

CYPRUS

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>No. The use of the term “agreement” refers only to legally binding agreements.</i></p>
<p>2. If not, what term do you use instead (e.g. arrangements) and how do you define it?</p> <p><i>We use the terms “arrangement/arrangements”, “non-legally binding arrangements”, “technical arrangements”, “memorandum of understanding”, “joint declaration” etc. These are, in practice, defined as non-legally binding instruments that set out the international commitments of the participants, using the appropriate form and terminology to express the intention of the participants that such commitments do not create legally binding obligations under international law.</i></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>We typically consider that a “Memorandum of Understanding” is a non-legally binding instrument. Whether or not a legal instrument entitled as “Memorandum of Understanding” is in effect legally binding will depend on the wording of its provisions and whether it does indeed create legal obligation under international law – in such a case, it will be treated as an international agreement irrespective of its title.</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 main criterion for distinguishing between treaties and non-legally binding instruments is the determination of the intention of the parties/participants to create legally binding rights and obligations under international law. The intention to create or not, legally binding rights and obligations under international law must be evident from the form, wording and terminology of the document and the content of its provisions.</i></p> <p><i>Treaties are agreements concluded in writing between two or more States, or between one State and one or more international organizations or between international organizations, which create legally binding obligations and rights for the parties under international law.</i></p> <p><i>International civil law contracts are agreements, whereby at least one of the parties is not a State or an International Organization, and there is an “international element”, namely the parties are not connected to the same State. The latter are not considered as treaties in the context of Vienna Convention in the Law of Treaties, and are governed by private law/private international law.</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>The relevant essential elements to be examined are the form, wording/terminology and the content of the provisions of the instrument.</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>No.</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>Not applicable – see question 6.</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 – to both questions.</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 Government, represented by the President of the Republic or a competent Minister, the Ministries or governmental departments, represented by the competent Minister or other authorized official.</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>No.</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><i>Not applicable.</i></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?</p> <p><i>Yes.</i></p> <p>Would you consider non-legally binding agreements under certain circumstances as a prerequisite of a binding instrument of international law?</p> <p><i>No.</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 main factor would be the intention of the parties/participants to create -or not- legally binding rights and obligations under international law. Other factors may include the nature of the intended cooperation and whether such would be on a political or technical level, and in accordance with the respective laws of the participants. A non-legally binding instrument is, also, pursued at times in order to facilitate the conclusion of a legally binding agreement in the future, as well as in situations in which a legally binding agreement cannot be reached.</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 Council of Ministers of the Republic.</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>As opposed to legally binding agreements, with regards to non-legally binding instruments the following are not required:</i></p> <p><i>(a) a Decision by the Council of Ministers for authorization for the negotiation of the instrument. A Decision of the Council of Ministers is, however, required (as with legally binding agreements) for approval of the final text and authorisation of signature.</i></p> <p><i>(b) a 'full powers' document;</i></p> <p><i>(c) the enactment by the Parliament of a ratifying law - a ratifying law is also not required with regards to three types of legally binding agreements (economic, commercial and modus vivendi);</i></p> <p><i>(d) publication in the Official Gazette of the Republic.</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>Yes.</p>
<p>16. If so, what Ministry/body performs this formal assessment?</p> <p><i>The Law Office of the Republic</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>If initially proposing the instrument to another State, the assessment is carried out prior to the commencement of negotiation (preliminary legal vetting), and, thereafter, during and/or after the conclusion of the negotiations - before being submitted to the Council of Ministers for approval and authorization of signature. If the instrument is initially proposed by another State, the assessment is carried out usually before first responding to other State and at any point during the negotiations or after their conclusion, as above.</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>Not applicable.</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>We have internal guidelines - A practical guide for concluding international agreements and signing memoranda of understanding, published by the Law Office of the Republic.</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>

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.

The practical guide, mentioned in answer to Q.19, has been circulated to all Ministries and governmental bodies by the Attorney-General of the Republic. Relevant trainings for government officials are also being conducted by the Law Office of the Republic.

21. How do you ensure that non-legally binding agreements are, in fact, submitted for the centralised formal assessment procedure?

There is no such formal mechanism. The Council of Ministers typically requires the prior assessment of the text of such an instrument, before issuing a decision approving it and authorizing its signature.

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)?

Please see answers to questions 19 and 20.

For International Organisations:

23. If such a process exists, please describe the regular process of formal assessment of non-legally binding agreements within your organisation.

Not applicable.

VII. Democratic Review/Parliamentary Participation

For States:

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?

No.

25. If so, at what stage of the process is the legislature usually involved?

Not applicable.

26. Does your parliament or other legislative have a right to monitor and/or review non-legally binding agreements?

No.

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?

Not applicable.

For International Organisations:

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?

Not applicable.

VIII. Signature and Format

29. Is there a formal procedure to authorise the signature of a non-legally binding agreement?

The final draft text, after the negotiations are concluded, is submitted to the Council of Ministers for approval and authorization for signature. As such, a formal Decision by the Council of Ministers is required.

30. Do the signatures of the non-legally binding agreement in question necessarily have to be on the same document?

According to our normal practice they are on the same document, but there is no such obligation.

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?

There is no regulation concerning electronic signature or electronic transmission of non-binding agreements. However, these are possible in practice.

32. For States:

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)?

It is acceptable to sign a document only in English (even in situations where the partner's language is English). Otherwise, it is usual for the document to be signed in Greek, English and in the partner's language (if this is not English).

For International Organisations:

What language do you usually require for the text of your non-legally binding agreements?

Not Applicable.

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)

No.

IX. Registration and Publication

34. Do you have a (digital) register/archive/database for all non-legally binding agreements signed by your country?

No.

35. If so, what entity keeps the non-legally binding agreement after signature?

Not applicable.

36. Do you publish your non-legally binding agreements and are they openly accessible?

Usually these are not published. However, it is in the discretion of the Government/Ministries/governmental bodies to publish them on their official websites.

X. Education/Training

37. 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?

Please see answers to questions 19 and 20.

Are there certain standard forms ("Model MoU"), which units can use as a drafting aid?

No.

C. GENERAL OBSERVATIONS ON STATE PRACTICE (AND WAY FORWARD)

38. What, in your view, is the main benefit of using non-legally binding agreements? What is your main concern?

The procedure is simpler, faster and more flexible. Further, the no-publication element can be decisive for certain sensitive subjects. Moreover, in situations where a legally binding agreement cannot be reached between the sides involved, these instruments can be the only available alternative. Our main concern, though, is that governments often opt to utilize the title of a non-legally binding instrument, while the provisions thereof are actually legally binding, in order to circumvent the necessity of following the stricter legal procedure in place for the adoption of international legally binding agreements.

39. 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?

Yes. Please see the answer to question 38.

For International Organisations:

40. 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?

Not applicable.

41. 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?

Not applicable.