

ESTONIA

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>We do not use the term in legal acts.</i></p>
<p>2. If not, what term do you use instead (e.g. arrangements) and how do you define it?</p> <p><i>Most commonly used is the term Memorandum of Understanding that is not defined in any legal act but is understood as an agreement that is not regulated by 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>The Memorandum of Understanding is mostly regarded as a non-legally binding instrument. In some circumstances, it may be a legally binding instrument depending not on the form but on the content, i.e. whether there are any legal norms or binding obligations included.</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 foreign relations of the Republic of Estonia are regulated by the <u>Foreign Relations Act</u> that sets the competence of the bodies conducting foreign relations and the national proceeding of treaties. According to the Foreign Relations Act, “treaty” means a bilateral or multilateral written agreement consisting of one or several documents which is concluded between the Republic of Estonia and a foreign state or an international organisation and which is regulated by international law.</i></p> <p><i>International civil law contracts are regulated by the national law of a state agreed upon.</i></p> <p><i>Non-legally binding instruments are mostly called the Memorandum of Understanding and these are regarded as political declarations that do not include legal norms or binding 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>Important elements are the type of (non-treaty) language used, concrete provisions on its non-legally binding nature, absence of the references to applicable law, no reference to the registration at the UN and the dispute settlement clause does not involve any outside parties.</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>Not in substance, by heading only.</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>The internal rules applied are the same to all 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-</p>

legally binding agreements depending on whether the other side is a State or an international organisation?

No, there is no distinction based on the parties.

III. Competence

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

According to the Foreign Relations Act, foreign relations can be conducted by:

- 1) the Riigikogu (parliament);*
- 2) the President of the Republic;*
- 3) the Government of the Republic;*
- 4) the Ministry of Foreign Affairs;*
- 5) other state agencies and local authorities according to their competence. The internal competence of signing is regulated by each entities own statute.*

The competence to sign a non-legally binding agreement depends mostly on the reciprocity with the other party. In practice, it is most often the respective Minister.

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?

Yes, state agencies and local authorities are competent to conclude their own non-legally binding agreements within their competence.

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?

Yes, we do consider that non-legally binding agreements could serve as preparatory acts or as interpretative guidance if concluded on the same topic and same context.

We do not regard these as a prerequisite of a binding instrument of international law.

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?

There are several options. The decision on the form is mainly driven by the expected outcome. If the aim is to have friendly relations and more interaction then the non-legally binding agreement may be sufficient. The non-legally binding agreements could also serve as "icebreakers" to lead the way for binding agreements in the future.

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

It is the decision of the responsible entity.

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

While there is no formal procedures for the conclusion of non-binding agreements, the internal procedure for the conclusion of binding treaties is regulated in the Foreign Relations Act. Treaties concluded on the governmental or parliamentary level need to follow certain internal procedure before the treaty can be signed or concluded by exchange of notes. Firstly, the governmental or parliamentary level treaties have to be translated into Estonian. In addition, an internal act approving the treaty text, an explanatory note with a study of the text with regard to needed amendments in national law and with analyses of the legal, economical as well as other impacts have to be prepared. There has to be a consultation process with other relevant ministries and agencies. After closing this phase, the competent Ministry presents the package (internal act approving the treaty, translation of the treaty, explanatory note) to the Ministry of Foreign Affairs with the request to introduce it to the Government for its approval. Sometimes, depending on the content of the treaty, they have to be presented also to the Parliament for ratification.

In the case of an inter-agency treaty, the competent Ministry has the right to conclude the treaty without any special procedures.

VI. Formal Assessment¹ 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.

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

N/A.

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

N/A.

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?

N/A.

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?

While Estonia does not have any centralised formal assessment of non-legally binding agreements, the Ministry of Foreign Affairs is sometimes asked for its expertise to determine the legal character of the text. Furthermore, the Ministry of Foreign Affairs has published for reference to other ministries and state agencies a guideline concerning international treaties. One chapter of it also includes guidance on non-legally binding treaties.

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

N/A.

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>21. How do you ensure that non-legally binding agreements are, in fact, submitted for the centralised formal assessment procedure?</p> <p>N/A.</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 MFA legal department has developed a guide on the national procedure for treaty conclusion that also includes some aspects of non-legally binding agreements. In addition, the MFA legal department offers trainings to colleagues at other Ministries about the conclusion of treaties and these include also the differences between binding and non-legally binding agreements.</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>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, there is no requirement for consulting the Parliament on non-legally binding agreements.</i></p>
<p>25. If so, at what stage of the process is the legislature usually involved?</p> <p>N/A.</p>
<p>26. Does your parliament or other legislative have a right to monitor and/or review non-legally binding agreements?</p> <p>No.</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>N/A.</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>No, the entity concluding the non-legally binding agreement gets its competence and authorization from law, other legislation, or the powers conferred to them. Each entity is responsible for not overstepping their competence.</i></p>

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

Preferably, 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?

Yes, we do allow also for electronic signature and the electronic transmission. Estonia follows the levels of e-signature as described in the European Union eIDAS Regulation.

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)?

There is no requirement for non-legally binding agreements to be concluded in Estonian. The other language used is mostly English.

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.

IX. Registration and Publication

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

No, there is no central database. There is also no obligation to publish the non-legally binding agreements. In case they are published, the website of the concluding entity is used for that.

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

It is up to the concluding entity to decide how to store the non-legally binding agreement.

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

No, there is no obligation to publish the non-legally binding agreements. In case they are published, the website of the concluding entity is used for that. Publication is a decision of the concluding entity.

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?

In order to ensure democracy, to enable public interest to be met and to enable all persons to exercise their rights and freedoms and perform their obligations, holders of public information are required to ensure access to the public information in their possession under the conditions and pursuant to the procedure provided by law. Public information is information, which is recorded and documented in any manner and on any medium and which is obtained or created upon performance of public duties provided by law or legislation issued on the basis thereof.

Access to public information may be restricted pursuant to the procedure provided by law (Public Information Act–Riigi Teataja).

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?

There are no such regular trainings. However, the MFA legal department does offer trainings to colleagues at other Ministries about the conclusion of treaties and these include also the differences between binding and non-legally binding agreements. The MFA legal department has developed a guide on the national procedure for treaty conclusion that also includes some aspects of non-legally binding agreements.

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?

The conclusion of non-legally binding agreements is not that time consuming which is sometimes an important element in foreign relations. In addition, the substance of the agreement often determines the non-legally binding nature.

The main concern could be the lack of overview of such agreements and their possible implications on treaties.

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?

There is no general overview of all the non-legally binding agreements in the government sector.

Estonian Ministry of Foreign Affairs is concluding increasingly the memoranda of understandings on bilateral political consultations to deepen good relations between states.

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?