

IRELAND

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: While all international agreements to which Ireland becomes a party are to be laid before Dáil Éireann (the lower house of the national parliament), Ireland’s Constitution distinguishes between three types of international agreement. These are:

- International agreements involving a charge upon public funds
- International agreements not involving a charge upon public funds
- International agreements ‘of a technical and administrative character’ regardless of whether they involve a charge on public funds.

Article 29.5.2° of the Constitution provides that Ireland shall not be bound by an international agreement involving a charge upon public funds without the prior approval of the lower house of parliament.

International agreements not involving a charge on public funds do not require prior parliamentary approval although Article 29.5.1° of the Constitution requires that both types of agreement be laid before the lower house of parliament following entry into force.

International agreements of a *technical and administrative* character, regardless of whether they involve a charge on public funds, are not subject to the requirements of prior approval or of laying before parliament. However, it has been the long-standing practice, in the interests of transparency, to lay such agreements before Dáil Éireann after they have entered into force and to publish them in the Irish Treaty Series (see below).

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: For categories of treaty see above answer to 1.1.1. The form of the instrument does not lead to a different category of treaty – categorisation will depend on the content of the instrument.

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

Answer: Whether a treaty requires parliamentary approval will not affect its place in the internal hierarchy of norms.

1.2. Competence

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

Answer: The negotiation of the text of the treaty is typically a matter for the Government Department with primary responsibility for the policy area or subject matter addressed by that

treaty (i.e. the line Department). This is the case whether or not the treaty requires parliamentary approval.

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 substantive content of specific international agreements will chiefly be a matter for the Government Department negotiating the agreement. However, it is for the Office of the Attorney General to advise, as a matter of constitutional law, whether an agreement is to be understood as involving a charge on public funds and, if so, whether it is to be regarded as being of a technical and administrative character. As noted above, agreements involving a charge on public funds will require the prior approval of Dáil Éireann, unless the agreement is of a technical and administrative character.

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: Under the Irish Constitution, the executive power of the State in or in connection with its external relations may only be exercised by or on authority of the Government (Article 29.4.1°). Signature and ratification of, and accession to, an international agreement are such exercises of the executive power of the State for which Government authority is required. For each international agreement the Minister for Foreign Affairs is responsible for seeking Government authority, albeit on behalf of the Minister with policy responsibility for the subject matter of the agreement.

In addition, as noted above, if an international agreement involves a charge on public funds and if it is not of a technical and administrative nature, it will require the prior approval of Dáil Éireann. This will be a matter for the Minister with policy responsibility for the matters addressed by the agreement. Likewise, if legislation is required to enable the State to meet its future obligations under the agreement that Minister is responsible for taking the necessary Bill through 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?

Answer: Where an international agreement is concerned with a particular policy area, the Minister with primary responsibility for that area will undertake the relevant negotiations in consultation with the Minister for Foreign Affairs. Express Government authority for the conclusion of a treaty at an international conference (i.e. the adoption of its text) is not required unless the treaty represents a significant change in Government policy or affects policy areas that are the responsibility of two or more Ministers.

Following the conclusion of negotiations on any international agreement, the Minister for Foreign Affairs will seek the express authority of the Government for all necessary treaty actions (i.e. signature and ratification or accession) by submission of a memorandum to the Government on behalf of the line Minister with primary subject-matter responsibility.

In cases where the international agreement requires prior parliamentary approval (see. 1.1.1. above), this approval must be obtained by the responsible line Minister. It is also the responsibility of that Minister to determine whether the terms of the agreement require prior enactment of legislation or the adoption of subordinate legislation and, if so, to arrange for these.

Finally, depending on the method by which Ireland is to express its consent to be bound by a particular treaty, either an Instrument of Full Powers or an Instrument of Ratification, Acceptance, Approval and Accession should be executed by the Head of State, Head of Government or Minister for Foreign Affairs. In Irish practice, these instruments are usually executed under the seal and signature of the Minister for Foreign Affairs.

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

Answer: Non-applicable – There are no autonomous regions in Ireland.

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: The Irish system does not categorise treaties for the purposes of internal approval procedures according to their significance (see 1.1.1. above).

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: Ireland understands the term ‘conclusion of a treaty’ to mean, in the context of a multilateral treaty, the adoption of its text at the conclusion of negotiations. In contrast a bilateral treaty is concluded when it is signed by both parties. As set out above (see 1.2.4.) the signature of any treaty on behalf of Ireland requires express Government authority. The conclusion of a multilateral treaty does not require express Government authority, not least because it would be a practical impossibility given the short period between conclusion of negotiations and adoption of the text at a conference. Signature of a multilateral treaty however does require prior Government approval.

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: Before seeking Government authority to ratify or accede to an international agreement, the line Department responsible for negotiating the text of the treaty will seek the advice of the Attorney General, as well as that of the Legal Division of the Department of Foreign Affairs. The purpose of this advice is to determine (i) the compatibility of an international agreement with existing national law; and (ii) whether any implementing legislation will be required to enable Ireland to meet the obligations it will assume under the agreement.

This procedure applies to all treaties, whether or not their terms require the prior approval of Dáil Éireann.

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 may enter into force upon signature, either where the treaty itself provides for this or where it is signed without reservation as to ratification, and where the necessary domestic procedural requirements referred to in the answers above have been met.

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

Answer:

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.)

Answer: No. The use of the term Memorandum of Understanding is typically used to denote a non-legally binding agreement. 'Minutes' may record understandings rather than obligations binding in international law.

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

Answer: No. See answer to question 1.2.3. and 1.2.4.

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

Answer: The President of Ireland, the Taoiseach (Prime Minister) and the Minister for Foreign Affairs enjoy, by virtue of their offices, full powers to sign treaties on behalf of Ireland. For any other person to sign a treaty on behalf of the State he or she must be expressly authorised to do so by an Instrument of Full Powers executed under the seal and signature of one of these office holders. This applies to all categories of treaties in Ireland. The only exception is where, in the case of a bilateral agreement, the other Party waives the requirement for the production of 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?

Answer: 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.

Answer: As noted above, a key issue in Irish treaty practice is whether the treaty involves a charge on public funds. If it does, and if the treaty is not of a technical and administrative character, prior approval must be obtained from Dáil Éireann.

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: Yes, as long as this is not precluded by the text of the treaty concerned and the parties agree that signature will have that effect. Government authority to sign the treaty without reservation as to ratification must be obtained and the necessary constitutional checks carried out to ensure that if the agreement involves a charge on public funds, prior approval from Dáil Éireann must be sought.

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: Pending entry into force, Irish practice allows for an agreement to be applied by or between parties on a provisional basis, subject to some limitations. Provisional application requires express Government authority. In addition, provisional application may require the prior approval of Dáil Éireann if such application will involve a charge on public funds. Finally, to the extent that full application of a treaty may require enactment of domestic legislation, provisional application can only be partial until the necessary legislation is enacted. In that event only those provisions of the treaty capable of being applied without legislation can be provisionally applied.

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: Bilateral agreements in the form of a single instrument are printed on treaty paper and then bound by ribbon in a dark green binder embossed with the State emblem of the harp. Agreements in the form of an exchange of letters or notes are printed on the headed notepaper of the relevant Government Department or Irish diplomatic mission.

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

Answer: In advance of signature, the DFA Treaty Office arranges the printing of treaties in the form of a single instrument on Irish treaty paper and binds it as described above. The Treaty Office will also correctly format texts for printing on headed paper of treaties in the form of an exchange of letters or notes.

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: In the Irish system the prior parliamentary approval of a treaty and the enactment of any legislation necessary for its implementation are distinct and separate questions. As set out above, prior parliamentary approval is required where a treaty involves a charge on public funds. If legislation is necessary to enable the State to meet its obligations under a treaty, this must be enacted in advance of expressing consent to be bound. Accordingly, for a treaty that does not involve a charge on public funds but the implementation of which does require enactment of legislation (by, for instance, the creation of new criminal offences in domestic law), that legislation must be enacted before Ireland expresses its consent to be bound by it.

2.5 Publication, Registration and Depository

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

Answer: As a matter of practice, Ireland publishes all international agreements which have entered into force with respect to the State in the Irish Treaty Series, while simultaneously preparing a notice for Iris Oifigiúil (the official Irish State gazette).

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 above answer to 2.5.1)

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

Answer: (See above answer to 2.5.1)

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

Answer: (See above answer to 2.5.1)

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

Answer: Consistent with Article 102 of the Charter of the United Nations, Ireland registers - or ensures registration of - every bilateral treaty entered into by it with the UN Secretariat.

In the case of multilateral agreements, registration is normally carried out by the depositary.

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 Legal Division of the Department of Foreign Affairs acts as a repository for the original treaty texts or certified copies of all treaties to which the State becomes a party. Once laid before Dáil Éireann and published in the Irish Treaty Series they are sent to the National Archives for safekeeping.