

## GEORGIA

### 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?

*We do not use the term “non-legally binding agreement”, since the agreements usually refer to the binding treaties. In practice, we use the term “non-legally binding documents” to refer to instruments that do not create legally binding obligations. Such non-legally binding documents constitute expression of participants’ political intentions or commitments.*

*There is no single term in our legislation that would describe all non-legally binding documents. Different terms may be used such as: “Memorandum of Understanding”, “Declaration”, “Statement”, “Joint Declaration of Intent”, “Joint Communiqué”, “Technical Arrangement”, etc.*

2. If not, what term do you use instead (e.g. arrangements) and how do you define it?

*See the response to question 1.*

3. Do you consider "Memoranda of Understanding" to be legally binding or non-legally binding instruments? Or can they be both?

*It can be both, depending on the intent of the parties as well as the content of the document and terminology used in it. The MoUs are generally regarded as non-legally binding instruments. Depending on the intent of the parties, content, form and terminology, the MoUs can be considered as legally binding, although, we prefer to reserve this term for non-legally binding documents. In order to make clear that it is non-legally binding instrument, we do prefer to insert the following provision in it stating that: this MoU reflects the intentions and understandings of the Participants. It does not constitute international agreement and does not create legal obligations under international law; Furthermore, we also prefer the terms such as: “participants,” “reached understanding”, “come into effect”, “paragraph”, “will”, etc. in non-binding MoUs, while in binding MoUs we prefer to use the following terms: “parties”, “agreed”, “enter into force”, “article”, “shall”, etc. So, in case if a MoU is regulated by the international law and it creates legally binding obligations, it is concluded in accordance with the procedure determined by the legislation for the conclusion of treaties.*

#### II. Distinction

4. How do you differentiate between treaties, international civil law contracts and non-legally binding agreements?

*Georgian Law on International Treaties defines treaty as an international agreement concluded in written form by Georgia with foreign state or an international organisation and which is governed by international law. International civil law contracts are usually regulated by the applicable domestic legislation, while non-legally binding documents generally constitute mere reflection of intentions and understandings of the participants. In order to determine the nature of the document, we carefully study the intent of the parties, the content and terminology. See also response to question 3. Furthermore, non-legally binding instruments may be made by entities, which are not subjects of international law.*

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)?

*The essential elements are the parties, their intention, the content and terminology. See also responses to questions 1, 4 and 6.*

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?

*As mentioned in paragraph 1 above, we generally use the non-legally binding documents instead of the term “non-legally binding agreement”, since the agreements usually refer to the binding*

*nature of the documents. The MoUs are generally regarded as non-legally binding instruments. However, depending on the intent of the parties, content of the obligations, form and terminology, the MoUs may be considered as legally binding. MoUs that do not create legally binding obligations under international law are considered to be non-legally binding documents.*

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

*We do not distinguish between non-legally binding documents. However, if a Memorandum of Understanding constitutes legally binding international treaty (see the response to question 4), we apply the rules of domestic legislation that regulate the conclusion of international treaties. While there are less formalities for the non-binding documents, such as MoU, statement, joint declaration, arrangement, etc.*

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?

*We do not make such differentiation.*

### **III. Competence**

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

*Central or local authorities and state agencies according to their competence may sign non-legally binding documents. These documents are signed by someone with appropriate authority, usually by the heads of the respective body or other officials mandated so.*

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, respective authorities have a right to sign non-legally binding documents in the areas 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-binding documents are not capable of producing legally binding obligations. In some cases, non-binding documents may be followed by the conclusion of the legally binding treaty.*

### **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?

Several reasons may be put forward to explain why concluding a non-legally binding instrument rather than a treaty may be preferable. One of the important factors is the intention of the parties. Do they intend to create legally binding obligations? If the document constitutes expression of the parties political will, in such case, there is no need to opt for legally binding agreement and the parties will implement undertaken commitments in accordance with the provisions of the applicable national legislation.

Another factor to be taken into consideration is the requirement of the national legislation. In certain cases, in order to regulate particular issue, the legislation provides for the conclusion of a treaty.

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

*This issue is decided by the competent authority depending on the nature of the document, intention of the parties and applicable rules of national legislation.*

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

*Law of Georgia on International Treaties regulates the whole process of conclusion of binding treaties. The Law provides detailed regulation of all stages of the process of conclusion of a treaty starting from initiation of the draft until its entry into force. Non-binding documents are generally concluded within the competence of the respective authority. In some instances, it can be proceeded by an inter-agency consultation process followed by the Governmental approval.*

## **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?

*There is no mandatory centralised formal assessment. International Law Department of the Ministry of Foreign Affairs could be consulted on the legal nature of the document by the initiating authority. International Law Department is responsible for coordination of the whole process of the conclusion of international treaties. Therefore, all treaties and agreements are subject to formal assessment by the International Law Department. Only those documents, which are considered as a binding international treaty shall be subject to the procedures established by the Law of Georgia on International Treaties.*

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

*See the response to question 15.*

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

*See the response to question 15.*

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

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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.

same formal assessment applicable for agreements of the (federal) government/international organisation?

*See the response to question 15.*

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?

*There is no written guidance, but we take into consideration the several factors, including intent of the parties, scope of undertaken obligations, wording of the document as well as the requirements of national legislation. More information is provided under section I above.*

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

*See the response to question 15.*

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

*Please refer to answer 15.*

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)?

*The International Law Department of the Ministry of Foreign Affairs provides informal guidance to other (government) departments and agencies on the best practices with respect to non-legally binding documents.*

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?

*According to the Constitution, the Government is accountable and responsible to the Parliament of Georgia. Therefore, the Government informs the Parliament on foreign policy issues, which may include the information on non-legally binding documents. Generally, the Parliament is involved in ratification of treaties, when they require so in pursuance of the national legislation. Furthermore, the Parliament is also informed on the entry into force of a treaty.*

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

*See the response to question 24.*

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

*See the response to question 24.*

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?

*See the response to question 24.*

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?

*Usually, non-legally binding documents are signed by the heads of the respective authorities within the sphere of their competence already vested by the domestic legislation. In other instances, some form of approval might be necessary by the Government.*

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

*According to the established practice, the signature is on the same document.*

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 specific legislation regulating electronic signature of non-legally binding documents.*

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 documents to be set only in Georgian. They can be done in English or Partner's languages as well.*

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).

*There is no such formal requirement for concluding non-legally binding documents. However, in practice, we tend to use different papers for non-legally binding document.*

## **IX. Registration and Publication**

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

*There is no central register/archive/database for all non-legally binding documents. The respective authority is responsible for keeping its own documents. Only legally binding international treaties are published in the official gazette.*

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

*See the response to the question 34.*

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

*There is no obligation to publish non-legally binding documents. Concluding authority can make the document openly accessible.*

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?

*General Administrative Code of Georgia guarantees that everyone may have access to public information available at the administrative body, as well as receive copies unless the information contains state, professional, or commercial secrets or personal data. (Article 10).*

## **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?

*International Law Department of the Ministry of Foreign Affairs could be consulted on the differences between binding agreements and non-binding documents by the initiating authority. There are certain standard forms, which are also used.*

## **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 instruments requires less time and fewer formalities and they are convenient instruments to develop mutually beneficial international cooperation. However, sometimes wording of the non-legally binding document is vague which might create different understanding between the parties as to its legally binding nature.*

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?

*Since there is no unified database, we do not produce general statistics of the non-legally binding documents.*