

HUNGARY

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?

Treaties are in general not categorised based on their denominations, contents or other procedural characteristics. According to the relevant legislation - the Act 50 of 2005 on the procedure regarding international treaties - only legally binding formal agreements are considered treaties under national law, however, categorization or differentiation might be done according to the bodies (Parliament or Government) that approve the particular treaty (give consent for the treaties to be bound for Hungary).

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?

Such distinctive classification is not applied.

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

In case the subject of the treaty falls within the competence of the Government, the treaty will be approved and promulgated by a Government Decree instead of a Parliamentary Act, the "lower-ranking" Government Decree contains a clause expressing the consent to be bound.

Summary of the domestic legal background and procedure:

The procedure of concluding an international treaty is based on the Vienna Convention on the Law of Treaties and in line with Act 50 of 2005 on the procedure regarding international treaties.

1. The Prime Minister gives authorization to negotiate a treaty .
2. The Government gives authorization to the signature of the treaty.
3. Consent to be bound given by the Parliament (ratification):
 - in case the subject of the treaty falls within the competence of the Parliament,
 - by adopting an act, the act contains a clause expressing the consent to be bound by the treaty,
 - after the Parliament gives authorization to consent to be bound the President of Hungary upon the initiation of the Minister for Foreign Affairs issues an instrument of ratification.
4. Consent to be bound given by the Government (approval):
 - in case the subject of the treaty falls within the competence of the Government,
 - by adopting a Government Decree, the Government Decree contains a clause expressing the consent to be bound.

5. Promulgation of the treaties

The promulgating act or government decree contains:

- the authorization to consent to be bound by the treaty,
- the authentic text and Hungarian translation of the treaty,
- the dates of entry into force if it is known at the date of the acceptance of the promulgating act or government decree,
- if the date of the entry into force of the treaty is unknown at the date of the promulgation, the Minister for Foreign Affairs establishes the date of entry into force by a communication published in the Official Gazette.

6. Keeping custody and registration of international treaties:

- the original copies of treaties are kept in the archives of the Ministry of Foreign Affairs and Trade (MFAT), and it keeps a registry of the international treaties concluded by Hungary.

1.2. Competence

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

The competent department of the relevant Ministry according to the subject of the treaty - as defined by the relevant Government Decree about the tasks and competencies of the Members of the Government – conducts the drafting of the text.

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 Department of International Law of the MFAT shall give legal opinion before the signature about the legal nature (legally binding treaty or MoU) of the given agreement, there is no characterization other than that. The Department of International Law examines the content of the text (e.g: whether it establishes international rights and obligations and other factors like the wording and the languages of the text, also the title and name - including official capacity - of the signatories). If the draft of the agreement has been identified as an international treaty, it shall follow the procedure for treaties laid down in Act 50 of 2005.

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)?

Ratification shall be granted by the Parliament, approval shall be given by the Government based on the subject of the treaty.

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 competent Ministry determined by the subject of the treaty bears responsibility through the process - as indicated at point 1.2.2. - for the conclusion of an international agreement. The Department of International Law of the MFAT

- provides preliminary legal opinion,
- does the printing of the final texts,
- arranges the issuance of documents designating a person or persons to represent the State for negotiating, adopting or signing the text of a treaty (full powers),
- arranges the exchange or deposit of instruments of ratification, approval or accession,
- establishes the date of entry into force by a communication published in the Official Gazette,
- the original treaties are kept in custody in the MFAT, and it keeps a registry of the international treaties concluded by Hungary.

In details:

If the draft of the agreement sent by the competent Ministry has been identified as a legally binding treaty by the minister for foreign affairs, it shall follow the procedure for treaties. The Prime Minister shall authorize the drawing up of the treaty upon the joint submission of the minister responsible for the subject of the agreement and the minister for foreign affairs and appoints the person mandated to negotiate. The Government, on the basis of a proposal from the Minister, in agreement with the minister for foreign affairs and the minister for justice, and in exceptional and justified cases, between two meetings of the Government, the Prime Minister, having knowledge of the text of the international treaty established or of the detailed

content of the treaty, shall authorize the finalization of the text of the international treaty and the designation of the person to act in this connection, and shall decide on the tasks necessary to ensure the consistency of the treaty with domestic law. The binding force of an international treaty can be recognized if, in the light of the text of the treaty (if the international treaty falling within the competence of Parliament) the Parliament or if an international treaty not falling within the competence of the Parliament, the Government authorizes so. The minister responsible for foreign affairs shall submit a proposal to the President of Hungary without delay after the adoption of the promulgating act, if the Parliament has given a mandate for the recognition of binding force (or if the Head of State is required by the treaty to recognize that the treaty has binding force on the States Parties). The President of the Republic shall, within five days of receipt of the submission or, if the international treaty is promulgated by law, at the time of its signature, issue an instrument of ratification, to be exchanged or deposited through the minister for foreign affairs. As for the promulgation, an international treaty falling within the functions and powers of the Parliament shall be promulgated by a Parliamentary Act. In other cases, the international treaty shall be promulgated by a Government Decree.

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

Not relevant in the Hungarian legal system.

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 Ministry of Foreign Affairs and Trade has competencies to conclude legally non-binding agreements (exclusively MoU's) in line with the relevant Government Decree about the tasks and competencies of the Members of the Government.

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.

International treaties are concluded in a manner as indicated in points 1.1.3 and 1.2.4. Simplification is only allowed when not the Government, but instead in exceptionally justified cases, the Prime Minister gives authorization to sign the treaty.

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?

An international treaty has to be consistent with the Fundamental Law (constitution) of Hungary, the domestic law, the law of the European Union and other obligations assumed under international law by Hungary. The harmonization shall be ensured by the appropriate modification of the content of the treaty and the possible modification or termination of the internal law and the obligations assumed under European Union law and other treaties. During the preparatory phase, the competent ministry according to the subject of the treaty may involve professional bodies, trade associations and unions or other institutions to collect opinions and ensure the harmonization and compliance of treaties. The promulgating law shall contain the legislative changes and other regulations required to harmonize the obligations between the treaty and national law if need be.

Where the treaties do not require parliamentary approval, the Government shall task in a Government Decree the relevant ministry to ensure that the treaty is consistent with the national law and designates the ministries responsible for the execution of the treaty.

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

International treaties are concluded as indicated in point 1.1.3. Hungary applies the dualistic approach, meaning that there is a difference between national and international law, and when concluding a treaty, it must be incorporated into national law, therefore a legally binding treaty cannot enter into force upon signature. The treaty or a certain part of the treaty can be applied provisionally – according to the provisions of the treaty, until its entry into force – if the body authorized to express the consent to be bound by the treaty approves the provisional application in the promulgating law.

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

There is no difference in the internal procedure. Unlike with bilateral treaties, by definition, in case of multilateral treaties, the depositary shall be notified of the consent to be bound by a treaty by the minister responsible for foreign affairs by the deposition of the ratification/approval instrument.

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.)

“Memorandums of Understanding”, “Minutes”, “Action Plan” etc. do not constitute legally binding international treaties under Hungarian law.

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

No. As for the procedure, Article 7 of the Vienna Convention on the Law of Treaties applies

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

Producing full powers upon signature of an international treaty is necessary as prescribed in the Vienna Convention on the Law of Treaties and in Act 50 of 2005 on the procedure regarding international treaties.

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?

Hungary neither allows for electronic signature nor accepts electronic transmission instead of physical copies.

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.

Ratification shall be granted by the Parliament, approval shall be given by the Government, acceptance is not applied in Hungary.

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?

Hungary applies the dualistic approach, meaning that there is difference between national and international law, and when concluding a treaty, it must be incorporated into national law, therefore a legally binding treaty cannot enter into force upon its signature.

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?

The treaty or a certain part of the treaty can be applied provisionally – according to the provisions of the treaty, until its entry into force – if the body authorized to express the consent to be bound by the treaty approves the provisional application in the promulgating law.

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)?

International treaties are handled uniformly – there is no difference with regard to the the alternation requirement, printing on treaty paper or using treaty folder – however, we do distinguish between international treaties and MoU's by using different folder, ribbon and treaty paper.

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

The text shall be finalized by the competent department of the relevant ministry and shall be forwarded to the Department of International Law of the MFAT for printing.

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?

Consent to be bound will be given by the Government in case the subject of the treaty falls within the competence of the Government by adopting a Government Decree. The Government Decree contains a clause expressing the consent to be bound concerning the national legislation.

2.5. Publication, Registration and Depository

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

International treaties have to be published without exception in the Official Gazette (Magyar Közlöny) of the Ministry of Justice.

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?

Legally binding treaties have to be published without room for discretion.

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

Not relevant, since the publishing is not optional.

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

In the Official Gazette (Magyar Közlöny) of the Ministry of Justice.

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

Treaties concluded by Hungary shall be registered with the UN Secretariat as prescribed in Article 80 subparagraph 1 of the Vienna Convention on the Law of Treaties.

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)?

The original treaties are kept in custody in the archives of the Ministry of Foreign Affairs and Trade, the MFAT keeps a registry of the international treaties concluded by Hungary.