

POLAND

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?

Polish legislation does differentiate between different categories of treaties.

In broadest terms, they are categorised as follows: (1) treaties requiring ratification (or ratified treaties) and (2) treaties requiring approval. Only the first category of treaties is a source of universally binding law in Poland.

The first category is further divided into (1a) treaties ratification of which requires prior consent granted by statute (i.e. parliamentary approval) and (1b) treaties ratification of which does not require consent granted by statute.

Under Polish law, treaties are ratified by the Head of State, i.e. by the President of the Republic of Poland.

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?

According to Article 89 para 1 of the Polish Constitution, ratification of a treaty by the Republic of Poland shall require prior consent granted by statute – if such a treaty concerns: (1) peace, alliances, political or military treaties; (2) freedoms, rights or obligations of citizens, as specified in the Constitution; (3) the Republic of Poland's membership in an international organisation; (4) considerable financial responsibilities imposed on the State; (5) matters regulated by statute or those in respect of which the Constitution requires the form of a statute. While Article 89 (2) of the Constitution refers to the category of treaties whose ratification does not require consent granted by statute, it does not provide any additional criteria with regard to these kind of treaties.

On the other hand, means of expressing consent to be bound by a treaty does not have decisive role for the classification of a treaty from the perspective of the domestic procedure. Similarly, the form of the instrument does not have bearing on the type of the domestic procedure to be applied. It is only the content – especially in the meaning of Article 89 para. 1 of the Polish Constitution – that matters.

Furthermore, Article 89 (2) of the Constitution indicates the category of treaties whose ratification does not require consent granted by statute, without stating any criteria of categorisation thereof;

Article 13 of the International Agreements Act of 14 April 2000 (Journal of Laws of 2020, item 127) provides an indicative list of treaties which do not require ratification. These are for example situations when a treaty has executive character to the main treaty or the statute authorizes the conclusion of a treaty.

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

Treaties whose ratification does not require consent granted by statute are a source of universally binding law of the Republic of Poland, but – as opposed to treaties requiring such consent – they do not enjoy precedence over statutes if such a treaty cannot be reconciled

with the provisions of such statutes. Nevertheless, they do enjoy precedence over legal acts issued by central State organs (including regulations).

Other treaties (i.e. treaties not requiring ratification or non-ratified treaties) are not a source of universally binding law of the Republic of Poland and do not enjoy precedence over legal provisions issued by central State organs, although they must be respected both internationally (*pacta sunt servanda*) and internally.

1.2. Competence

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

Minister managing the department of government administration competent for the matters covered by the treaty or head of the central government administration body competent for the matters covered by the treaty ("Competent authority") are the authorities responsible for drafting the text of all categories of treaties.

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?

Competent authority which is additionally aided by the Legal and Treaty Department of 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)?

President of the Republic of Poland ratifies the treaties (both those that require prior consent granted by statute and those that don't). Other treaties are approved by the Council of Ministers.

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?

Competent authority, after consultations, submits an application for the consent for initiating the negotiations of a treaty. Consent is given by the Prime Minister. After finalising negotiations competent authority, after consultations, submits an application to the Council of Ministers for a consent to sign the treaty.

Subsequently, competent authority, after consultation, submits to the Council of Ministers, through the Minister of Foreign Affairs, an application for ratification or approval of the treaty

Minister of Foreign Affairs submits the treaty to the President of the Republic of Poland for ratification.

The submission of a treaty to the President of the Republic of Poland for ratification shall be performed after obtaining the consent referred to in Article 89 para 1 and Article 90 of the Constitution of the Republic of Poland or after the notification to the Sejm of the Republic of Poland, referred to in Article 89 para 2 of the Constitution of the Republic of Poland.

If, within 30 days from the date of the notification, the Lower Chamber of the Parliament of the Republic of Poland opposes the procedure chosen under Article 89 para 2 of the Constitution of the Republic of Poland, the Council of Ministers shall express its position on the matter.

After the ratification of the treaty by the President of the Republic of Poland, the Minister of Foreign Affairs notifies the other party to the treaty through diplomatic channels, and in the case of a multilateral agreement of the depositary of the agreement, about the ratification.

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

In the Republic of Poland there are no autonomous regions/territories. Local governments have not been granted any competence for the conclusion of a treaty.

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?

Minister of Foreign Affairs has no delegated competence to conclude less significant treaties.

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.

The standard (not simplified) Polish treaty procedure consists of two steps:

1. PM's consent to negotiation,
2. Consent of the Council of Ministers to sign a treaty (or to exchange the notes etc.)

Simplified procedure – in some cases, the treaties not requiring ratification can be concluded in simplified procedure. It means that the consent of the Council of Ministers to sign the treaty constitutes also the approval of the treaty. The simplified procedure can be applied in particular in following cases (Article 13 par. 2 of the International Agreements Act of 14 April 2000):

1. the statute authorizes the conclusion of a treaty in this way, and the concluded treaty does not violate the provisions of that statute, or
2. the concluded treaty constitutes an implementing one to the treaty in force and does not fulfil the conditions of the great or big ratification, or
3. the purpose of a treaty is to amend an existing one, including an appendix hereto, and that change does not fulfil the conditions of the great or big ratification, or
4. it is required by other special circumstances, and the treaty does not fulfil the conditions of the so called "great" or "big" ratification.

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?

All treaties are reviewed the harmonization and compliance with existing national laws. However, there is no specific or special procedure to that effect. Every step of the Polish procedure is preceded by the internal consultation of the treaty with the ministers whose competences the treaty might affect and with the whole Council of Ministers in a later stage (i.a. when granting a consent to sign a treaty or granting a consent for an approval or submission to the ratification).

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

See above.

The treaties that are concluded in a simplified procedure (combining granting a consent to sign it and its approval) can enter into force upon signature.

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

There are no differences in the Polish procedure when considering multilateral vs 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 such denominations. The denomination of the document does not affect its legal status, f.e. a "MoU" may possibly constitute a treaty and an "agreement" may constitute a non-legally binding document. However, in accordance with the contemporary Polish treaty practice denominations like "minutes", "MoU", "arrangement" etc. are used to the non-legally binding documents only.

Historically speaking, under the law governing the Polish internal procedures of 1968 – there were regulations that attached e.g. ratification procedure to 'treaties' (as opposed to e.g. 'agreements'). This is, however, as explained above, no longer the case.

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

The procedure for obtaining the mandate for negotiations is the same for all categories of treaties. It is granted by the PM, who at the same time accepts the negotiating instruction for the Polish delegation.

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

All signatories are required to produce full powers upon signature unless the person signing is one of the Troika (President, Prime Minister, Minister of Foreign Affairs).

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?

Polish internal law – Act of 14 April 2000 on International Treaties – does not allow electronic signature of treaties.

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.

Pursuant to 12 sec. 1 of the Act on international agreements (Journal of Laws of 2020, item 127), in order for Poland to be bound by an international agreement, it is required to obtain consent expressed by ratification by the President or by approval by the Prime Minister.

The international agreements referred to in Art. 89 sec.1 and art. 90 of the Constitution of the Republic of Poland (Journal of Laws 1997, No. 78, item 483), and other international agreements that require or allow for ratification, and special circumstances justify it - are subject to ratification.

Article 89 states:

1. Ratification by the Republic of Poland of an international agreement and its termination requires the prior consent expressed in the Act, if the agreement refers to:

- 1) peace, alliances, political arrangements or military agreements,
- 2) civic freedoms, rights or duties specified in the Constitution,
- 3) membership of the Republic of Poland in an international organization,
- 4) significant financial burden on the state,
- 5) matters regulated by an act or where the Constitution requires an act.

2. The intention to submit to the President of the Republic for ratification international agreements, the ratification of which does not require the consent expressed in the Act, the Prime Minister shall notify the Lower House of Parliament.

Article 90 states:

1. The Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters.
2. A statute, granting consent for ratification of an international agreement referred to in para.1, shall be passed by the Sejm by a two-thirds majority vote in the presence of at least half of the statutory number of Deputies, and by the Senate by a two-thirds majority vote in the presence of at least half of the statutory number of Senators.
3. Granting of consent for ratification of such agreement may also be passed by a nationwide referendum in accordance with the provisions of Article 125.
4. Any resolution in respect of the choice of procedure for granting consent to ratification shall be taken by the Sejm by an absolute majority vote taken in the presence of at least half of the statutory number of Deputies.

The international agreements referred to in Art. 89 sec.1 and art. 90 of the Constitution of the Republic of Poland (Journal of Laws of 1997, No. 78, item 483), and the legal acts of the European Union referred to in Art. 48 sec. 6 of the Treaty on European Union and in Art. 25, art. 218 paragraph. 8, second paragraph, second sentence, Art. 223 paragraph. 1, art. 262 or article. 311, third paragraph, of the Treaty on the Functioning of the European Union - are also subject to ratification.

An international agreement that is not subject to ratification, requires approval by the Council of Ministers. In line with Article 13 (1) of the Act this may occur in particular when:

- 1) the law authorizes the conclusion of an international agreement in this way, and the concluded international agreement does not violate the provisions of the authorizing act, or
- 2) the international agreement is implementing in relation to the international agreement in force and does not fulfil the conditions set out in Art. 89 sec. 1 or art. 90 of the Constitution of the Republic of Poland, or
- 3) the purpose of an international agreement is to amend an existing agreement, incl. of an annex to it, and the amendment of an international agreement or annex does not fulfil the conditions set out in Art. 89 sec. 1 or art. 90 of the Constitution of the Republic of Poland, or
- 4) it is required by other special circumstances and an international agreement does not fulfil the conditions set out in Art. 89 sec. 1 or art. 90 of the Constitution of the Republic of Poland.

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?

Yes it is possible, when the treaty does not fulfil prerequisites for ratification. In such a situation the consent for conclusion of such a treaty is given by the Council of Ministers.

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?

In Poland there are no law expressly providing for the provisional application of treaties. Hence, in practice, provisional application is only possible after the completion of all national approval procedures.

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)?

Poland uses:

- specific treaty paper for all kind treaties and
- specific MoU paper for all kind of MoUs
- specific type of treaty folder for all kind of treaties and for MoU
- specific lack seal (only in case when both signatories of the treaty are sealing it)

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

All texts of all categories (so called "hard copies") are prepared and printed by the Treaty and Archives Division, which forms part of the Legal and Treaty Department of the Ministry of Foreign Affairs of the Republic of Poland.

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?

All treaties not requiring parliamentary approval have to be published by the Prime Minister on a request of the competent authority. In this case, such a publication is made without delay together with all the governmental announcements relating to it in the Official Journal of the Republic of Poland "Monitor Polski". Their implementation is supervised by competent authority.

By law, every treaty (including treaties not requiring parliamentary approval) has assigned ministry that is responsible for its implementation.

2.5. Publication, Registration and Depository

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

Polish legal system generally requires all treaties to be published. It also differentiates between two types of treaties with different procedures applying depending on the type of treaty in question.

First, the treaties which are subject to ratification as well as the treaties that implement or change the pre-existing treaty, which was subject to ratification, have to be published without delay, together with the governmental announcements relating to it, in the Official Journal of the Republic of Poland "Dziennik Ustaw" as specified in the Act on International Treaties. The Act on International Treaties further envisages that the publication of such a treaty shall be ordered by the President of the Republic of Poland on a request of the minister competent for foreign affairs.

Second, all other treaties than those mentioned above have to be published by the Prime Minister on a request of the minister in charge of a department of the governmental administration competent for matters regulated by the treaty as specified in the Act on International Treaties. In this case, such a publication is made without delay together with all the governmental announcements relating to it in the Official Journal of the Republic of Poland "Monitor Polski".

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?

Pursuant to the Act on International Treaties, the President of the Republic of Poland or the Prime Minister respectively, may, in justified cases, dispense with the publication of an annex or other document attached to a treaty in *Dziennik Ustaw* or in *Monitor Polski*, if such annex or document contains detailed provisions of a technical character, not requiring statutory regulation, referring to a small number of subjects and not concerning the rights of the citizens. In such cases, the governmental announcement, published together with the treaty in *Dziennik Ustaw* or in *Monitor Polski*, shall contain information on access to or publication of the text of the annex or document. In practice, nowadays, this procedure is not utilized.

There is also additional possibility for the non-publication of a treaty which is elaborated on in point 2.5.3 below.

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

Pursuant to Act on International Treaties, in exceptional cases, when required by essential interests of the State such as, in particular, the interests of defence, security of the State and the citizens, the Prime Minister, on a request of the minister in charge of a department of the governmental administration competent for matters regulated by a treaty, may decide not to publish the treaty in *Monitor Polski* as specified in the Act on International Treaties.

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

The ratified treaties as well as those treaties that implement or change the pre-existing treaty, which was the subject of ratification, have to be published in the Official Journal of the Republic of Poland "*Dziennik Ustaw*". The other types of treaties have to be published in the Official Journal of the Republic of Poland "*Monitor Polski*". These publications are available online.

Also, the Legal and Treaty Department of the Ministry of Foreign Affairs maintains an online database of treaties which Poland has been party to. However, this database does not constitute an official gazette and, consequently, any publications in the database are of informative nature.

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

Pursuant to the Constitution of the Republic of Poland, the UN Charter constitutes a part of the Polish legal system. Accordingly, the Republic of Poland registers "*every treaty and every international agreement*" which enters into force with respect to Poland.

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)?

All treaty documentation including the original versions of documents are kept in the Treaty Archive, which forms part of the Polish Ministry of Foreign Affairs, as specified in the Regulation of the Council of Ministers on the Implementation of Certain Provisions of the Act on International Treaties as well as in the Ordinance of the Minister of Foreign Affairs on the granting of organisation regulations to the Ministry of Foreign Affairs.