

ESTONIA

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?

Estonian legislation (Foreign Relations Act) differentiates treaties into following categories:

- 1) treaties which need ratification by the parliament,
- 2) treaties concluded on governmental level and
- 3) inter-agency treaties, which are concluded in the competence of ministries and state agencies.

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?

In Estonia, the criteria for the classification into specific categories are subject matter, scope of the treaty and financial effects. The form of the instrument is essential only in case of inter-agency treaties, as inter-agency treaties cannot be concluded by exchange of diplomatic notes.

The Estonian Constitution § 121 regulates, that the Riigikogu (parliament) shall ratify treaties of the Republic of Estonia:

- 1) which alter state boundaries;
- 2) the implementation of which requires the adoption, amendment or repeal of Estonian laws;
- 3) by which the Republic of Estonia joins international organisations or unions;
- 4) by which the Republic of Estonia assumes military or pecuniary obligations;
- 5) in which ratification is prescribed.

In compliance with the principles enshrined in the Estonian Constitution, the parliament has also to ratify such treaties,

- 1) which include directly applicable rules (rights and obligations) to the physical or legal persons in Estonia or
- 2) content of which touches upon issues that have to be regulated, according to Estonian legislation, by laws. Such a case are for example issues of tax exemptions.

On the last mentioned reason all treaties regulating avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have to be ratified by the parliament.

According to the Foreign Relations Act (§ 25 para 1) the treaties shall be amended pursuant to the same procedure as it was concluded unless otherwise prescribed in the treaty. This means that the parliament has to also ratify the amendments to such treaties which it has ratified. There is however an exception, regulated in Foreign Relations Act § 25 para 2, which states that the Government may give consent to an amendment of a treaty ratified by the Riigikogu, if the amendment does not concern the content of the treaty (this means, that the amendment is rather technical) and if on the international level the simplified procedure for entering into force of the amendment is used (meaning that the amendment enters into force on certain day when certain amount of contracting parties are not objecting the amendment). Inter-agency treaties can only be concluded in the competence field of the ministry or state agency. If the scope of the agreement is wider than the competence field of the ministry or state agency, the agreement has to be concluded by the Government.

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

These agreements are internationally fully binding, but in the internal hierarchy of norms, they are below treaties requiring parliamentary approval and below laws adopted by the Parliament.

1.2. Competence

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

The Ministry whose competence field the agreement covers is responsible for drafting the text. Ministry of Foreign Affairs, as the coordinating institution for Estonian international treaties, is often participating in the negotiation process with its expertise.

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 Ministry whose competence field the agreement covers is responsible for the assessment of the legal character and category of the agreement. However, often the Ministry of Foreign Affairs as coordinating institution for Estonian international treaties is included in the assessment process.

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)?

General responsibility for treaty procedures lies with the Government. The Government will send treaties, which require ratification, to 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?

Line ministries are responsible for drafting and negotiating the text of a treaty. The line ministries are responsible for preparing all required documents for internal legal procedures. They need to prepare the internal legal act, explanatory paper thereto, and the translation of the treaty. The line ministries are also responsible for the inter-ministerial consultation process of documents prepared for the internal legal procedures.

The Ministry of Foreign Affairs is the overall coordinating body of international treaties and advises line ministries if specific issues arise concerning international treaty law etc. Line ministries are obliged to involve the Ministry of Foreign Affairs in internal legal procedures. Such obligation is not valid for inter-agency treaties.

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

Estonia does not have autonomous regions/territories.

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?

Estonia does not have such delegated competence.

In Estonia every ministry or state agency has the right to conclude inter-agency treaties if the content of the treaty falls within the competence of that ministry and if there are no legal obligation in the constitution or laws to send the treaty to the Government or Parliament.

However, in certain cases, through the treaty text itself, the Government could give the Ministry of Foreign Affairs the right to amend the treaty by sending to the other Party a Note Verbale. Such kind of treaties are for example treaties on mutual visa representation. Often the treaty text states that amendments on contact points or places where the representation takes place could be amended by the Ministry of Foreign Affairs via diplomatic notes.

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 concluded on the governmental or parliamentary level need to follow certain internal procedure before the treaty can be signed or concluded by exchange of notes. Firstly, the governmental or parliamentary level treaties have to be translated into Estonian. In addition, an internal act approving the treaty text, an explanatory note with a study of the text with regard to needed amendments in internal law and with analyses of the legal, economical as well as other impacts have to be prepared. After the competent Ministry has prepared the act and the explanatory note and the text of the treaty is translated, other ministries have time to comment on the whole package. After closing this phase, the competent Ministry presents the package (internal act approving the treaty, translation of the treaty, explanatory note) to the Ministry of Foreign Affairs with the request to introduce it to the Government for its approval. Sometimes, depending on the content of the treaty, they have to be presented also to the Parliament for ratification (for example, if the treaty which needs ratification enters into force on the date of the signature).

In the case of an inter-agency treaty, the competent Ministry has the right to conclude the treaty without any special procedures.

Using an internal simplified procedure is possible in cases where the Government has given the Ministry of Foreign Affairs through the treaty text the right to amend the treaty by sending exchange of notes. Such kind of treaties are for example treaties on mutual visa representation. Often the treaty text states that amendments on contact points or places where the representation takes place could be amended by the Ministries of Foreign Affairs by exchange of notes.

One kind of an internal simplified procedure is also valid with regards to amendments of treaties ratified by the Parliament (described in point 1.1.2.). Foreign Relations Act § 25 para 2 states that the Government may give consent to amendment of a treaty ratified by the Riigikogu, if the amendment does not concern the content of the treaty (this means, that the amendment is rather technical) and if on the international level the simplified procedure for entering into force of the amendment is used (meaning that the amendment enters into force on certain day when certain amount of contracting parties are not objecting the amendment).

- 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?

Yes, in Estonia every treaty is reviewed with regard to this aspect. The review is done by the line ministry or state agency before signing of the agreement while going through the internal procedures. The review is included in the explanatory note, which is mentioned in point 2.1.1. This review also explains whether the treaty has to be ratified by the Parliament.

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

A treaty has a two-phase procedure for entering into force if it needs parliamentary ratification. Generally, Estonia can sign a treaty after governmental approval. If the treaty does not need ratification by the Parliament, the governmental approval of the treaty text includes also approval for entering into force.

An exceptional case is when the treaty enters into force on signing but needs parliamentary ratification. Then the treaty has to go the Parliament before it can be signed and in such case, governmental approval is not enough.

A treaty can enter into force on the date of signature.

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

There are no differences.

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.)

There are no such denominations in Estonia.

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

There are no different mandates for negotiations.

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

All international treaties need full powers for signature, except if the signatory is the President, Prime Minister or the Ambassador accredited in Estonia.

According to the Foreign Relations Act **§ 17 para 1** a treaty approved by the Government shall be signed *ex officio* on behalf of the Republic of Estonia and without producing full powers by:

- 1) the President of the Republic, the Prime Minister or the Minister of Foreign Affairs, or
- 2) the head of a diplomatic mission who is accredited to the state or the international organisation with which the treaty is concluded.

Estonia is accepting the same exception on full powers also with regards to other States when signing a treaty with Estonia. However, if other State asks full powers from Estonia for signing the treaty by aforementioned officials, Estonia issues the full powers.

Inter-agency treaties do not need any full powers as they are concluded in the competence field of the ministry.

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?

Estonia could accept electronic signature and electronic transmission of treaties if this is done in relations with states with whom the acceptance of digital signatures are harmonized or agreed, for example with Member States of European Union. Estonia follows the levels of e-signature as described in the European Union eIDAS Regulation.

Until now, however, we have had no such exchange or signing.

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.

Inter-agency treaties do not have any special procedure needed for expressing consent to be bound by it.

Treaties on governmental level do not need any additional internal procedures for expressing consent to be bound. The Government gives its approval to apply the treaty already with the approval to sign the treaty. Therefore, Estonia can, after the signature of the treaty notify the

other party or depositary of the treaty of its consent to be bound without any additional internal procedures.

If a treaty needs to go through parliamentary procedure, the consent to be bound can be sent to the other party or depositary only after parliamentary procedures are completed.

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?

The entry into force of a treaty on the date of signature is possible.

Inter-agency treaties do not have any special requirements, except that the ministry or state agency has to be ready to apply the treaty.

The governmental level treaties have to have governmental approval, including full powers for the person who is going to sign the agreement.

When the treaty enters into force on the signature but needs parliamentary consent (i.e. ratification) for entering into force, parliamentary consent has to be acquired before signing.

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?

Yes, Estonian law also allows the provisional application of treaties. The decision on provisional application of treaties is in the competence of the government.

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)?

Inter-agency treaties do not have any specific requirements. Other treaties have specific form (specific treaty paper, treaty folder and specific text formatting).

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

Inter-agency treaties are prepared by the ministries or state agencies. Other treaties are prepared for the signature by the Ministry of Foreign Affairs.

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?

Treaties are binding and need to be followed even if it should appear that they are in contradiction to national legislation. In case the treaty is in contradiction with the national legislation, the laws have to be amended or the treaty has to be denounced, terminated or amended.

2.5. Publication, Registration and Depositary

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

Governmental and parliamentary level treaties have to be published, in accordance with the Foreign Relations Act § 28.

An inter-agency treaty may be unpublished, if so foreseen by the treaty text, in accordance with the Foreign Relations Act § 30.

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?

There is no room for discretion with regards to governmental or parliamentary level treaties. The exception are inter-agency treaties. Inter-agency treaties are published, unless otherwise provided by the inter-agency treaty.

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

As non-publishing is possible only in the case of inter-agency treaties, the decision lies with the ministry or state agency. As noted in point 2.5.1, an inter-agency treaty may be unpublished, if so foreseen by the treaty text.

2.5.4. Where is each category of treaty published (Official Gazette, website, database, etc.)?

Official Gazette (electronic), website of relevant ministries.

Governmental and parliamentary level treaties have to be published in the official State Gazette (*Riigi Teataja*). Texts of treaties which are published in the European Legal Gazette appear in the Estonian State Gazette as a link to the European Legal Gazette.

An inter-agency treaty is published on the website or in the official publication of the relevant state agency or local government unless otherwise provided by the inter-agency treaty.

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

All treaties, except for inter-agency treaties, are registered with the UN Secretariat.

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)?

Originals of inter-agency treaties are kept at the respective ministry or state agency.

All other treaties are kept by the Ministry of Foreign Affairs. Older international treaties, from 1920 to 1940, are kept by the National Archives.

1.