

CYPRUS

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?

Article 169 (1) of the Constitution of the Republic of Cyprus (RoC) provides that every treaty with a foreign State or any International Organisation, relating to commercial matters, economic co-operation (including payments and credit) and *modus vivendi* shall be concluded only under a decision of the Council of Ministers. A ratifying law is not required with regard to these three categories of treaties.

All other types of treaties, according to Article 169 (2) of the Constitution, are negotiated and signed under a decision of the Council of Ministers and are only operative and binding on the Republic when approved by a law made by the House of Representatives.

- 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?

The classification of the three abovementioned specific categories of treaties, the conclusion of which, under Article 169(1) of the Constitution does not require Parliamentary approval, is based upon their *subject matter*, (as far as treaties relating to commercial matters and economic co-operation are concerned) and on their *scope*, as far as *modus vivendi* treaties are concerned. The latter term is used to describe a treaty which is intended to be temporary, preliminary, provisional or interim between the parties, pending final agreement or settlement.

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

Under Article 169 (3) of the Constitution, all treaties -including treaties not requiring parliamentary approval-, concluded according to the provisions of Article 169 (1) and (2) of the Constitution and published in the Official Gazette, have superior force to any national law (but not EU Law and the Constitution) provided that they are reciprocally applied by the counterparty.

1.2. Competence

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

The government Ministries are mainly responsible for the drafting of the text of all treaties.

- 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 Ministries or governmental departments who draft the treaty have the primary responsibility for such an assessment. The Law Office of the Republic conducts legal vetting of the draft treaty and ensures adherence to the relevant Constitutional provisions and addresses other legal issues that may be raised.

- 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)?

In general, both (a) a Decision of the Council of Ministers and (b) the enactment by the Parliament of a ratifying law are required. Only the aforementioned three categories of treaties

are concluded by decision of the Government (Council of Ministers), without the need for ratification by the Parliament.

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?

The responsibilities of line Ministries include:

1. Investigation by the relevant Ministry of feasibility/usefulness of concluding a bilateral treaty, which is proposed either by the RoC, or by another State or international organization, or to become a party to a multilateral international treaty.
2. Detailed scrutiny of the draft agreement including:
 - (a) Consultation with the Ministry of Finance in order to determine possible financial burdens that the conclusion of the treaty may entail;
 - (b) Consultation with other co-competent Ministries;
 - (c) Examination whether the obligations to be undertaken are compatible with the existing legislation of the RoC or EU law, and whether compliance with these obligations requires implementing measures, legislative or other;
 - (d) Examination whether the submission of reservations by the RoC is required, or interpretative declarations, or objections to reservations or declarations of other parties ((d) applies only to multilateral treaties).
3. Submission of the draft treaty to the Law Office for a preliminary legal vetting.
4. Submission of a proposal to the Council of Ministers by the competent Ministry for a decision of authorization to negotiate the treaty.
5. Negotiation of the treaty by the competent Ministry.
6. The final text is submitted to the Law Office for legal vetting.
7. Submission of a proposal to the Council of Ministers by the competent Minister for approval of the final text of the treaty and authorization of signature, as well as for drafting of a ratifying law.
8. Decision by the Council of Ministers for approval of the final text and authorisation of signature and for the drafting of a ratifying law.
9. Signature by the duly authorised person, (with a 'full powers' document- see also question 2.1.1)
10. Preparation by the competent Ministry of the draft ratifying law.
11. Submission of the draft ratifying law to the Law Office for legal vetting.
12. Submission of a proposal to the Council of Ministers by the competent Minister for approval of the draft ratifying law and for authorization of its submission to the Parliament.
13. Submission by the competent Ministry of the draft ratifying law to the House of Representatives.
14. Enactment by the House of Representatives of a ratifying law.
15. Publication in the Official Gazette.

16. Deposit by the Ministry of Foreign Affairs of the Ratification Document on behalf of the Republic to the depositary of the multilateral treaty or, in the case of a bilateral treaty, exchange of Notes Verbales specifying that the internal ratification procedures have been completed.

17. Registration of a bilateral treaty which has entered into force, with the UN Secretariat, pursuant to Article 102 of the Charter of the United Nations (UN Treaty Series).

As already explained above, a ratifying law is not required with regard to three categories of treaties (relating to commercial matters, economic co-operation and *modus vivendi*), which are concluded under a decision of the Council of Ministers (Article 169 (1) of the Constitution) and acquire as from their publication in the Official Gazette of the Republic superior force to any domestic law, as referred to in 1.1.3 above. Thus, for these treaties, steps 10-14 above do not apply.

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

Not applicable.

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?

No.

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.

2.1.2. Please see 1.2.3 and 1.2.4 above. 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?

The Law Office of the Republic advises the competent Ministries on the harmonization and compliance of treaties with the Constitution and national laws, during the conduct of legal vetting of the treaty and, following its conclusion, of the draft ratifying law.

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

The assessment/vetting takes place before signature. A treaty cannot enter into force upon signature. The treaty will enter into force, subject to the terms of the same, only after its publication in the Official Gazette of the Republic, whereby it becomes operative.

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

No.

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?

No.

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

The signatories of all categories of treaties required to produce full powers upon signature, with the exception of the President of the Republic and the Minister of Foreign Affairs who do not need a 'full powers' in relation to the execution of all acts required for the conclusion of an international agreement.

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?

There is no regulation concerning electronic signature or electronic transmission of treaties. However, this is possible in practice.

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.

Please see 1.1.1., 1.2.3, 1.2.4 and 2.1.1.

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?

No. A treaty cannot enter into force upon signature. The treaty will enter into force, subject to the terms of the same, only after its publication in the Official Gazette of the Republic, whereby it becomes operative.

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?

No provision for provisional application of treaties is included in the Constitution of the RoC.

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 competent Ministry.

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?

(Please see 1.1.3 above) Under Article 169 (3) of the Constitution, all treaties -including treaties not requiring parliamentary approval-, concluded according to the provisions of Article 169 (1) and (2) of the Constitution and published in the Official Gazette, have superior force

to any national law (but not EU Law and the Constitution) provided that they are reciprocally applied by the counterparty.

Moreover, further steps/actions may be taken in order to ensure implementation of the obligations assumed, e.g. amendment of internal legislation where needed or adoption of new implementing legislation.

2.5. Publication, Registration and Depository

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

Yes.

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.)?

All treaties are published in the Official Gazette of the Republic, according to Article 169(3) of the Constitution.

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

All bilateral treaties are registered with the UN Secretariat according to article 102 of the UN Charter.

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)?

At the MFA.