

Croatia

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? <i>We do not use term “non-legally binding agreement”.</i>
2. If not, what term do you use instead (e.g. arrangements) and how do you define it? <i>In the Croatian Law on the Conclusion and Execution of Treaties the term international instruments is used. According to Article 3 of the Law on the Conclusion and Execution of Treaties, for the purposes of that Law the following shall not be considered a treaty: a) international instruments, however named, preceding the conclusion of a treaty, b) international instruments being concluded for execution of treaties whereby the Parties do not assume new obligations, c) other international instruments whereby no new international obligations are being assumed.</i>
3. Do you consider “Memoranda of Understanding” to be legally binding or non-legally binding instruments? Or can they be both? <i>The name of the instrument is not decisive for determining its character, i.e. whether it is an international treaty or instrument. Its content is important. In our practice, however, the term “Memorandum of Understanding” is typically used for non-legally binding instruments.</i>
II. Distinction
4. How do you differentiate between treaties, international civil law contracts and non-legally binding agreements? <i>According to Article 2 point 1 of the Law on the Conclusion and Execution of Treaties an international treaty is an agreement based on the agreement of at least two international legal entities which is governed by international law and which is in written form, regardless of whether it is contained in a single document or in two or more interconnected documents and regardless of its name, which the Republic of Croatia concludes with one or more states, one or more international organizations, or one or more other international legal entities. According to Article 3 of the Law on the Conclusion and Execution of Treaties, for the purposes of that Law the following shall not be considered a treaty: a) international instruments, however named, preceding the conclusion of a treaty, b) international instruments being concluded for execution of treaties whereby the Parties do not assume new obligations, c) other international instruments whereby no new international obligations are being assumed. (See question number 2) International civil law contracts are not defined in the Law on the Conclusion and Execution of Treaties.</i>

<p><i>The key difference between a treaty and a non-legally binding instrument is the intention to create legally binding international obligations.</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>Elements typically qualifying an instrument as non-legally binding are intention of the parties, content, terminology, context in which it was signed, form and structure of 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>We do not distinguish non-legally binding instruments by their name, however, we make a distinction between non-legally binding instruments signed between competent authorities and those signed between Governments.</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>For non-legally binding instruments whose participants are competent authorities there is no proscribed procedure by Law on the Conclusion and Execution of Treaties prior to their signing. If participants of a non-legally binding instruments are Governments, it is necessary to carry out a general preliminary procedure for adoption of Government conclusions.</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>There are no different rules applying to non-legally binding instrument 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>The head of the competent authority, is primarily authorized to sign non-legally binding instrument on its behalf. However, if non-legally binding instrument will be signed by a person from another authority, or if participants of a non-legally binding instruments are Governments it is necessary to carry out the general preliminary procedure before the Government and determine who will sign the non-legally binding instrument</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, state agencies or other entities can conclude their own non-legally binding instruments within the limits of their competence. Those non-legally binding instruments are not defined by the Law on the Conclusion and Execution of Treaties.</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>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>According to Article 3 of the Law on the Conclusion and Execution of Treaties, non-legally binding instruments can precede the conclusion of international treaties and non-legally binding instruments can be concluded for execution of treaties whereby the Parties do not assume new obligations.</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 fundamental criterion for deciding which instrument to conclude is whether it is necessary to assume international legal obligations. If new international legal obligations have to be assumed you have to opt for an international treaty.</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>Ministry or competent authority responsible for the content of the international instrument decides whether to conclude a treaty or a non-legally binding instrument.</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 for concluding binding treaties is established by the Constitution and the Law on the Conclusion and Execution of Treaties which provides detailed provisions of all stages of the process of conclusion of a binding treaty starting from initiation of the procedure of its conclusion until its entry into force.</i></p> <p><i>The Law on the Conclusion and Execution of Treaties does not provide a special procedure for the conclusion of international non-legally binding instruments. The Law prescribes that after conclusion, the original of the concluded international non-legally binding instrument shall be submitted to the Ministry of Foreign and European Affairs, for recording and storage in accordance (Article 34, Paragraph 3). Also, after signing the text of international non-legally binding instruments shall be submitted to the Government of the Republic of Croatia by the Ministry of Foreign and European Affairs for considerations (Article 20).</i></p>
<p>VI. Formal Assessment¹ of Non-legally Binding Agreements</p>
<p><u>For States:</u></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.

15. In your State, is there a mandatory centralised formal assessment of non-legally binding agreements concluded by any government ministry? <i>There is no mandatory centralised formal assessment of non-legally binding instruments prescribed by law.</i>
16. If so, what Ministry/body performs this formal assessment? <i>Not applicable.</i>
17. At what time in the process of concluding a non-legally binding agreement is the formal assessment carried out? <i>Not applicable.</i>
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? <i>Not applicable.</i>
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? <i>There is no internal standard/written guidance for formally assessing non-legally binding instruments.</i>
20. How do you ensure all relevant actors are aware of the requirement of a centralised formal assessment of a non-legally binding agreement? <i>Not applicable.</i>
21. How do you ensure that non-legally binding agreements are, in fact, submitted for the centralised formal assessment procedure? <i>Not applicable.</i>
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)? <i>The Ministry of Foreign and European Affairs provides, only on request of ministries and other state administration bodies, guidance on best practices with respect to non-legally binding instruments.</i>
<u>For International Organisations:</u>
23. If such a process exists, please describe the regular process of formal assessment of non-legally binding agreements within your organisation.
VII. Democratic Review/Parliamentary Participation
<u>For States:</u>
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

<p>agreement or are there limitations (eg only for politically significant agreements)? Who determines whether such requirements are fulfilled?</p> <p><i>There is no legal obligation to notify or consult the Parliament about the conclusion of legally non-binding instruments.</i></p>
<p>25. If so, at what stage of the process is the legislature usually involved?</p> <p><i>Not applicable.</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>Not applicable</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>Not applicable.</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>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 question 9</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>Signatures of the non-legally binding act in question necessarily do not have to be on the same document but it is recommended 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>The use of electronic signature is not prescribed by the Law on the Conclusion and Execution of Treaties.</i></p>
<p>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)?</p> <p><i>We do not require non-legally binding instruments be set in Croatian language. We also accept non-legally binding instruments to be set in other "neutral" language, mostly in English.</i></p> <p><u>For International Organisations:</u> What language do you usually require for the text of your non-legally binding agreements?</p>

<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>There are no formal requirements exclusively for concluding non-legally binding instruments.</i></p>
<p>IX. Registration and Publication</p>
<p>34. Do you have a (digital) register/archive/database for all non-legally binding agreements signed by your country?</p> <p><i>The original texts of the non-legally binding instruments shall be deposited with the Ministry of Foreign and European Affairs in accordance with Article 34 Paragraph 3 of the Law on Conclusion and Execution of Treaties. On that basis, there is a digital register for non-legally binding instruments.</i></p>
<p>35. If so, what entity keeps the non-legally binding agreement after signature?</p> <p><i>See question 34.</i></p>
<p>36. Do you publish your non-legally binding agreements and are they openly accessible?</p> <p><i>According to Article 32 of the Law on Conclusion and Execution of Treaties, international instruments that are not international treaties may be published in the Official Gazette based on a special decision of the President of the Republic, the Croatian Parliament or the Government of the Republic of Croatia.</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><i>Not applicable.</i></p>
<p>X. Education/Training</p>
<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>Ministry of Foreign and European Affairs (International Law Department, Treaty Division) will provide opinions to other (government) departments and agencies, on their request, on best practices with respect to non-legally binding acts, e.g. information on how to properly draft and conclude non-legally binding instruments.</i></p>
<p>C. GENERAL OBSERVATIONS ON STATE PRACTICE (AND WAY FORWARD)</p>
<p>39. What, in your view, is the main benefit of using non-legally binding agreements? What is your main concern?</p> <p><i>The main benefits are swift conclusion and political, but not legally binding character. They are a useful tool for promoting international cooperation among partners in cases where there is no political will or readiness to concluding respective legally binding acts.</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>

We do not keep such statistics.

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?