

FINLAND

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>Usually we don't use the term "non-legally binding agreement" in our practice since we try to avoid using the term "agreement" when describing non-legally binding instruments.</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 don't have a single term to describe all non-legally binding instruments. Depending on the instrument, for example the following terms may be used: Memorandum of Understanding, Arrangement, Declaration of Intent, Letter of Intent, Joint Declaration, Joint Statement etc. In our practice, the most common umbrella term used for these instruments is "non-legally binding instrument". A non-legally binding instrument is meant to indicate mutual political understanding between the participants, and it does not generate legally binding obligations for the participants.</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>In our view, the name of the instrument has no decisive effect on the evaluation of whether the instrument should be regarded as legally binding or non-legally binding. The assessment should be made based on the intent of the parties and the content, form and terminology of the instrument. In our practice, however, the term "Memorandum of Understanding" is typically used for non-legally binding instruments.</i></p>
II. Distinction
<p>4. How do you differentiate between treaties, international civil law contracts and non-legally binding agreements?</p> <p><i>Treaties are legally binding and are governed by international law, whereas international civil law contracts are legally binding, but are not governed by international law but instead are usually governed by a national legal system. Non-legally binding instruments do not generate legally binding obligations under international or national 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>In our view, the instrument should be assessed as a whole, taking into account the intent of the parties and the content, form and terminology of the instrument. Also the circumstances surrounding the instruments conclusion and the subsequent practice of the participants play a role. In our practice, it is advised to explicitly state in the text of the instrument that it is "non-legally binding" and "not eligible for registration with the Secretary-General of the United Nations". In a non-legally binding instrument, it is recommended to use terminology that differs from general treaty terminology (for example will instead of shall, Participants instead of Parties, paragraphs or sections instead of articles, introduction instead of preamble and so on). Non-legally binding instruments do not have any binding provisions on dispute settlement or final provisions of the kind used in treaties.</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>In general, no. In our practice, similar national procedures apply for different kinds of non-legally binding instruments. The recommended “MoU-terminology” should also be used for</i></p>

other types of non-legally binding instruments as applicable (the MoU-glossary of the national Treaty Handbook can be found here). Different types of non-legally binding instruments may be suitable for different situations.

7. If you distinguish between different types of non-legally binding agreements, do you have different internal rules applying to them?

See previous answer.

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?

Similar national rules/procedures apply for both cases. In our practice, non-legally binding instruments are mainly concluded on behalf of ministries or other state entities. If a non-legally binding instrument is concluded on behalf of the state or government, wider coordination within the state usually needs to be ensured.

III. Competence

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

The competent ministry decides on the signing and the signatory of the instrument in question. If the competent minister signs the instrument, this can be mentioned in the ministry decision, although in this case no decision on the signatory needs to be made. Full powers are not required for the signature of a non-legally binding instrument.

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, for example state authorities, agencies or other entities can conclude their own non-legally binding instruments within the limits of 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?

Non-legally binding instruments could, in our view, potentially serve as interpretative guidance for binding instruments or as preparatory acts for legally binding instruments or national 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?

When assessing the applicability of a non-legally binding instrument, attention should be paid to whether there is a need to seek legally binding rights and obligations in the cooperation or

not. A non-legally binding instrument is a flexible way for cooperation arrangements in situations where there is no need to create legally binding provisions.

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

Assessment on whether a non-legally binding instrument is a suitable instrument is made by the competent ministry/authority, in cooperation with the Unit for EU and Treaty Law of the Ministry for Foreign Affairs if needed.

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

The procedure for concluding binding treaties is based on Chapter 8 of the Constitution of Finland (an unofficial English translation of the Constitution can be found [here](#)). The President (in co-operation with the Government) decides on signing and approval of a binding treaty. The acceptance of the Parliament is required for such treaties and other international obligations that contain provisions of a legislative nature, are otherwise significant, or otherwise require approval by the Parliament under the Constitution. Provisions of the treaty that are of a legislative nature shall be brought into force by an Act of the Finnish Parliament. Other provisions than those of a legislative nature are to be brought into force by a Decree of the Government.

Chapter 8 of the Constitution does not specifically address the issue of non-legally binding instruments, nor is there any other legislative framework specifically related to such instruments (however, the Parliamentary right to receive information on international affairs as well as the General parliamentary right to receive information, are for example applied mutatis mutandis to non-legally binding instruments). A decision should be taken in the competent Ministry before a non-legally binding instrument is signed. If the non-legally binding instrument is estimated to be of significance in terms of foreign policy, it is recommended that the instrument be discussed also at a joint meeting of the Ministerial Committee on Foreign and Security Policy and the President of the Republic. The need to discuss the instrument at a joint meeting of the Ministerial Committee on Foreign and Security Policy and the President or other Ministerial Committees or working groups should also be evaluated in case of non-legally binding instruments that will be signed on behalf of the Government or the State. If the substance of a non-legally binding instrument relates to more than one Ministry, all Ministries concerned should be given the opportunity to give a statement on it.

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?

There is no mandatory formal assessment, but ministries must familiarize themselves and comply with the internal guidelines concerning non-legally binding instruments, which can be found in the national Treaty Handbook (the Treaty Handbook can be found in Finnish [here](#)). The guidelines also include a model-MoU and a MoU-glossary (which can be found [here](#)). The Unit for EU and Treaty Law of the Ministry for Foreign Affairs also provides regular training, official statements and ad hoc guidance on drafting, national procedures and legal issues related to binding and non-legally-binding instrument. Ministries are encouraged to consult the Unit before negotiating and signing non-legally binding instruments.

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

See previous answer.

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.

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

As stated before, no formal assessment is required. The ministries / state authorities may contact the Unit for EU and Treaty Law at any time of the process, and if they wish for the Unit to review the form of the instrument, this should be done early enough in the process.

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?

As stated before, no formal assessment is required. Other state authorities/entities also have the possibility to seek guidance from the Unit for EU and Treaty Law of the MFA.

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?

As stated under question 15, there are internal guidelines in the national Treaty Handbook for assessing non-legally binding instruments and the guidelines also include a model-MoU and a MoU-glossary.

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

No formal assessment is required. Ministries / other state authorities always have the possibility to seek guidance from the Unit for EU and Treaty Law.

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

No formal assessment is required.

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, the Unit for EU and Treaty Law of the MFA provides guidance, information materials and training.

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.

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?

As stated under question 14, the Parliamentary right to receive information on international affairs as well as the General parliamentary right to receive information, are applied to non-legally binding instruments. The competent ministry makes the assessment on whether information about a non-legally binding instrument should be provided to the Parliament. The Parliament may also request information about a non-legally binding instrument. In most cases, non-legally binding instruments are less significant or technical in nature, so it is assessed that there is no need to provide information to the Parliament.

<p>25. If so, at what stage of the process is the legislature usually involved?</p> <p><i>If the Parliament is informed in the process, it may take place at different stages of the process depending on the instrument, for example at the beginning of the negotiations and before the signing/conclusion of the instrument.</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>The Parliament has a right to receive information on international affairs on its own request or as necessary. Any positions expressed by the Parliament should be taken into account in the process.</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>If the Parliamentary right to receive information on international affairs is not complied with (if it had been necessary) or the positions expressed by the Parliament are not taken into account, the Government is politically responsible to the Parliament.</i></p>
<p>For <u>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 the answer under 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>It is recommended that the signatures are on the same document, but this is not an absolute requirement.</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>At the moment, there remain doubts about electronic signatures, as there are no suitable technical methods in place. Physical copies and physical signatures are recommended.</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>In our practice, non-legally binding instruments are often concluded only in a "neutral" language, such as in English. If the instrument is concluded in the partner's language, usually the instrument should also be concluded in Finnish.</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> <p>-</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>The formal requirements concerning non-legally binding instrument are less strict compared to binding treaties. For example, normal paper can be used for 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>There is no central register/archive for all non-legally binding instruments. All ministries/authorities are responsible for archiving the non-legally binding instruments they have concluded. However, we have recently launched an electronic datasystem, common to the whole Government, which could allow a central register for non-legally binding instruments to evolve.</i></p>
<p>35. If so, what entity keeps the non-legally binding agreement after signature?</p> <p><i>See previous answer.</i></p>
<p>36. Do you publish your non-legally binding agreements and are they openly accessible?</p> <p><i>In most cases, non-legally binding instruments are not published in the treaty series of Finland or elsewhere, for example ministry websites. Nevertheless, non-legally binding instruments are public, unless specifically otherwise provided by law. It is recommended that significant non-legally binding instruments be published in the treaty series of Finland. The text can also be published for example on the ministry website, if the ministry so decides.</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>In accordance with the principle of openness (which stems from the Act on the Openness of Government Activities), non-legally binding instruments are public, unless specifically otherwise provided by law. Thus, the same secrecy provisions apply to non-legally binding instruments as to other government activities. A non-legally binding instrument could be regarded as secret for example if access to the information would cause damage or harm to Finland's international relations or the ability to engage in international cooperation.</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>The Unit for EU and Treaty Law of the MFA provides regular training, official statements and ad hoc guidance on drafting, national procedures and legal issues related to binding and non-legally-binding instrument. As stated under question 15, there are internal guidelines in the national Treaty Handbook for assessing non-legally binding instruments. The guidelines also include a model-MoU and a MoU-glossary.</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>A non-legally binding instrument is a flexible way for cooperation arrangements in situations where there is no need to create legally binding rights and obligations. The internal procedures regarding non-legally binding instruments are less formal, and therefore also take</i></p>

considerably less time. In our view, the potential blurring between legally binding and non-legally binding instruments could raise concerns. There could also be different views or misunderstandings between the participants about the legal status of a certain instrument. Democratic Review/Parliamentary Participation should not lose its role in relation to non-legally binding instruments, especially politically significant ones. The transparency of non-legally binding instruments should also be taken into account, and it could be beneficial if there was an open common registry for non-legally binding instruments.

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?

It seems that the significance of non-binding instruments is growing. This is in part well justifiable, when it is assessed that there is no need to create legally binding provisions, since international cooperation and related practical and technical needs are ever increasing.

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?