

BULGARIA

A. SUBSTANTIVE ASPECTS
I. Definitions
<p>1. In your practice, do you use the term “non-legally binding agreement”? If so, how do you define it?</p> <p><i>In our practice we prefer using the term “agreement” for legally binding texts (treaties), but we acknowledge that the term “agreement” is in practice also used for instruments which are non-legally binding and for other types of arrangements without legal force. We note the definition ascribed to the term “non-legally binding agreement” for the purpose of this questionnaire, as set out in footnote 1 and we will use this term accordingly for the purposes of this questionnaire.</i></p>
<p>2. If not, what term do you use instead (e.g. arrangements) and how do you define it?</p> <p>We prefer the term “arrangement” and in our internal practice we define the instruments which are non-legally binding as „documents of a political/declaratory nature“.</p>
<p>3. Do you consider "Memoranda of Understanding" to be legally binding or non-legally binding instruments? Or can they be both?</p> <p><i>In our practice, the title does not play a leading role in determining the instrument's legal nature. To determine whether or not an instrument is legally binding, we analyse the substantive text. It is also important to take into account whether the intention of the parties is to create obligations under international law. We acknowledge that "Memoranda of Understanding" are not supposed to be legally binding, but we also note that there are many agreements titled MoU's that are legally binding reflecting the intent of the parties to them.</i></p>
II. Distinction
<p>4. How do you differentiate between treaties, international civil law contracts and non-legally binding agreements?</p> <p><i>The key difference between treaties and non-legally binding agreements is whether the intention is to create obligations under international public law or not. On the other hand, International civil law contracts are signed with parties, which are not subjects of public international law in which case the state does not act in its public capacity.</i></p>
<p>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)?</p> <p><i>As mentioned above, the essential element qualifying an agreement as non-legally binding is that it does not create legally binding rights or obligations. In this light, we prefer that there is a text clearly indicating the non-legally binding nature of the document.</i></p> <p><i>In our practice we also try to avoid using terms that are typical for treaties, e.g. “article”, “party”, “entry into force” and texts indicating duration or amendment and termination procedures in non-legally binding instruments</i></p>
<p>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?</p> <p><i>As stated above, in our practice, the title does not determine the instrument's legal on non-legal nature.</i></p>
<p>7. If you distinguish between different types of non-legally binding agreements, do you have different internal rules applying to them?</p> <p><i>No, we don't have different internal rules applying to different types of non-legally binding agreements.</i></p>

<p>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?</p> <p><i>No, we don't have distinct internal rules applying to different types of non-legally binding agreements depending on whether the other side is a State or an international organisation.</i></p>
<p>III. Competence</p>
<p>9. Who, within your State/International Organisation, has the competence to sign a non-legally binding agreement?</p> <p><i>There are specific rules on the competence to sign a legally binding agreement, but there are no specific rules applying to non-legally binding agreements. In our practice, if a certain entity does not possess the competence to sign a legally binding agreement, it is advised to sign a non – legally binding one if they have the competence to do so on the concrete subject matter at hand.</i></p>
<p>10. <u>For States:</u> Are sub-national territorial units like single federal states, provinces, municipalities or public agencies competent to conclude their own non-legally binding agreements?</p> <p><i>Sub-national territorial units like municipalities or district administrations can conclude non-legally binding agreements on their behalf in areas where they have the competence to do so, in accordance with national legislation (not non-legally binding agreements in general, but exceptionally, e.g. documents for town twinning or other declarations of a political/declaratory nature), but they cannot conclude agreements that create rights and obligations under public international law.</i></p> <p><u>For International Organisations:</u> 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)?</p> <p>N/A</p>
<p>IV. (Indirect) Legal Effects</p>
<p>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?</p> <p><i>The intention behind concluding non-legally binding agreements is precisely not to produce direct legal effect. Therefore, possible indirect legal effects must be carefully considered in advance on a case by case basis.</i></p>
<p>B. PROCEDURAL ASPECTS</p>
<p>V. Choice of Instrument</p>
<p>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?</p> <p><i>The decision to opt for a legally binding or non-binding agreement is taken on a case by case basis depending on different factors, such as the will of the sides, e.g. intention to create legally binding obligations, subject matter, scope of application, etc.</i></p>
<p>13. Who, within your State/international organisation, ultimately decides whether to conclude a treaty or a non-legally binding agreement?</p> <p><i>The decision is taken by the competent national authority which negotiates the draft. In accordance with the Constitution of the Republic of Bulgaria, foreign policy is governed and implemented by the Council of Ministers, in particular the Ministry of Foreign Affairs, so non-legally binding agreements concluded by Ministries or other public bodies/entities shall be coordinated with the MFA, which recommends changes in the draft, accordingly.</i></p>

<p>14. What are the main differences in your internal procedure when concluding a non-legally binding agreement or a binding treaty?</p> <p><i>The procedure on conclusion of binding treaties is regulated on constitutional and legislative level and it depends on whether the treaty needs to be ratified or not. In both cases it requires the sanction of the Council of Ministers. Ratification is carried out by the National Assembly, which adopts the law for ratification.</i></p> <p><i>As mentioned above, non-legally binding agreements concluded by Ministries or other public bodies/entities shall be coordinated with the MFA. In accordance with our practice non-legally binding agreements which are politically significant should be also approved/sanctioned by the Council of Ministers before being signed.</i></p>
<p>VI. Formal Assessment¹ of Non-legally Binding Agreements</p>
<p><u>For States:</u></p>
<p>15. In your State, is there a mandatory centralised formal assessment of non-legally binding agreements concluded by any government ministry?</p> <p><i>See answer to question 14.</i></p>
<p>16. If so, what Ministry/body performs this formal assessment?</p> <p><i>See answer to question 14.</i></p>
<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 assessment is generally carried out before text has been agreed upon by the Participants in order for the MFA to recommend changes in the draft accordingly. If it needs the sanction of the Council of Ministers, it is done after the draft text has been agreed upon by the Participants.</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>N/A</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>As mentioned above, in accordance with the Constitution of the Republic of Bulgaria, foreign policy is governed and implemented by the Council of Ministers, in particular the Ministry of Foreign Affairs, so non-legally binding agreements concluded by Ministries or other public bodies/entities shall be coordinated with the MFA.</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>As mentioned above, non-legally binding agreements concluded by Ministries or other public bodies/entities shall be coordinated with the MFA, which gives an opinion in advance on the draft on a case by case basis.</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>When the Ministry of Foreign Affairs gives opinion on the draft, it may recommend that it should be approved/sanctioned by the Council of Ministers if the non-legally binding agreement is politically significant.</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>See answer to question 20.</i></p>

¹ 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><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>N/A</p>
<p>VII. Democratic Review/Parliamentary Participation</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>No, see answer to question 14.</i></p>
<p>25. If so, at what stage of the process is the legislature usually involved?</p> <p><i>No, see answer to question 14.</i></p>
<p>26. Does your parliament or other legislative have a right to monitor and/or review non-legally binding agreements?</p> <p><i>No, see answer to question 14.</i></p>
<p>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?</p> <p><i>No, see answer to question 14.</i></p>
<p><u>For International Organisations:</u></p>
<p>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?</p> <p>N/A</p>
<p>VIII. Signature and Format</p>
<p>29. Is there a formal procedure to authorise the signature of a non-legally binding agreement?</p> <p><i>See answer to question 14.</i></p>
<p>30. Do the signatures of the non-legally binding agreement in question necessarily have to be on the same document?</p> <p><i>The common practice is that the signatures are on the same document.</i></p>
<p>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?</p> <p><i>No.</i></p>
<p>32. <u>For States:</u></p> <p>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)?</p> <p><i>It can be done in our language and the language of the other participant, and in English or any other third (neutral) language, or only in English (or other third/neutral language).</i></p> <p><u>For International Organisations:</u></p> <p>What language do you usually require for the text of your non-legally binding agreements?</p>

N/A
<p>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)</p> <p><i>No, but such special paper is required for legally binding agreements.</i></p>
IX. Registration and Publication
<p>34. Do you have a (digital) register/archive/database for all non-legally binding agreements signed by your country?</p> <p>Yes.</p>
<p>35. If so, what entity keeps the non-legally binding agreement after signature?</p> <p><i>According to the Law on the International Treaties of the Republic of Bulgaria, the Minister of Foreign Affairs keeps the legally binding treaties after signature. Although there is no legislative obligation, the practice is that the competent body/agency/entity which has signed the non-legally binding agreement sends it to the Ministry of Foreign Affairs after signature.</i></p>
<p>36. Do you publish your non-legally binding agreements and are they openly accessible?</p> <p><i>No. Only binding treaties are published in the State Gazette.</i></p>
<p>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?</p> <p>N/A</p>
X. Education/Training
<p>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?</p> <p><i>Yes, as mentioned above, the Ministry of Foreign Affairs gives its opinion on the draft when being asked on a case by case basis.</i></p>
C. GENERAL OBSERVATIONS ON STATE PRACTICE (AND WAY FORWARD)
<p>39. What, in your view, is the main benefit of using non-legally binding agreements? What is your main concern?</p> <p><i>Non-legally binding agreements are a flexible instrument for making a political commitment or in the field of cooperation in cases where there is no need to create legally binding rights and obligations.</i></p>
<p>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?</p> <p><i>The number of non-binding international agreements has increased in recent years mainly because of the light procedure for their signature and the flexibility they offer.</i></p>
For International Organisations:
<p>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?</p> <p>N/A</p>
<p>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?</p> <p>N/A</p>