

ITALY

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?

Yes, the Constitution differentiates between treaties for which the ratification issued by the President of the Republic requires a preliminary authorizing law approved by the Parliament and treaties that can be directly ratified by the President without parliamentary approval.

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?

A combination of the above-mentioned criteria is used by the Constitution to enumerate the categories of the treaties requiring a prior authorizing law. According to article 80 of the Constitution, the categories are the following: treaties having political nature, treaties requiring arbitration or legal settlement, treaties entailing border changes and those requiring new expenditure or new legislation.

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

Once the treaties enter into force, there is no difference between those requiring parliamentary authorisation and the others. From a domestic law perspective, there is no formal hierarchy between the treaties.

1.2. Competence

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

There is no distinction between the different categories of treaties in relation to the drafting stage. The negotiation and/or drafting of the text is coordinated by the Ministry of Foreign Affairs, involving other Public Administrations, as necessary.

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 of Foreign Affairs' Legislative Office determines the treaty category in order to ascertain the correct ratification procedure.

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)?

The President of the Republic holds the general authority to ratify treaties. However, if a treaty falls within one of the categories listed under Article 80 of the Constitution, prior parliamentary authorization by law is required. Other treaties, in accordance with international law, may enter into force upon signature without requiring formal ratification.

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 Ministry of Foreign Affairs plays a pivotal role in identifying the appropriate ratification procedure under the Constitution.

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

Under Article 117 of the Italian Constitution, Regions and autonomous provinces can conclude international agreements only within their specific legislative competences. This power is subject to strict Government oversight, requiring prior authorization and the granting of 'full powers' by the Ministry of Foreign Affairs.

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?

Yes, for those agreements which execute or implement pre-existing treaties. While the President of the Republic holds the general power to ratify international treaties pursuant to Article 87 or Article 80 of the Constitution (respectively with or without prior parliamentary authorisation), the Ministry of Foreign Affairs, as well as any other Public Administration duly authorised by the Ministry of Foreign Affairs, can conclude agreements in simplified form. In these cases, treaties enter into force upon signature. The Minister of Foreign Affairs has the authority to issue full powers to other delegated officials.

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.

Three distinct procedures may apply. Treaties falling within the categories listed under Article 80 of the Constitution require prior parliamentary authorization by law, empowering the President of the Republic to ratify the instrument. Other treaties may be ratified directly by the President of the Republic pursuant to Article 87 of the Constitution, provided that the instruments of ratification are countersigned by the Minister of Foreign Affairs. Finally, treaties that serve as mere executive or implementing measures of a pre-existing treaty may enter into force upon signature.

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. An *ex ante* compliance review is coordinated by the Legal Service of the Ministry of Foreign Affairs. This review ensures that treaties not requiring parliamentary approval are fully harmonized with existing national laws. Any international agreement, including those in simplified form, requires the prior authorization of the Minister of Foreign Affairs before signature. This control is exercised through the formal issuance of Full Powers by the Minister to the designated signatory. If the review reveals that a treaty requires amendments to domestic legislation, the simplified procedure is ruled out, and the treaty must instead follow the solemn ratification procedure by the President of the Republic, requiring prior parliamentary authorization.

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

The number of phases depends on the type of procedure. For treaties requiring ratification by the President of the Republic pursuant to Article 87 of the Constitution, the procedure involves two distinct phases (before and after signature). During the second phase, the President of the Republic may exercise constitutional oversight and request a political or legislative reconsideration by Parliament before proceeding with the formal ratification, if deemed necessary. On the other hand, for agreements entering into force upon signature, the review process occurs exclusively in a single phase prior to signature. Therefore, a treaty can enter into force upon signature, provided it does not fall under the categories requiring formal ratification.

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

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.)

No, the *nomen iuris* of the agreement is irrelevant.

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?

The Head of Government and the Minister of Foreign Affairs represent the State ex officio and are inherently exempt from this requirement. All other officials or representatives must be granted full powers to sign any international agreement. However, the formal letters of credence certifying these full powers are physically produced and exchanged only when expressly requested by the counterpart.

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, electronic signature is allowed only for non-binding instruments.

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.

The ratification process changes as described above.

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 upon signature shall be stated in the treaty itself. The Legal Service and the Legislative Office of the Ministry of Foreign Affairs evaluates if the treaty constitutes a mere execution of a provision of an agreement already in force.

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?

Under Italian constitutional law, the provisional application of treaties is not explicitly regulated and is generally considered institutionally inappropriate, particularly for agreements falling under Article 80 of the Constitution, as it could bypass the mandatory scrutiny of the President of the Republic and/or of the Parliament. Consequently, in domestic practice, its application is strongly discouraged.

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, all these elements are required for all categories of treaties.

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

The Legal Service 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?

They may be eventually enacted through administrative regulations or decrees. All treaties must as well be published in the Official Gazette. Furthermore, they are officially registered and made accessible to the public on the online database for international treaties Ministry of Foreign Affairs ([ATRIO](#)).

2.5. Publication, Registration and Depository

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

Yes.

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?

N/A

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

N/A

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

Each treaty is published on the Official Gazette and on the online database ATRIO (www.atrio.esteri.it) of the Legal Service of the Ministry of Foreign Affairs.

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

All treaties are registered with the UN Secretariat except the executive treaties concerning specific projects in the framework of international development cooperation.

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)?

Treaties are kept in the archive of the Legal Service of the Ministry of Foreign Affairs.