

LITHUANIA

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?

There is no such definition in the legal acts. Though in practice the term sometimes is used.

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

Usually used terms are Memorandum of Understanding, Memorandum of Intent, Declaration or Joint Statements that are not defined in any legal act but are understood as non-legally binding agreements that are not regulated by international law.

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

In essences, we consider, that the content and the language used in the document define whether an instrument could be regarded as legally binding or not. The term "Memorandum of Understanding" in most cases would amount to non-legally binding instrument. However, depending on the content, in some circumstances, it may be a legally binding instrument, e.g. when there are any legal norms or binding obligations included.

II. Distinction

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

The Law on Treaties of the Republic of Lithuania provides that a “treaty” means an international agreement concluded between the Republic of Lithuania and foreign states and international organizations in written form and governed by international law, whatever its particular designation and regardless of whether it is embodied in a single instrument or two or more related instruments.

The Law provides for two categories of treaties – subject to parliamentary ratification (establishes specific list of treaties) and those that do not require parliamentary ratification, but are subject for approval of the Government.

Moreover, the legal regulation provides for possibility to conclude agreements that could be concluded on behalf of the Republic of Lithuania or the Government of the Republic of Lithuania which are not treaties and cannot be attributed to agreements establishing civil legal relations under the national law of the Republic of Lithuania or of a foreign state, provided that they do not conflict with the laws, other legal acts and international obligations of the Republic of Lithuania.

In practice we also observe the conclusion of non-legally binding arrangements/declarations of political character, which are usually signed by the President, the Prime Minister or the Minister of Foreign Affairs.

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)?

Non-legally binding agreement does not create any legal obligation under public international law. Moreover, it is important, that non-legally binding instrument would not contain provisions related to references to applicable law, to the registration at the UN and the dispute settlement clause, does not involve any outside parties, its language would not entail taking obligations. The

intent of the parties of the agreement is also one of the essential element to differentiate between treaties and non-legally binding agreements.

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?

The conclusion of non-legally binding instruments described in Regulation, foresees certain procedural elements to be followed. However, for non-legally binding arrangements/declarations of political character, there are no legal rules that would regulate their conclusion.

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

There are certain differences depending on the type of non-legally binding instrument is about to conclude. If the non-legally binding instrument is to be concluded on behalf Republic of Lithuania or the Government of the Republic of Lithuania the Regulation foresee that:

- such drafts shall be coordinated with the ministries and Governmental bodies concerned in accordance with the Rules of Procedure of the Government of the Republic of Lithuania related to the approximation of draft legal acts;

- submitted to the Ministry of Foreign Affairs (hereinafter – MoFA), indicating which funds will finance the implementation of the instrument;

- for coordination purposed, the texts of such drafts shall be submitted to the MoFA in the Lithuanian language and must be verified by the head of the Ministry, Government Offices or the another state institution that is going to conclude the instrument or a person authorized by him;

- if, in accordance with the provisions of the instrument, its interpretation shall be based on the foreign language text, the text in foreign language shall also be submitted to the MoFA;

- the MoFA shall give its written approval for conclusion of such instrument;

- the person shall be authorized by a resolution of the Government, unless the instrument is being signed by the President, the Prime Minister or the Minister of Foreign Affairs;

- a copy of the agreement concluded and the electronic version must be submitted to the MoFA, which collects and processes the information about such agreements.

However, for conclusion of the non-legally binding instrument i.e. arrangements/declarations of political character, there are no legal rules that would regulate their conclusion. However in practice inter-institutional co-ordination takes place involving MoFA and institutions concerned.

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, there is no difference depending on what is the other side of the agreement.

III. Competence

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

See answer to the question 7.

The non-legally binding agreements could be signed by the President, the Prime Minister or the Minister of Foreign Affairs. For the signature by any competent minister or high level official of the non-legally binding instrument concluded on behalf of State or the Government, full powers are required.

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, ministries, government bodies and other state institutions may conclude non-legally binding agreements within their competence with institutions of other states or international organizations, as well as municipalities. However, such agreements of state institutions and municipalities are not considered as non-legally binding agreements concluded on behalf of the State or the Government.

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?

In our view, they could serve in certain instances as preparatory acts or as interpretative guidance if they relate to the same topic or issue. We do not consider them as prerequisite for conclusion of legally binding instrument in the future. Still, in essence non-legally binding agreements will only produce political effects, as provisions in non-legally binding agreements do not produce legal effects by itself.

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 on whether to opt for legally binding or non-legally binding instrument is mainly influenced by the expected outcome and the intentions of the parties as to the outcome. Provided the aim is to have friendly relations, to establish certain mutual political understanding and more co-operation then the non-legally binding agreement may be sufficient. Moreover, the procedure of preparation of the non-legally binding instrument is rather simple.

If such simpler form is sufficient to achieve the objective of co-operation and that is not contrary to domestic legislation, the first consideration is to draw up a non-legally binding instrument. In other instances, legally binding agreements are to be concluded.

Moreover, if by nature of the subject matter of the instrument it is to be regulated by the international law, the legally binding instrument is to be concluded.

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

In essence, that is the decision of the entity, that initiates conclusion of the instrument. However, in the course of interagency co-ordination the MoFA may suggest/advice to the responsible entity the most appropriate type of the instrument.

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

The conclusion of a binding treaty is in detail regulated by legislation and is possible only with prior decision on expediency of the conclusion of a treaty. The legal regulation requires the course of interagency co-ordination of a draft treaty. Moreover, persons may perform acts relating to the conclusion of the treaty of the Republic of Lithuania only provided they possess full powers. Only the President of the Republic, the Prime minister and the Minister of Foreign Affairs are entitled, without possessing special powers, to perform all acts relating to the conclusion of treaties of the Republic of Lithuania.

For the procedure of conclusion of the non-legally binding instruments, see the answer to question 7.

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?

For formal assessment procedure see the answer to question 7.

In practice, MoFA also plays a central role in the cases when non-legally binding arrangements/declarations of political character are to be concluded.

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?

Assessment is usually made well before the intended date of signature or well before submission of the draft to the other party and also before decision on granting full powers.

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?

Not applicable

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, we do not have such standard/written guidance, but non-legally binding instrument cannot contradict the laws, other legal acts and international obligations of the Republic of Lithuania.

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 answer to question 7.

This procedure is established in the Regulation approved by the Government, therefore every public authority must follow provisions of the Regulation.

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

See the answer to question 7.

This procedure is established in the regulation approved by the Government.

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.

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)?

No, we do not have such practice, the consultations are conducted on the case by case basis.

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, there are no formal legal requirements for consulting the Parliament on non-legally binding agreements.

The Parliaments role in conclusion of international agreements is limited to ratification, denunciation and to decisions on rising objections on the reservations to multilateral treaties by other states, if by such objection Lithuania declares that treaty will not come into force between the state concerned and Lithuania.

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

Not applicable, but see the answer to question 26.

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

Not specifically, but within the general system of parliamentary control over the activities of the Government.

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?

Not applicable

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?

See the answers to the question 7.

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

Preferably. In any case, the signatures must be clearly visible and it should be clear who the signatories are.

However, non-legally bind instruments may also be concluded by the way of exchange of letters/diplomatic notes.

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?

Though the possibility for electronic signature of non-legally binding arrangements is not regulated by the internal guidelines, if the sides agree an electronic signature should be possible for conclusion of the non-legally binding instruments.

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 instruments to be concluded in Lithuanian. Though, it would be much preferable. However, if the other side of the instrument insists to sign it in their own language, the Lithuanian version shall be prepared 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)

No, there are no special requirements for conclusion of non-legally binding agreements.

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 data base, though the MoFA has information about conclusion of non-legally binding instruments and collects it.

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

See the answers to the question 7.

The MoFA collect the digital copy as well as signed copy of such instrument.

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

As there is no obligation to publish the non-legally binding instruments, entities, concluding them only sometimes publish them on their websites. However, non-legally binding instruments fall under the definition of public information created upon performance of public duties provided by law or legislation and therefore institutions are required to ensure public access to such information.

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?

Not applicable

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?

Only consultations on the case by case basis are taking place in practice.

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 process of conclusion of non-legally binding instruments is much shorter.

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?

We have not noticed an increased number of the non-legally binding instruments concluded in the recent years.

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?