

NORWAY

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?

Under Article 28 of the Norwegian Constitution, decisions on matters of importance must be made by the King in the Council of State and may not be delegated. Any decision to conclude a treaty that is regarded as a matter of importance must be made by royal decree (a decision in the Council of State, i.e. all the members of the Government, presided over by the King.).

It follows from Article 26, second paragraph, of the Constitution that certain treaties require the consent of the Storting (Norwegian parliament) before they can become legally binding. This applies to treaties on “matters of special importance” and to treaties whose implementation necessitates a new law or a decision by the Storting, typically a decision of budgetary character.

Less important treaties may be concluded by the Secretary General of the Ministry of Foreign Affairs, who will be provided with Full Powers signed by the Minister of Foreign Affairs.

It is normal practice for grant management agreements to be concluded through simplified and less formal procedures, and they are signed without the production of Full Powers signed by the Minister of Foreign Affairs.

- 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?

Assessments of which treaties are matters of importance must be made on a case-to-case basis, and decisions must be made by royal decree under Article 28 of the Norwegian Constitution. Constitutional practice is relevant to such assessments.

Treaties on “matters of special importance” or whose implementation necessitates a new law or a decision by the Storting require the consent of the Storting before they can become legally binding. A decision by the Storting will typically be a budgetary decision, i.e. on the allocation of funds. The Constitution provides no further guidance as to what is meant by ‘treaties on matters of special importance’. When determining whether or not the Storting’s consent is needed, we rely on constitutional practice.

Competence to conclude less important treaties may be delegated to the Secretary General of the Ministry of Foreign Affairs, who will be provided with Full Powers signed by the Minister of Foreign Affairs.

A decision on ratification or accession must be made by royal decree, because an instrument of ratification or accession must be signed by the King as Head of State.

Competence to make a decision on acceptance or approval may be delegated to the Secretary General of the Ministry of Foreign Affairs. The instrument of acceptance or approval is signed by the Foreign Minister.

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

All treaties are binding according to international law, regardless of how they are concluded. Treaties not requiring parliamentary approval have the same legal status as those requiring parliamentary approval.

1.2. Competence

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

The line ministries in Norway are normally responsible for negotiation and drafting of treaty texts which fall within their areas of responsibility. The Ministry of Foreign Affairs may be consulted, and is involved directly in negotiations on more important or wide-ranging treaties.

Tax agreements are always drafted by the Ministry of Finance.

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 relevant ministry or ministries make an initial legal assessment of the text. The Ministry of Foreign Affairs may be consulted about the legal status of the document and other legal questions related to the text. The Ministry of Foreign Affairs makes final decisions on the legal category to which treaties belong, for instance whether they are legally binding or non-binding documents.

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 Government has the overall responsibility for concluding treaties under Article 26 of the Norwegian Constitution. Under Article 28 of the Constitution, decisions on matters of importance must be made by the King in the Council of State. Many treaties are considered to be matters of importance.

Treaties on "matters of special importance" or whose implementation necessitates a new law or a decision by the Storting, typically a decision of budgetary character, also require parliamentary approval before they can become legally binding.

Less important treaties may be concluded by the Secretary General of the Ministry of Foreign Affairs, who will be provided with Full Powers signed by the Minister of Foreign Affairs.

The Ministry of Foreign Affairs is the ministry generally responsible for the conclusion of treaties. The Ministry submits royal decrees to the King in Council and propositions to the Storting on conclusion of treaties on behalf of other ministries. If a treaty requires the enactment of a new law, it is possible to combine a bill proposing the new legislation and a recommendation for consent to the treaty in one proposition submitted to the Storting by the relevant ministry.

An internal decision to conclude a treaty (ratify, accept, approve or accede to it) after the Storting has given its consent is made by the King in Council. The Ministry of Foreign Affairs normally submits the necessary royal decree.

The Ministry of Finance is responsible for tax agreements and submits royal decrees to the King in Council and propositions to the Storting on consent to the conclusion of such agreements.

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?

Line ministries are responsible for drafting decisions on the conclusion of treaties for the Ministry of Foreign Affairs. They also draft the necessary propositions to the Storting. The Ministry of Foreign Affairs submits the documents on the conclusion of treaties to the King in Council and the Storting.

The line ministries are responsible for having treaty texts translated into Norwegian.

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

There are no Norwegian territories or dependencies that have the competence to conclude treaties on their own.

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 Secretary General of the Ministry of Foreign Affairs has delegated competence to conclude less significant treaties. Full Powers for such treaties are signed by the Minister of Foreign Affairs.

According to Norwegian practice, less significant treaties include amendments to free trade agreements, amendments to the Schengen Agreement, amendments to the rules of the Universal Postal Union, security agreements and other minor treaties and treaty amendments in general.

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.

Generally, the internal procedure for the conclusion of treaties in Norway is the same for any category of treaty. However, decisions on ratification or accession must be made by the King in Council because an instrument of ratification or accession must be signed by the King as Head of State.

The procedure for concluding an exchange of notes or exchange of letters is the same as for other treaties.

Grant management agreements are concluded through simplified and less formal procedures. Grant management agreements are also signed without the production of Full Powers.

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?

The relevant ministry must assess whether a new treaty in its area of responsibility will require a new law. In this respect there is no difference between treaties that require parliamentary approval and those that do not.

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

An assessment of whether a treaty necessitates a new law or a decision by the Storting must be made before it is signed.

It is possible for a treaty to enter into force on the date of signature, provided that the necessary internal decisions have been made and the constitutional requirements are met before it is signed. New laws must be in force when the treaty enters into force for Norway.

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

Norway has the same procedures for concluding multilateral and bilateral treaties.

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.)

There are no denominations of treaties in Norwegian domestic law that imply a treaty in simplified form.

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

For treaties of special importance, the mandate for negotiations is decided by the government. The mandate for negotiations on less important treaties is decided by a line ministry or the Ministry of Foreign Affairs. No specific mandate is formulated for negotiations on treaties of minor importance.

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

Full Powers must be produced for the signing of all legally binding treaties at governmental level with the exception of grant management agreements. Normal practice is for these to be signed without the production of Full Powers.

Full Powers are not required for an exchange of letters or exchange of notes.

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?

Norway does not currently allow for electronic signature of treaties. Electronic signature would require internal authorisation according to the internal security rules.

Norway prefers physical copies of treaties for archiving in the treaty archive. An electronic version is used if it is not possible to obtain a physical copy.

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.

Once the Storting's consent to be bound by a treaty has been obtained, the decision on ratification, acceptance, approval or accession is always made by the King in Council.

A decision on ratification or accession must be made by the King in Council even if the Storting's consent is not necessary. This is because instruments of ratification or accession must be signed by the King, and this requires a prior decision by the King in Council.

A decision on acceptance or approval of a treaty not requiring parliamentary approval may be made by the King in Council or by the Secretary General of the Ministry of Foreign Affairs, who has delegated competence.

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?

Entry into force of a treaty on the date of the signature is possible, provided that the necessary internal decisions have been made and the constitutional requirements are met before it is signed.

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?

Norway could provisionally apply a treaty if the constitutional requirements are met in advance.

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 bilateral treaties and treaties without a depositary are printed on Norwegian treaty paper and ribboned into Norwegian treaty binders.

Treaties concluded in the form of an exchange of letters or exchange of notes are printed on normal paper with the emblem of the Ministry of Foreign Affairs or embassy.

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

Line ministries are responsible for drafting decisions on the conclusion of treaties and treaty texts in their area of responsibility for the Ministry of Foreign Affairs. The adopted treaty texts are sent to the Ministry of Foreign Affairs, which is responsible for decisions on their conclusion and for printing and the preparation of treaty binders.

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?

Treaties not requiring parliamentary approval are implemented internally in the same way as other treaties. The relevant line ministries are responsible for the implementation of treaties in their areas, irrespective of whether parliamentary approval is required.

2.5. Publication, Registration and Depositary

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

All international treaties are published in the Norwegian treaty register, online (lovdata.no) and in the publication *Overenskomster med fremmede stater*. The Unit for Treaties and Documentation of the Ministry of Foreign Affairs is responsible for the publication and registration of treaties. The line ministries are responsible for providing relevant information and for having treaties translated into Norwegian.

The Storting also receives an annual communication on all treaties concluded in the course of a year, including the full texts both in the original language and in Norwegian translation.

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?

All ordinary treaties concluded by the Government must be published and made available to the general public. This means publication of the full text in one original language, generally English, and the Norwegian translation.

According to internal practice, Joint Committee decisions on amendments to the EFTA free trade agreements are not registered. Nor are IMO committee decisions adopted by silent procedure.

In addition, grant management agreements at governmental level are according to internal practice not published. However, as a general rule grant management agreements are concluded at ministry level in Norway.

Agreements concluded at departmental level are not registered and published.

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

All ordinary treaties at governmental level are published, except for grant management agreements. As mentioned above, grant management agreements are generally concluded at ministry level, not at governmental level. The Treaty Section in the Ministry of Foreign Affairs is responsible for publication and for deciding whether or not a treaty should be published.

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

The full text of all treaties at governmental level regulated by international law is registered and published online in the Norwegian treaty register.

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

The most important treaties and treaties for which Norway is a depositary are registered with the UN Secretariat. Important treaties are typically border treaties and bilateral oil and gas treaties.

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 archived in the Treaty Section of the Ministry of Foreign Affairs.