

GREECE

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>The term “non-legally binding agreement” is not officially used.</i></p>
<p>2. If not, what term do you use instead (e.g. arrangements) and how do you define it?</p> <p><i>There is no common term generally used. As regards the greek practice, when assessing the legal nature of an instrument, we follow the approach taken by the 1969 Vienna Convention on the Law of Treaties (VCLT) and give priority to the terms used therein. Therefore, the content of the instrument concerned is the key criterion for determining its legal nature. On the contrary, the designation of a document is not significant in determining whether it is legally binding or not.</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>They can be both depending on their content (see above, question 2). In addition, taking into account that, according to the Greek Constitution, if an instrument contains provisions giving rise to obligations which need to be endorsed by domestic legislation, then it must be submitted to Parliament for ratification, a Memorandum of Understanding may also be subject to parliamentary approval, regardless 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>According to the definition contained in Article 2 para 1 (a) of the VCLT, “treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. A similar definition is also contained in Article 2 para 1 (a) of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. Therefore, the main criteria used to differentiate treaties from international civil law contracts and legally non-binding instruments are a) whether they are concluded by States or other subjects of international law (such as the IOs) and b) whether they are governed 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>See above, question 2.</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>See above, questions 2 and 3.</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>N/A</i></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?

No.

III. Competence

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

This is determined on a case-by-case basis depending on the subject matter and the content of the instrument concerned, and taking into account the competence of various State Authorities/Entities.

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?

They may be competent to conclude instruments, which are either binding or non-binding subject to the applicable legislation (e.g, their Statutes). In any case, however, given that they do not possess international legal personality, these instruments are not governed by international law.

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)?

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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?

N/A

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?

The decision to opt for a legally non-binding instrument is mainly dependent on its subject-matter and content, which is determined by the intention of the partners to produce (or not) legal effects, without necessarily being linked to the conclusion of a legally binding agreement in the future.

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

This is decided on a case-by-case basis (see above, question 9).

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

Non-legally binding instruments do not undergo the formal internal procedure which applies for the conclusion of binding international agreements. Thus, the signatory of a legally non-binding instrument (if identified as such, in light of its content) is not required to produce full powers for its signature. In addition, once concluded, non-legally binding instruments usually become effective upon their signature and are not subject to parliamentary approval, neither are they published in the Official Government Gazette.

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?

N/A

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?

N/A

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

N/A

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

N/A

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)?

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.

<u>For International Organisations:</u>
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
<u>For States:</u>
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 (e.g. only for politically significant agreements)? Who determines whether such requirements are fulfilled? N/A.
25. If so, at what stage of the process is the legislature usually involved? N/A
26. Does your parliament or other legislative have a right to monitor and/or review non-legally binding agreements? N/A
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? N/A
<u>For International Organisations:</u>
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 <i>statutory organ of the organisation</i> ?
VIII. Signature and Format
29. Is there a formal procedure to authorise the signature of a non-legally binding agreement? <i>No. See above, question 14.</i>
30. Do the signatures of the non-legally binding agreement in question necessarily have to be on the same document? <i>Signatures are usually placed on the same document although there is no such formal requirement (e.g. in the case of an exchange of letters).</i>
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? N/A
<u>32. For States:</u>
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)?

They may be concluded in the language used during the negotiations (usually English, or French). If the partner requires for the text to be set in their language, it is also set in Greek.

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?

Non-legally binding agreements signed at central government level are archived in the Treaty Office of the Ministry of Foreign Affairs.

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

If at a central government level (including Ministries), the Treaty Office of the Ministry of Foreign Affairs. If at any other level (e.g. public institutions, local governments etc) they are kept by the signatory.

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

No. See above, question 14.

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?

N/A

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?

The Ministry of Foreign Affairs / Legal Department is currently finalizing the publication of a practical guide on the negotiation and conclusion of international agreements, which will mention non-legally binding instruments.

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?

In our view, the main benefit of non-legally binding instruments is that they are a useful tool for promoting international cooperation among partners in cases where there is no political will or readiness to concluding respective legally binding agreements. As to our main concerns, taking into account that the relevant State practice is not uniform, the conclusion of such instruments may give rise to ambiguities or even divergent views as to their effects. We, therefore, are in favour of a careful approach regarding the conclusion of such instruments and for as much flexibility as possible, giving due consideration to the specificities of different national legal systems.

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, for the reasons stated under questions 12 and 39.

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?