

GREECE

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 36 para. 2 of the Greek Constitution provides that “Conventions on trade, taxation, economic cooperation and participation in international organizations or unions and all others containing concessions for which, according to other provisions of the Constitution, no provision can be made without a statute or which may burden the Greeks individually, shall not be operative without ratification by a statute voted by the Parliament”.¹

On the basis of the above provision, a distinction may be drawn between treaties enumerated therein, for which there is a constitutional requirement for ratification by the Parliament, and all other treaties.

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 criterion for the classification into a specific category under the above-mentioned Article 26 para. 2 of the Constitution relates to the substance of the treaty. In other words, what determines whether a treaty falls within one of the abovementioned categories of treaties requiring parliamentary approval is its subject matter and content, which also includes its financial impact, as “all treaties which may burden the Greeks individually” are subject to ratification by the Parliament.

Unlike the substance, the form of the instrument concerned and its designation are irrelevant for its classification.

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

Article 28 para. 1 of the Constitution provides that “international conventions as of the time they are ratified by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law”.² Treaties not ratified by statute in accordance with Article 28 para. 1 do not prevail over national law.

1.2. Competence

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

There are no general rules providing for the authority responsible for drafting the text of each category of treaty. This is determined on a case-by-case basis depending on the subject

¹ The Constitution of Greece, Article 36 paragraph 2, as translated into English by the Parliament, available at: <https://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma/>

² The Constitution of Greece, Article 28 paragraph 1, op. cit.

matter and the content of the treaty concerned and taking into account the internal distribution of competences between various State authorities.

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 assessment is made by the authorities responsible for the drafting and negotiation of the treaty. The Legal Department of the Ministry of Foreign Affairs is normally consulted.

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)?

For those treaties requiring ratification, the responsibility lies with 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?

During the negotiation process and up to signature, each line Ministry has the responsibility for the treaties falling within its competence. Within this context, line Ministries coordinate with the Ministry of Foreign Affairs which has a general competence for the negotiation and conclusion of international agreements to which the Hellenic Republic is a contracting party. After their signature, all treaties concluded by the Hellenic Republic must be deposited with the International Treaties Office of the Legal Department/ Public International Law Section of the Ministry of Foreign Affairs. The Treaties Office is responsible for promoting and supervising the internal procedures necessary for the ratification of treaties, both bilateral and multilateral, and for their entry into force with respect to the Hellenic Republic.

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?

The President of the Republic, the Prime Minister and the Minister for Foreign Affairs have competence to issue full powers for all categories of treaties, without distinction. In practice, however, full powers for all treaties are issued by the Minister for Foreign Affairs.

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 under the Constitution cannot be concluded through a simplified procedure.

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?

Ministries responsible for the drafting and negotiation of a treaty are also responsible for ensuring their compliance with existing national laws.

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 for which there is no constitutional requirement for parliamentary approval (see above, question 1.1.1.) may enter into force upon signature, if it provides so expressly or it is otherwise established that signature should have that effect (cf. Article 12 VCLT).

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

No. However, multilateral treaties are more likely to fall under Article 36 para. 2 of the Constitution and require ratification by the Parliament.

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. See above, question 1.1.2.

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?

Yes, unless they fall within the categories of persons which, by virtue of Article 7 para. VCLT, are exempted from the obligation to produce full powers.

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.

Treaties falling within one of the categories referred to in Article 36 para. 2 of the Constitution are subject to ratification by the Parliament. However, certain amendments or implementing arrangements, such as agreed minutes, action plans or programmes of cooperation adopted by joint committees or other organs established by treaties ratified by the Parliament may be

approved by a Presidential Decree or Ministerial Decision, provided that the law ratifying the initial treaty provides for this possibility.

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?

See above, 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?

Provisional application of treaties is exceptional. In extremely rare cases, the treaty itself may provide that, pending its entry into force, it will be provisionally applied to the extent that such provisional application is not contrary to the Greek Constitution and law. Provisional application with respect to provisions falling under Article 36 para. 2 of the Constitution is excluded.

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. The same form applies to all treaties. There are certain differences with respect to non-legally binding instruments.

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

This is determined on a case-by-case basis (see above, question 1.2.4.). However, the relevant material (treaty paper and folder, sealing etc.) is provided by the International Treaties Office of the Legal Department/Public International Law Section of 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?

Upon their entry into force in accordance with the terms provided therein, the treaties concluded by Greece produce legal effects in the domestic legal order and must be fully complied with in line with the principle of *pacta sunt servanda*. It is the duty of the negotiators to make sure that the provisions of the treaty are in line with the domestic legislation and can be implemented without any issues. Treaties that are not aligned with the domestic legislation fall under Article 36 para. 2 of the Constitution and are ratified by law, thus acquiring supra legislative legal force.

2.5. Publication, Registration and Depository

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

The Official Government Gazette of the Hellenic Republic publishes all laws ratifying treaties, as well as all relevant presidential decrees and ministerial decisions (see above, question

2.2.1). There is no general provision for the publication of treaties that are not ratified or approved as above.

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?

See above, question 2.5.1.

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

See above, question 2.5.1.

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

See above, question 2.5.1.

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

Bilateral treaties ratified by the Parliament and entered into force.

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)?

As mentioned above (see question 1.2.4.) the originals of the treaties are normally kept with the International Treaties Office of the Legal Department/Public International Law Section of the Ministry of Foreign Affairs.