

## ALBANIA

### A. SUBSTANTIVE ASPECTS

#### I. Definitions

1. In your practice, do you use the term “non-legally binding agreement”? If so, how do you define it?

*The term non-legally binding agreement is used/ recognized in Albanian practice of concluding agreements. According to the Albanian law on treaties as such are defined instruments as joint statements/declarations, Letter of intention, MoU that do not set up legal obligations. If such agreements do not have budgetary implications and do not create legal obligations, they can be defined as non-legally binding agreements.*

*The procedure of concluding a non legally binding agreement is the same as other legally binding , with the only difference of its entry into force. Such agreements enter into force with the signature.*

2. If not, what term do you use instead (e.g. arrangements) and how do you define it?

*These documents are not referred to as „non legally binding agreement “, but as a MoU, Joint Declaration, Exchanges of Notes, letter of intent, arrangements. Those instruments are defined as non legally binding by the intention of the parties not to establishing legal obligations, the language and the context used and the explanation given in to the document.*

3. Do you consider "Memoranda of Understanding" to be legally binding or non-legally binding instruments? Or can they be both?

*In the Albanian-practice the title of the document is not determinative to consider a document as binding or non legally binding document. MoU can be both legally biding or non-binding agreements.*

#### II. Distinction

4. How do you differentiate between treaties, international civil law contracts and non-legally binding agreements?

- *A treaty is an instrument concluded between the subjects of international law (a states, a state agency or international organization). A treaty is a legally binding instrument governed by international law and the domestic legislation concerning the process of concluding international agreements.*
- *An international civil law contract is a legally binding document that involve private sector, in more than one state and one or more foreign legal system.*
- *non legally binding agreements are also instruments concluded between the subjects of international law (a states, a state agency or international organization) that doesn't create legal obligations, which have the intention to have political weight.*

5. In your view, is there one (or multiple) essential element(s) typically qualifying an agreement as non-legally binding? If so, which one(s)?

*At my view I think that the main element that determinate an agreement as a non-legally binding document, is the intention of both parties not to established legal obligations by concluding an agreement. Another element to be considered on qualifying an agreement as non-legally binding is the non-governance of these documents by international law, not*

referring the dispute to a third party for adjudication, or the procedure of the entry into force.

6. Do you distinguish between “MoUs” and other types of non-legally binding agreements, such as “joint declarations of intent” or “arrangements”? If so, how?

*The distinction between MoU or other types of non legally binding agreements is related with the wording of the documents.*

7. If you distinguish between different types of non-legally binding agreements, do you have different internal rules applying to them?

*For MoU as a non legally binding agreement we don't apply different rules. The procedure that we use to conclude an MoU as non legally binding starts with proposal, internal consultation including the Ministry of Foreign Affairs and the Ministry of Justice, final approval of the text by the other party, and in the end the signing of MoU. If the MoU has to be concluded between states or governments before signature the text of the MoU agreed between parties must be approved by the Council of Ministers. In the case of Join Statements, Join Declaration or Letter of Intent the procedure is shortest, it includes the intention to conclude such instruments the approval of the text by parties and the signature.*

8. Do you distinguish between the type of non-legally binding agreement concluded with international organisations or States? Do you have different rules applying to non-legally binding agreements depending on whether the other side is a State or an international organisation?

No

### III. Competence

9. Who, within your State/International Organisation, has the competence to sign a non-legally binding agreement?

*Albanian legislation does' not specified internal rules for non legally binding agreement. Following the Albanian law of treaties, the competent authority to sign an agreement being it MoU, JS, JD, Arrangement the head of state, head government, head of the state agency or the authorized person by the law.*

10. For States: Are sub-national territorial units like single federal states, provinces, municipalities or public agencies competent to conclude their own non-legally binding agreements?

*According to the Albanian legislations, public competent ministries and/or agencies, municipalities are entitled to conclude their own agreements.*

For International Organisations: Are bodies/specialized agencies competent to conclude their own non-legally binding agreements (or can they sign non-legally binding agreements on behalf of the entire organisation)?

### IV. (Indirect) Legal Effects

11. Do you consider non-legally binding agreements capable of producing (indirect) legal effects, for example as preparatory acts for/in connection with a legally binding instrument or as interpretative guidance for such binding instruments? Would you consider non-legally binding agreements under certain circumstances as a prerequisite of a binding instrument of international law?

*Considering the fact of the intention of the parties not to establish legal obligations, in my opinion a non legally binding agreement has not juridical capability to produce legal*

*effects, but it can be used as preparatory document for concluding a legally binding agreement leaded by international law.*

*A join declaration of the two heads of states to present a dispute to an international tribunal, is a non legally binding instrument, but the instrument agreed by the parties on what to present to the tribunal is a legally binding agreement.*

## **B. PROCEDURAL ASPECTS**

### **V. Choice of Instrument**

12. What factors influence or determine your decision whether to opt for a legally binding or non-binding agreement? For instance, do you sign non-legally binding agreements to facilitate the conclusion of a legally binding agreement in the future or do you conclude non-legally binding agreements in situations in which a legally binding agreement cannot be reached with the involved sides?

*We do not have specific regulations on concluding non legally binding agreements. The procedure is the same as for all agreements, with the difference of fact that non legally binding agreements are concluded especially for political commitment, that can be used to facilitate the conclusion of a legally binding agreement.*

13. Who, within your State/international organisation, ultimately decides whether to conclude a treaty or a non-legally binding agreement?

*According to Albanian legislation the decision to conclude an agreement being it legally or non legally binding is taken by the competent ministry/state agency in consultation with the Ministry for Europe and Foreign Affairs.*

14. What are the main differences in your internal procedure when concluding a non-legally binding agreement or a binding treaty?

*Albania does not have internal different procedures when concluding a non legally binding agreement. The only difference referees to the entry into force of non legally binding agreement. Since it does not establish legal obligations, non legally bindings agreement enters into force without internal procedures, it enters into force by the date of its signature.*

### **VI. Formal Assessment<sup>1</sup> of Non-legally Binding Agreements**

For States:

15. In your State, is there a mandatory centralised formal assessment of non-legally binding agreements concluded by any government ministry?

*According to Albania legislation there is no mandatory centralized formal assessment for checking the criteria only for non legally binding agreement, but we do have the internal procedure for checking the formal criteria of drafting an agreement being it binding or non-legally binding.*

16. If so, what Ministry/body performs this formal assessment?

*Referring the explanation for question 15, the ministries that perform this formal assessment are the Ministry of Foreign Affairs, the Ministry of Justice and the Ministry of Finance and Economy.*

<sup>1</sup> In this section, “formal assessment“ refers to the internal procedure for checking the formal criteria of a draft agreement to ensure it is clearly identifiable as non-legally binding.

<p>17. At what time in the process of concluding a non-legally binding agreement is the formal assessment carried out?</p> <p><i>The formal assessment is carried out at the moment of proposal of the draft.</i></p>
<p>18. If sub-national territorial units/bodies or specialized agencies are competent to conclude non-legally binding agreements (cf. question 9), are such agreements subject to the same formal assessment applicable for agreements of the (federal) government/international organisation?</p> <p><i>Yes, the procedure is the same.</i></p>
<p>19. Do you have an internal standard/written guidance for formally assessing non-legally binding agreements, i.e. a law, a directive or internal guidelines?</p> <p><i>No</i></p>
<p>20. How do you ensure all relevant actors are aware of the requirement of a centralised formal assessment of a non-legally binding agreement?</p> <p><i>All actors are aware of the law obligation to have a formal assessment when concluding and agreement being it non legally binding.</i></p>
<p>21. How do you ensure that non-legally binding agreements are, in fact, submitted for the centralised formal assessment procedure?</p> <p><i>All communications between Albania as a party and another State party are carried out through the Ministry of Foreign Affairs. Sending the proposal to conclude an agreement (legally or non legally binding) to the competent ministry/agency we ensure to remind of the obligation for formal assessment procedure to be followed before concluding an agreement.</i></p>
<p>22. Does the responsible ministry/body provide guidance to other (government) departments and agencies on best practices with respect to non-legally binding agreements (e.g. workshops, information materials on how to properly draft and conclude non-legally binding agreements)?</p> <p><i>The MEFA provide guidance on how to draft and conclude agreements part of which are also non legally binding agreement.</i></p>
<p><u>For International Organisations:</u></p>
<p>23. If such a process exists, please describe the regular process of formal assessment of non-legally binding agreements within your organisation.</p>
<p><b>VII. Democratic Review/Parliamentary Participation</b></p>
<p><u>For States:</u></p>
<p>24. Is your legislature notified or consulted about the conclusion of non-legally binding agreements? If so, does parliament need to be involved for any non-legally binding agreement or are there limitations (eg only for politically significant agreements)? Who determines whether such requirements are fulfilled?</p> <p><i>In our practice on concluding agreements the legislature/parliament is involved. In the case of non legally binding agreements the parliament is not involved.</i></p>
<p>25. If so, at what stage of the process is the legislature usually involved?</p> <p><i>The parliament is involved at the moment of the ratification/approvement/accession of legally binding agreements.</i></p>

26. Does your parliament or other legislative have a right to monitor and/or review non-legally binding agreements?
27. If legislative participation is provided for, does the legislature have a (legal) remedy if it perceives a violation of its right to be consulted/to participate?
For <u>International Organisations</u> :
28. In case you have an internal directive/guideline on how to conclude non-legally binding agreements, has this document been approved by the member States/a statutory organ of the organisation?
<b>VIII. Signature and Format</b>
29. Is there a formal procedure to authorise the signature of a non-legally binding agreement?  <i>Agreements can be signed by the competent authority that are authorized by the law. The agreements can be signed by Head of State, Head of Government, Minister of Foreign Affairs, Ambassador, head of competent ministry/agency.</i>
30. Do the signatures of the non-legally binding agreement in question necessarily have to be on the same document?
31. Do you allow for electronic signature of your non-legally binding agreements? If so, are there certain requirements concerning what type of electronic signature is acceptable? Do you accept the electronic transmission of non-binding agreements instead of the exchange of physical copies?  <i>With the signature is intended the handwritten signature, we don't use electronic signature as a form to sign an agreement.</i>
32. <u>For States</u> :  Do you always require non-legally binding agreements to be set in your own language or do you also accept them exclusively in the partner's language / in English (or any other "neutral" language)?  <i>All agreements, including those considered as non legally binding with the consent of the other party can be signed in both Albanian and partner language, or Albanian, partner and English language, or only in English language.</i>  <u>For International Organisations</u> :  What language do you usually require for the text of your non-legally binding agreements?
33. Do you have any formal requirements exclusively for concluding non-legally binding agreements? (e.g. using a special kind of paper only for non-legally binding agreements)  <i>No, we don't have any formal requirements for concluding non-legally binding agreements.</i>
<b>IX. Registration and Publication</b>
34. Do you have a (digital) register/archive/database for all non-legally binding agreements signed by your country?  <i>No, we don't have a separate register for non legally binding agreements. We have a database where all agreements are registered.</i>

35. If so, what entity keeps the non-legally binding agreement after signature?
36. Do you publish your non-legally binding agreements and are they openly accessible? <i>Each ministry has the obligation to publish all agreements that are in it's competence.</i>
37. Are there certain reasons (confidentiality, security, etc.) why non-legally binding agreements can be withheld from central registration/storage or (if applicable) publication? If so, which ones? <i>The publication of documents that are concluded by Albanian authority is obligatory, except those that are considered to be confidential.</i>
<b>X. Education/Training</b>
38. How do you disseminate information internally regarding the differences between binding and non-legally binding agreements? For example, are there regular workshops or training sessions with the units drafting non-legally binding agreements? Are there certain standard forms ("Model MoU"), which units can use as a drafting aid? <i>Institutional communication is the most common way to disseminate information on drafting agreements.</i>
<b>C. GENERAL OBSERVATIONS ON STATE PRACTICE (AND WAY FORWARD)</b>
39. What, in your view, is the main benefit of using non-legally binding agreements? What is your main concern? <i>In my opinion the main benefit of using non legally binding agreements is that they may constitute precursors for the conclusion of a future treaty. They can be used as a way of states engagement to conclude an agreement.</i>
40. In recent years, have you been concluding an increased number of non-binding international agreements? If so, why do you think this is the case? <i>No, there is no increased number of non legally binding international agreements.</i>
For International Organisations:
41. How would you describe the main differences between resolutions/declarations adopted by IOs and non-legally binding agreements concluded by IOs from a legal and practical perspective?
42. Do you attribute any law-making effect to non-legally binding agreements? Or do you see them as mere status and administrative arrangements for the purposes of international organisations?