are quite burdensome, no such treaties have been concluded, and the regions prefer to enter into non-legally binding arrangements.

1.2.6. Does the Ministry of Foreign Affairs have delegated competence to conclude less significant treaties on its own, by producing full powers signed by the Minister of Foreign Affairs? If it does, what typically characterises these agreements?

The foreign minister, like all other ministers, may conclude regulation level agreements within her or his sphere of competence, if there is a legal basis for such agreements and if the formal requirements referred to under 1.1.2 are fulfilled.

2. PROCEDURAL ASPECTS

2.1. Procedure before conclusion/signature

2.1.1. What are the procedures required for the conclusion of different categories of treaties? Can a treaty be concluded through a simplified procedure? If yes, please provide a detailed presentation of the circumstances in which such procedures can be applied and describe the procedures.

Treaties requiring parliamentary approval are negotiated, signed and – after parliamentary approval was obtained – concluded with full powers of the federal president based on proposals by the government.

Government agreements (see question 1.1.1) are negotiated, signed and concluded with full powers of the federal chancellor. Ministerial and administrative agreements are negotiated, signed and concluded under the authority (and only if specially requested with formal full powers) of the competent minister.

2.1.2. Do you have a procedure to review the harmonization and compliance of treaties not requiring parliamentary approval with existing national laws? What authority does the review and when?

There is no formal compliance procedure, but – as stated under 1.2.2 – opinions of the office of the legal adviser of the foreign ministry and/or the constitutional law service of the federal chancellery are often sought to assess the status of an agreement.

2.1.3. Do these procedures have one or two phases (before and/or after signature)? Can a treaty enter into force upon signature?

See question 2.1.2. The assessment should be made as early as possible. Treaties and agreements may enter into force upon signature – in the case of treaties requiring parliamentary approval the approval would have to be obtained before. See also question 2.2.2.

2.1.4. Are there any differences in the procedures when considering multilateral vs bilateral treaties?

In the case of the negotiation of multilateral treaties at international conferences, the full powers for participation in the conference usually comprise also the previously announced negotiation of multilateral treaties and adoption of their texts.

2.1.5. Are there certain denominations of treaties, which, according to your domestic law, always imply a treaty in simplified form? (for example, “Memorandum of Understanding”, “Minutes” etc.)

No.

2.1.6. Is the procedure for obtaining the mandate for negotiations differentiated according to different categories of treaties? If yes, how?

See question 2.1.1.

2.1.7. Are the signatories of all categories of treaties required to produce full powers upon signature or just some of them?

See question 2.1.1.

2.1.8. Do you allow for electronic signature of treaties? If so, are there certain requirements concerning what type of electronic signature is acceptable? Do you accept the electronic transmission of treaties instead of the exchange of physical copies? What is the procedure?

No.

2.2. Procedure after conclusion

2.2.1. Does the internal procedure for expressing consent to be bound change based on different categories of treaties (i.e., ratification, approval, acceptance, etc.)? If so, please explain.

For the differentiation of procedures, see question 2.1.1. There is no differentiation in the internal procedures linked to the terminology of “ratification, approval or acceptance”.

2.2.2. Is entry into force of a treaty possible on the date of the signature? If yes, what are the procedural requirements that enable such entry into force?

Under Austrian law, all treaties and agreements need to be published in the Federal Law Gazette, which is a condition for their direct applicability under national law. A treaty entering into force upon signature may be binding under international law, but not applicable under national law. Thus, entry into force without a sufficient delay allowing for publication in the Federal Law Gazette is avoided, if possible.

2.2.3. If entry into force is not possible on the date of the signature, is it possible to use provisional application for an earlier application of such treaty?

In Austria, provisional application is only possible after the completion of all national approval procedures. Thus, a treaty requiring parliamentary approval may only be applied provisionally once such approval has been obtained.

2.3. Form

2.3.1. Do different categories of treaties require specific form when the text is prepared for signature (i.e., printing on treaty paper, sealing, treaty folder)?

No.

2.3.2. Who prepares the text of different categories of treaties for signature?

The treaty office within the office of the legal adviser of the foreign ministry, at least for all treaties requiring parliamentary approval, government agreements and ministerial agreements of the foreign minister.

2.4. Implementation

How are treaties not requiring parliamentary approval implemented in national legislation in order to ensure respect of the principle of *pacta sunt servanda* in accordance with Article 26 of the VCLT?

All such agreements are published in the Federal Law Gazette (see question 2.2.2) and enjoy the status of regulations or – in the case of administrative agreements – the status of internal instructions (see question 1.1.2).

2.5. Publication, Registration and Depository

2.5.1. Do all categories of treaties have to be published?

Yes (see question 2.2.2).

2.5.2. If not, which categories do not need to be published and made available to the general public? Is there room for discretion?

Not applicable.

2.5.3. Which authority decides whether a treaty should not be published?

Not applicable.

2.5.4. Where is each category of treaty published (Official Gazette, website, database, etc.)? In the Federal Law Gazette and in some cases by public display at the authority responsible for the implementation of the treaty.

2.5.5. Which categories of treaties are registered with the UN Secretariat?

Treaties requiring parliamentary approval and, in some cases, also government agreements.

2.5.6. Where are the originals (or certified true copies) of different categories of treaties kept (e.g., MFA, authority responsible for their implementation, state archives)?

Initially in the archives of the authority that proposed the conclusion of the treaty or agreement, mainly the foreign ministry, and after some time in the State Archives.