

LITHUANIA

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?

In general, in accordance to national legislation of the Republic of Lithuania treaties may be categorised as:

- a) *treaties subject to ratification and*
- b) *treaties for which ratification procedure is not provided in the legislation of the Republic of Lithuania are subject to Governmental approval, except for:*
 - i) *treaties that enter into force upon signature or exchange of letters or if treaty is applicable provisionally;*
 - ii) *treaties concluded by the exchange of diplomatic notes.*

- 1.1.2. What are the criteria for their classification into specific category (subject matter, scope, financial effects, etc.)?

The Constitution of the Republic of Lithuania provides such specific categories of treaties that are subject to ratification:

- 1) *treaties on the alteration of the boundaries of the State of the Republic of Lithuania;*
- 2) *treaties on political co-operation with foreign states; mutual assistance treaties; as well as treaties of a defensive nature related to the defence of the State;*
- 3) *treaties on the renunciation of the use of force or threatening by force; as well as peace treaties;*
- 4) *treaties on the presence and status of the armed forces of the Republic of Lithuania on the territories of foreign states;*
- 5) *treaties on the participation of the Republic of Lithuania in universal international organisations and regional international organisations;*
- 6) *multilateral or long-term economic treaties.*

The Constitution of the Republic of Lithuania also provides that laws, as well as treaties, may also provide for other cases when the Parliament (the Seimas) ratifies treaties of the Republic of Lithuania.

The Law on Treaties provides few additional categories of treaties that are subject to ratification:

- 7) *treaties on the delimitation of exclusive economic zone and continental shelf of the Republic of Lithuania;*
- 8) *treaties on the presence of foreign state army units and their status in the territory of the Republic of Lithuania;*
- 9) *treaties establishing legal norms other than the effective laws of the Republic of Lithuania.*

The Law on Treaties also specifies that long-term economic treaties are those treaties which are concluded for a period longer than 5 years, if they do not provide for the possibility of unilateral termination or the minimum notice for such termination period is longer than one year.

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

Treaties of the Republic of Lithuania not requiring parliamentary approval by the Seimas that have entered into force, or provisionally applicable, shall be binding in the Republic of Lithuania. However, in the internal hierarchy of norms such treaties cannot contradict to the laws adopted by the Seimas.

1.2. COMPETENCE:

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

Competent Ministry or Government institution – the one that will be responsible for the execution of the treaty.

1.2.2. In the process of drafting an international agreement, which authority is responsible for the assessment of the legal character and category of an agreement?

Drafts of treaties prepared by ministries and government institutions are coordinated with other interested ministries and government institutions. In every case it is necessary to coordinate the draft text with the Ministry of Justice and the Ministry of Foreign Affairs.

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)?

Certain categories of treaties (as mentioned above) are subject to ratification by the Parliament. Other treaties are subject to approval by the Government. However, this approval procedure is not applied to treaties signed by the President of the Republic.

As mentioned above, certain treaties, do not require post approval by the Government of the Republic of Lithuania, but their conclusion is subject to “prior” authorisation by the Government, i.e.:

- *The conclusion of treaties of the Republic of Lithuania through the exchange of diplomatic notes, if they enter into force from the day of the exchange of diplomatic notes is entrusted to the Ministry of Foreign Affairs of the Republic of Lithuania by a resolution of the Government of the Republic of Lithuania.*
- *The powers to conclude treaties which are not subject to a ratification procedure, and which enter into force from the date of signing or exchange of letters or are temporarily applied, are granted by the Government of the Republic of Lithuania.*

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?

If there is no decision by the President or the Government of the Republic of Lithuania on the expediency of the conclusion of a treaty, or conclusion of the certain treaty is not foreseen in the strategic policy documents of the Government, then this decision is taken by the Ministry of Foreign Affairs on request by the authority which is responsible for drafting the text of a treaty. Decisions on the expediency of concluding treaties between the European Union and the Republic of Lithuania, as a member state of the European Union, representing one party to a treaty (mixed treaties), are made in accordance with special procedure.

If the decision on the expediency of the conclusion of a treaty is positive, then the authority which is responsible for drafting the text of a treaty has to coordinate the draft text of this treaty with other interested ministries and government institutions. In every case it is necessary to coordinate the draft text with the Ministry of Justice and the Ministry of Foreign Affairs.

Responsible Ministry or Government institution prepares drafts of legal acts involving ratification. These drafts of legal acts have to be coordinated with the Ministry of Justice and the Ministry of Foreign Affairs.

2. PROCEDURE:

2.1. 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.

In every case decisions on the expediency of conclusion of treaties of the Republic of Lithuania shall be taken by the President, the Government of the Republic of Lithuania or the Ministry of Foreign Affairs. If the decision on the expediency of the conclusion of a treaty is positive, then the authority which is responsible for drafting the text of treaty has to coordinate the draft text of treaty with other interested ministries and Government institutions. In every case it is necessary to coordinate the draft text with the Ministry of Justice and the Ministry of Foreign Affairs.

The authority which is responsible for drafting the text of a treaty has to prepare and coordinate legal acts necessary for the full powers (on full powers see point 6 below).

After signature, treaties that are subject to ratification have to be ratified by the Seimas and treaties that are not subject to ratification have to be authenticated by the Government. All drafts of legal acts involving ratification or approval have to be coordinated with competent ministries, including the Ministry of Justice and the Ministry of Foreign Affairs. The legal acts of the Republic of Lithuania do not provide „simplified procedure” to conclude a 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?

Such a review is done when the draft text of the treaty is coordinated with competent ministries.

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

Such a review has to be done before signature. In principle, during the process of interinstitutional coordination it has to be established whether treaty will be subject to ratification or not. According to the Law on International Treaties, the treaty establishing legal norms other than the effective laws of the Republic of Lithuania is subject to ratification. Therefore, review procedure If a treaty is subject to ratification or subject to approval by the Government, such a review should be done in the process of ratification or authentication.

A treaty that is not subject to ratification can enter into force upon signature.

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

In accordance with the Constitution of the Republic of Lithuania multilateral treaties are subject to ratification.

- 2.1.5. Are there certain denominations of international agreements, which, according to your domestic law, always imply a treaty in simplified form according to your domestic law? (e.g., "Memorandum of Understanding", "Minutes" etc.)

In accordance with the legislation of the Republic of Lithuania a treaty means an international agreement concluded between the Republic of Lithuania and foreign states and international organisations in written form and governed by international law, whatever its particular designation and regardless of whether it is embodied in a single instrument or two or more related instruments. There is no provisions of the national law according to which certain denomination of international agreements would imply a treaty in simplified form. In practice, a variety of designations might be applied to agreements, however, a treaty is defined by its content, not by its name. Thought usually for simplified form would be called "agreement" rather than a treaty.

Agreements concluded on behalf of and according to the competence of the ministries or Government institutions or other state institutions of the Republic of Lithuania with the appropriate institutions or organisations of foreign states are not considered as treaties to which the Republic of Lithuania is a party.

In accordance with the legislation of the Republic of Lithuania, international agreements might be concluded on behalf of the Republic of Lithuania or on behalf of the Government of the Republic of Lithuania, which are not classified as treaties and cannot be classified as contracts creating civil legal relations under the national law of the Republic of Lithuania or a foreign state. These international agreements are not considered as treaties under international law.

In accordance with the legislation of the Republic of Lithuania, ministries, governmental institutions and other state institutions may conclude agreements in accordance with their competence with the institutions of other states or international organizations, if these agreements do not contain legally binding obligations for the Government of the Republic of Lithuania, other ministries and Government institutions, they do not contradict the laws of the Republic of Lithuania, other legal acts and international obligations, also if the execution of these agreements does not require additional funds from the state budget of the Republic of Lithuania. These international agreements are also not considered as treaties under international law.

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

The powers to negotiate treaties that are subject to ratification are granted by the President of the Republic of Lithuania based on the submission of the Government of the Republic of Lithuania.

The powers to negotiate treaties that are subject to approval by the Government are granted by the Prime Minister based on the submission of the competent ministry or Government institution with the approval of the Ministry of Foreign Affairs of the Republic of Lithuania.

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

The President, the Prime Minister or the Minister of Foreign Affairs of the Republic of Lithuania shall be entitled, without possessing special powers, to perform all acts relating to the conclusion of treaties of the Republic of Lithuania.

The head of a diplomatic mission of the Republic of Lithuania or the authorised representative of the Republic of Lithuania at an international conference, international organisation or one of its bodies shall be entitled to negotiate the conclusion of a treaty or to approve its text

without possessing special powers for the purpose, accordingly, with the State to which he is accredited or at the international organisation, international conference or one of its bodies. The Permanent Representative of Lithuania to the European Union is entitled to perform all acts in relation to conclusion of the mixed international treaties without possessing special powers for the purpose.

Other persons may perform acts relating to the conclusion of the treaty of the Republic of Lithuania only provided they possess full powers

2.2. AFTER CONCLUSION

2.2.1. How are confirmation procedures differentiated based on different categories of treaties (government ratification/approval/acceptance)?

Categories of treaties subject ratification are listed in the Constitution and the Law on Treaties. Other treaties are subject to Governmental approval with the exemptions mentioned in point 1 chapter Distinction.

2.2.2. Is entry into force of a treaty possible on the date of their signature? If yes, what are the procedural requirements that enable such entry into force?

It is possible for treaties which are not subject to ratification. It might be done in usual form of a treaty or through the exchange of letters or diplomatic notes.

The conclusion of treaties of the Republic of Lithuania through the exchange of diplomatic notes, if they enter into force from the day of the exchange of diplomatic notes is entrusted to the Ministry of Foreign Affairs of the Republic of Lithuania by a resolution of the Government of the Republic of Lithuania.

The powers to conclude treaties which are not subject to a ratification procedure, and which enter into force from the date of signing or exchange of letters or are temporarily applied, are granted by the Government of the Republic of Lithuania.

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 a treaty is possible to the extent that it does not conflict with legal acts in force in the Republic of Lithuania.

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)?

All treaties have the same form requirements.

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

The authority which is responsible for drafting the text of a treaty and the Ministry of Foreign Affairs.

2.4. IMPLEMENTATION

2.4.1. 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?

The principle of pacta sunt servanda is incorporated in the legal system of the Republic of Lithuania.

Besides that, the Law on Treaties provides that if a law or any other legal act has to be passed for the purpose of implementation of a treaty of the Republic of Lithuania, the Government of the Republic of Lithuania shall submit to the Seimas according to the established procedure a draft of the appropriate law or shall adopt an appropriate resolution of the Government or ensure according to its competence the passing of another legal act.

Some other laws and legal acts of the Republic of Lithuania (e.g. the Civil Code) provide a norm, which gives preference to treaties in relation to other laws. Such a norm is usually applied to all treaties of the Republic of Lithuania regardless of whether they are ratified, though in few cases legislation provides preference only to ratified treaties.

2.5. PUBLICATION, REGISTRATION AND DEPOSITORY

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

Yes. With the exception of treaties of the European Union and the Republic of Lithuania, as a member state of the European Union, representing one party to a treaty, which are published in the Lithuanian language in the Official Journal of the European Union.

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?

Not applicable

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

Not applicable

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

From 1 January 2014 legal acts are published on the website of the Register of Legal Acts www.e-tar.lt. Publication in the Register of Legal Acts is considered the official publication of a legal act. Before 2014 treaties were published in Official Gazette „Valstybės žinios“.

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

Law on Treaties provides that after the entry into force treaties of the Republic of Lithuania shall be transmitted by the Ministry of Foreign Affairs of the Republic of Lithuania to the Secretariat of the United Nations for registration.

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)?

MFA diplomatic archives.