

FINLAND

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?

Answer: Different categories of treaties are not defined in the Constitution or national legislation of Finland as such. However, the procedure of concluding different types of agreements, other than treaties in the sense of Vienna Convention on the Law of Treaties, has been evolved in the treaty practice.

The provisions regarding the conclusion of *treaties* can be found in Chapter 8 of the Constitution of Finland (an unofficial English translation of the Constitution can be found [here](#)). These provisions apply to all treaties and other international obligations, whether they are treaties contained in a single instrument or treaties in simplified form, for example treaties concluded in the form of exchange of notes or treaty amendments by tacit consent/opting out procedure. The President of the Republic (in co-operation with the Government) decides on signing and ratification/approval/acceptance of treaties. In the case of some EU-affiliated treaties, the Government replaces the President as a decision-maker, but this category of treaties will not be dealt with further in this questionnaire. The acceptance of the Parliament is required for such treaties and other international obligations that contain provisions of a legislative nature, are otherwise significant, or otherwise require acceptance by the Parliament under the Constitution (for example treaties containing provisions that bind the budget authority of the Parliament). The acceptance of the Parliament must be obtained before the President of the Republic decides on ratification/approval/acceptance of the treaty. If there is no need for the parliamentary acceptance, the President of the Republic will decide on ratification/approval/acceptance of the treaty after it has been signed.

The Constitution does not contain provisions concerning so-called “*delegated treaties*”, which are treaties that authorities can conclude on behalf of the state or the government on the basis of an express delegation. However, it has been considered in the rationale of the Constitution and in the practice of the Constitutional Law Committee, that competence to conclude a treaty on behalf of the state or the government can be

delegated to state authorities in a limited manner by law. A precondition for this kind of delegation is that the law identifies the recipient of the delegation and restricts the appropriate content of the delegation in sufficient detail and states the subjects of international law with which the recipient of the delegation may conclude a treaty. Typically, delegated treaties concern technical additions to the main treaty. Once the competence to conclude a certain treaty has been delegated to a designated authority, this authority can conclude the treaty in question without the acceptance of the Parliament or the President of the Republic. A delegated treaty is considered to be binding on the state or the government. However, the constitutional status of such a delegated treaty is not always clear. As a rule, such a treaty must be considered a treaty as referred to in the Constitution, but in some cases the difference between such a treaty and a so called international administrative agreement may be unclear.

There is no legislative framework specifically related to *international administrative agreements* in our national legislation. These agreements are not considered to be treaties or other international obligations as referred to in the Constitution, or treaties within the meaning of the Vienna Convention on the Law of Treaties. International administrative agreements can be concluded by the competent authorities on technical and minor issues related to cooperation between the authorities, and they are considered to be binding only on the authorities in question. There is no need for a specific detailed delegation to conclude an international administrative agreement, but the competence to conclude such an agreement may be derived from general provisions concerning the competence of an authority.

Non-legally binding instruments are not considered to be treaties or other international obligations as referred to in the Constitution. These instruments are not dealt with further in this questionnaire.

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?

Answer: See previous answer as regards the criteria for the classification into a specific category. The form of the instrument has no decisive effect on the evaluation of the category of the instrument, and the assessment should be made based on the content of the instrument. However, typically for example treaties concluded in the form of exchange of notes are used in the case of bilateral technical treaties or treaties of no

foreign policy importance or in the context of amending treaties. Usually, these types of less significant treaties do not contain provisions of a legislative nature, or otherwise require acceptance by the Parliament under the Constitution.

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

Answer: Finland adheres to the dualist approach. The Constitution does not specifically define the relationship between the provisions of *treaties* and the national norms of Finland. The Constitution provides that provisions of treaties and other international obligations, in so far as they are of a legislative nature, are brought into force by an Act. Treaties that contain provisions that are of a legislative nature require the acceptance of the Parliament. Provisions of treaties that are not of a legislative nature are brought into force by a Decree. The acceptance of the Parliament is not required if the treaty does not contain provisions of a legislative nature or otherwise require acceptance by the Parliament under the Constitution. The provisions of a treaty that have been brought into force by an Act must be applied in national courts and administrative authorities in the same way as national Acts, and the provisions that have been brought into force by a Decree must be applied in the same way as national Decrees. When applying the statutes, attention must be paid to the principle of human rights friendly interpretation of law so that, when interpreting the statutes, an effort must be made to adopt an interpretation that best promotes the implementation of human rights provisions.

The so-called “*delegated treaties*” should not contain provisions of a legislative nature, and they are in general brought into force by a Decree.

International administrative agreements are not brought into force by an Act or a Decree. The competent authority is responsible for the implementation of the agreement in question.

1.2. Competence

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

Answer: The competent ministry is responsible for drafting and negotiating the instruments described above. The Unit for EU and Treaty Law of the Ministry for Foreign Affairs provides regular training, official statements and ad hoc guidance on drafting, national procedures and legal issues related to all categories of instruments described above.

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?

Answer: The competent ministry is responsible for this assessment. The Unit for EU and Treaty Law of the Ministry for Foreign Affairs provides help and guidance as described above.

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)?

Answer: As described under question 1.1.1, the President of the Republic (in co-operation with the Government) decides on ratification/approval/acceptance of *treaties*. The acceptance of the Parliament is required for such treaties and other international obligations that contain provisions of a legislative nature, are otherwise significant, or otherwise require acceptance by the Parliament under the Constitution. When accepting a treaty, the Parliament gives its consent so that the President of the Republic can then decide on the ratification/approval/acceptance of the treaty.

The competent ministry decides on approval of “*delegated treaties*” and *international administrative agreements*.

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?

Answer: The competent ministry is responsible for conducting the process for all categories of instruments described above. The Unit for EU and Treaty Law of the Ministry for Foreign Affairs provides help and guidance as described above.

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

Answer: The autonomous region of Åland Islands has no competence to conclude treaties referred to in the Constitution on its own. However, under Chapter 9 of the Act on the Autonomy of Åland (an unofficial English translation of the Act can be found [here](#)), the Government of Åland may in certain cases play a role in the negotiations of a treaty, and if a treaty contains provisions which under the said Act concern matters

within the competence of Åland, the Åland Parliament must consent to the statute implementing those provisions in order to have them enter into force in Åland.

- 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?

Answer: No, the Ministry for Foreign Affairs does not have this kind of delegated competence, unless this kind of competence has been delegated to the Ministry by law in sufficient detail (see also answer to question 1.1.1). The Ministry for Foreign Affairs can conclude *international administrative agreements* within the limits of its competence without specific delegation.

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.

Answer: As described under question 1.1.1, the national procedure concerning *treaties* (whether they are traditional treaties contained in a single instrument or treaties in simplified form) is defined in Chapter 8 of the Constitution of Finland. The President (in co-operation with the Government) decides on signing and ratification/approval/acceptance of treaties, and the acceptance of the Parliament is required only for treaties that contain certain kind of provisions as defined in the Constitution. If the treaty in question does not contain these kind of provisions, and the acceptance of the Parliament is not required, the national procedure is considerably simpler and faster since the time-consuming process of drawing up a Government Proposal and the Parliamentary processing are not necessary.

When an authority has delegated competence to conclude so-called “*delegated treaties*”, procedures required for their conclusion are simpler and faster compared to “normal” treaties. As described under question 1.1.1, once the competence to conclude a certain treaty has been delegated to a designated authority by law, this authority can conclude

the treaty in question by its own decision without the acceptance of the Parliament or the President.

As regards *international administrative agreements*, the competent authority decides on signing and approval of the agreement.

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?

Answer: The competent ministry is responsible for reviewing the *treaty* being concluded in relation to national legislation. This review will be performed with other relevant ministries, if needed. As stated above, if the treaty in question contains provisions that are of legislative nature, the acceptance of the Parliament is required, and the national legislation must be harmonized with the provisions of the treaty. If the acceptance of the Parliament is not required, the competent ministry shall review the provisions of the treaty in relation to subordinate legislation, such as Decrees, and they must be harmonized with the provisions of the treaty, if necessary. This also applies to “*delegated treaties*”.

International administrative agreements should only contain provisions concerning technical and minor issues related to cooperation between the parties, so there is usually no need for this kind of review and harmonization.

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

Answer: A *treaty* should not enter into force upon signature. If the acceptance of the Parliament is required, the acceptance will be obtained after the treaty has been signed, and the President of the Republic will decide on ratification/approval/acceptance after the parliamentary acceptance. If the treaty does not require parliamentary acceptance, in most cases the decision of the President of the Republic on ratification/approval/acceptance will be made after the treaty has been signed. In some cases, it is possible that the President of the Republic decides on signing and ratification/approval/acceptance at the same time. Even in these cases, the treaty should not enter into force upon signature, since the treaty has to be implemented into national legislation by a Decree (see also question 1.1.3), which should enter into force at the same time as the treaty. Thus, there should be sufficient time to issue the Decree. This also applies to “*delegated treaties*”.

International administrative agreements can enter into force upon signature.

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

Answer: There are no differences in the procedures when considering multilateral vs bilateral treaties. However, the significance of the treaty in question plays a role when considering the applicable procedure.

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.)

Answer: In our practice, for example treaties concluded in the form of exchange of notes or treaty amendments by tacit consent/opting out procedure are considered treaties in simplified form, even though this is not specified in our domestic legislation. However, the form or the denomination of the instrument does not have an effect on the national procedures, and the assessment of the applicable procedure should be made based on the content of the instrument. In our practice, “Memorandum of Understanding” and “Minutes” usually refer to non-legally binding instruments.

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

Answer: As a rule, a negotiating delegation must be appointed for *treaty* negotiations. The body appointing the delegation (the President of the Republic, the Government or the competent ministry) depends on the significance of the treaty in question and on whether the matter substantially concerns more than one ministry. The President of the Republic decides on the appointment of a delegation when the subject of the negotiations is a significant treaty in terms of foreign and security policy or otherwise important treaty. The government appoints a delegation for negotiations regarding treaties when the matter concerns more than one ministry. If the matter concerns only one ministry in its essential parts, the ministry in question can appoint the delegation. However, it is not necessary to appoint a negotiating delegation for all treaty negotiations, for example less significant ones.

For negotiations concerning “*delegated treaties*” and *international administrative agreements*, a decision on a negotiating delegation is not in principle necessary.

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

Answer: Full powers are required for all *treaties* within the meaning of the Vienna Convention on the Law of Treaties if they are signed (for example treaties concluded in the form of exchange of notes or treaty amendments by tacit consent/opting out procedure are not signed). Full powers are usually not required for “*delegated treaties*” or *international administrative agreements*.

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?

Answer: At the moment, there remain doubts about electronic signatures, as there are no suitable technical methods in place. Physical copies and physical signatures are recommended.

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.

Answer: In our practice, ratification has traditionally been used in connection with the most significant *treaties*, for example treaties that are important in terms of foreign and security policy. The national procedure for ratification, approval and acceptance is the same, but the only difference is that the instrument of ratification is signed by the President of the Republic while instruments of acceptance and approval are signed by the Minister for Foreign Affairs. As regards *international administrative agreements*, consent to be bound is usually expressed by definitive signature.

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?

Answer: See answer under question 2.1.3.

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?

Answer: Yes, provisional application is possible. The Constitution or other legislation do not contain provisions concerning provisional application, but in accordance with

established practice, the President of the Republic decides on provisional application of a treaty. For treaties requiring parliamentary acceptance, the acceptance of the Parliament is needed before the treaty can be applied provisionally.

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)?

Answer: Traditional *treaties* contained in a single instrument are printed on treaty paper and bound in a treaty folder. Treaties can also be sealed in exceptional cases if the partner so request. The requirements concerning “*delegated treaties*” and *international administrative agreement* are less strict, and for example, normal paper can be used for printing.

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

Answer: The competent ministry is responsible for producing the text of all categories of instruments for signature. The Unit for EU and Treaty Law of the Ministry for Foreign Affairs provides help and guidance, as necessary.

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?

Answer: As described under question 1.1.3, *treaties* that do not require parliamentary acceptance are brought into force by a Decree. As stated under question 2.1.2 the provisions of the treaty are reviewed in relation to national legislation, including subordinate legislation such as Decrees, and the legislation must be harmonized with the provisions of the treaty, if necessary. “*Delegated treaties*” are also brought into force by a Decree, and reviewed in relation to national legislation. *International administrative agreements* need not to be implemented in national legislation, since they usually concern technical and minor questions related to cooperation between authorities. The competent authority is responsible for the implementation of the agreement in question

2.5. Publication, Registration and Depository

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

Answer: The *treaties* referred to in the Constitution and “*delegated treaties*” have to be published in the Finnish Treaty Series. In exceptional cases, the publication of the text of the treaty is not necessary. This is possible, when the treaty does not require the acceptance of the Parliament and if the provisions of the treaty are of minor general significance or if there is no need to issue a separate statute for their implementation.

In most cases, *international administrative agreements* are not published in the Finnish Treaty Series or elsewhere, for example ministry websites. However, it is recommended that significant international administrative agreements be published in the Finnish Treaty Series. The text can also be published for example on the ministry website, if the ministry so decides.

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?

Answer: See previous answer.

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

Answer: As stated above, the *treaties* referred to in the Constitution and “*delegated treaties*” should in most cases be published in the Finnish Treaty Series. The assessment on whether the criteria for not publishing the text of the treaty is met, is made by the competent ministry. The competent ministry is also responsible for assessing whether an *international administrative agreement* is significant enough that it should be published in the Treaty Series or for example on the ministry website.

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

Answer: As stated above, the *treaties* referred to in the Constitution and “*delegated treaties*” are published in the Finnish Treaty Series. In most cases *international administrative agreements* are not published at all, but more significant ones can be published in the Treaty Series or for example ministry website.

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

Answer: The *treaties* within the meaning of the Vienna Convention on the Law of Treaties and “*delegated treaties*” should be 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)?

Answer: The *treaties* referred to in the Constitution and “*delegated treaties*” are kept in the archives of the Ministry for Foreign Affairs. *International administrative agreements* are kept in the archives of the competent ministry.