

## Czech Republic

<b>A. SUBSTANTIVE ASPECTS</b>
<b>I. Definitions</b>
<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, we do not. For principal reasons we reject this misleading and contradictory notion.</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 term “non-legally binding documents or non-legally binding instruments”.</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 consider them to be non-legally binding instruments.</i></p>
<b>II. Distinction</b>
<p>4. How do you differentiate between treaties, international civil law contracts and non-legally binding agreements?</p> <p><i>We do not recognize “non-legally binding agreements”; international civil law contracts are governed by civil law, treaties and agreements by 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>Non-legally binding document does not contain obligations, its content cannot be enforced by legal tools, different terminology and soft wording, sometimes special disclaimers</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>Yes. Trying to avoid the long lasting problematic attitude and apprehension of MoU’s, we prefer to use joint declarations, declarations of intent, letters of intent or simply memorandum, if possible, when seeking compromise alternatives with the partners.</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 reserve in this respect our flexibility to be able to modify the desired content and appropriate wording and formulations of the text.</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</i></p>
<b>III. Competence</b>

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

*There is no special competence envisaged for this type of documents that are non-legally binding. It can be from Minister, Deputy Minister, DG ...senior civil servant, Ambassador or other senior diplomat, case-by -case.*

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?

*See sub 9. Nevertheless, they have to respect the competence of MFA to coordinate foreign relations of the State. In practice, the main risk is their obvious misunderstanding of the real character of this type of documents, the appropriate formulations and terminology that must be used in order not to mix it with treaty-making or not to breach their own legal competence as such. Therefore, they are advised to be cautious in this respect and consult the MFA if necessary.*

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)?

*It depends. Case-by-case assessment is needed.*

#### **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?

*First question: "Indirect effect": Yes.*

*Second question: "Not as a prerequisite": As an impulse or initiation – yes.*

#### **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?

*First question: "The aim and envisaged effect": Legal necessity or political wish. Ability to implement and to enforce fulfilment of binding agreement. Preference to soft or hard provisions.*

*Second question: Second option is significantly overwhelming. First option is not excluded.*

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

*Ministry of Foreign Affairs on the proposal of the competent designated ministry (not excluding also primary constitutional competence of the Head of State) as far as treaties and agreements are concerned.*

*Non-legally binding documents – see sub 9. and 10. The position of MFA is in practice respected and accepted (however no further obligatory control).*

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

*Conclusion of a binding treaty or agreement has its strict procedure regulated by the Resolution of government.*

## **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?

*No, it is not mandatory.*

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

*See the answers to questions 7 and 15.*

17. At what time in the process of concluding a non-legally binding agreement is the formal assessment carried out?

*At any time of negotiations.*

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?

*No, they are not. But if requested the MFA will check it.*

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?

*No, but a long-lasting practice and know-how.*

20. How do you ensure all relevant actors are aware of the requirement of a centralised formal assessment of a non-legally binding agreement?

*We do not have such a direct competence or capacity to cover all possible actors.*

*Nevertheless, we organize briefings and lectures for the interested ministries or state organs and their civil servants sharing the know-how and best practices.*

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

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<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.

*As described above.*

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)?

*Yes. See sub 20.*

For International Organisations:

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

## **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?

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

*No. They are not legal documents.*

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?

*No*

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?

## **VIII. Signature and Format**

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

*No, it is not. However, it does not exclude that the participants signing such document may have introduced some internal procedures.*

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

*For many practical reasons, including e.g. the increasing quantity of such documents, we are convinced that yes.*

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?

No

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)?

*For practical reasons we strongly prefer one language (even not necessarily "neutral", if it is the language in which the text was negotiated, e.g. English, French, Spanish, German..., as agreed). In case the partner insists on its own language as well, the Czech language will be required reciprocally.*

For International Organisations:

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)

*No. Special paper used for treaties is not allowed; clean white paper of standard format is required.*

## **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?

*The signatory.*

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

*No. They may be made accessible by the participant/signatory.*

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?

*Yes. If they are confidential or classified.*

## **X. Education/Training**

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?

*Yes. See sub 20. Drafting units may use in their practice to certain extent as a basis ("Model MoU's") duly checked previous documents of this type.*

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

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

*We, as lawyers, do not see much benefit of using non-legally binding instruments, because, in fact, they do not guarantee anything, bringing legal uncertainty only.*

*They may, of course, help in certain cases as complementary source for interpretation of legally binding resources. They may serve as a political guidance in preparatory works and treaty-making process. Last but not least, they may bring a possible solution in the spirit of seeking at least some compromise in the situations where true consensus and legal compromise in treaty-making process is not possible, or where political ambitions and wishes to reach any output in the form of signed piece of paper, cost what it may, have such priority that the legal values must step aside.*

*One of the main concerns is that these non-legally binding documents may, step by step, replace the legally binding treaties and agreements and put the development of international relations completely on non-binding basis i.e. outside the system of international law and its norms.*

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?

*Yes. It is simple, quicker, it satisfies the fashion to sign as much papers as possible and present them to the public as a result of every visit, trip or other occasion, putting aside the true value, benefit, applicability and responsibility in case of not fulfilment*

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?