

REPUBLIC OF MOLDOVA

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?

The term „non-legally binding agreement” is used in the Republic of Moldova’s legal framework and it embraces different titles, such as: letters of intent, memoranda of understanding (MoUs), and joint statements that are considered not to impose legal obligations. It is important to note that while such agreements may guide future actions and negotiations in Moldova, they do not carry budgetary implications or enforceable legal consequences unless further formal steps are taken. These agreements are recognized as effective upon signature but do not create rights or duties that a court or arbitral body can enforce.

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

As mentioned in the previous answer, besides referring to these documents as non-legally binding agreements, they can also be defined as joint declarations, exchanges of notes, letters of intent, or MoUs. The participants will not establish any legal obligations arising from the respective agreement that defines the characteristics of these agreements, and the language used reflects these intentions

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

The title of the document as „MoU” could be used in both cases: for a treaty, as well as for a non-legal binding instrument.

II. Distinction

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

In the Republic of Moldova, a treaty is defined as any agreement concluded in writing by the Republic of Moldova with the intent to produce legal effects and governed by public international law norms, formalized in a single instrument or in two or more instruments, regardless of its specific designation.

International civil law contracts represent legally binding agreements that involve entities operating across multiple countries and incorporate one or more foreign legal systems.

Non-legally binding agreements are seen as instruments that are not creating legal obligations for the participants

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)?

Certain elements qualify an agreement as non-legally binding, and these are the intent of the participants, the nature of the rights and obligations, the language and structure of the agreement, the procedures convened by the participants for its entry into force and the absence of any legal consequences. This illustrates that the participants willingly intend to enter into an agreement that does not have any clear legal consequences.

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 distinction between MoUs and other types of non-legally binding agreements is related to the content, scope, and level of formalization or the intent these documents reflect

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

In the Republic of Moldova, there are no different internal rules applied to non-legally binding agreements. The process begins with a proposal, which is usually initiated by the relevant ministry or government body. The draft is prepared and reviewed internally. The draft is subject to internal consultation with relevant ministries, including the Ministry of Foreign Affairs, Ministry of Justice, Ministry of Finance and the Ministry of Economy and Digitalization. Then, the legal experts review the text to confirm that the agreement remains non-legally binding and does not inadvertently create enforceable obligations. If so, the document is signed usually by the leadership of the authorities involved

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, we don't.

III. Competence

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

In the Republic of Moldova there are no legislative provisions regarding granting prerogatives for signing of non-legally binding instruments to a limited category of persons. Usually, these types of documents are signed by the leadership of the institutions responsible for the document.

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?

Administrative territorial units, such as rayons, municipalities, cities or other administrative subdivisions, usually do not conclude either non-legally binding agreements, nor treaties.

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 agreements can produce an indirect legal effect as they could shape the trajectory of international legal instruments. Even though these agreements do not have binding legal effects, they can create political or diplomatic pressure and guide the conduct of the participants involved. While they do not carry the same effect as legally binding treaties, their influence on international legal processes and the behavior of states can be substantial, viewed in the context of the broader goals and diplomatic objectives they aim to advance.

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?

First, the decision is determined by the will of the participants. The authorities of the Republic of Moldova agree with the other part that the signing of an international treaty is inappropriate or premature. Another aspect may be the field or spectrum of social relations it covers. Moldovan treaty law regulates the domains where an international treaty it is compulsory. Therefore, if there is no need to conclude an international treaty that will explicitly regulate the rights, obligations and liability of the parties, most often the option is to conclude a non-legal bidding agreement.

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

The involved authorities submit proposals regarding the status of the document to be signed to the Ministry of Foreign Affairs, who assesses it and decides the status of the future document: legally binding treaty or non-legally binding agreement.

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 opportunity of the conclusion of a treaty. The legal regulation provides concrete procedure for coordination of the draft between the authorities. The Moldovan legislation does not contain express provisions for non-legally bidding instruments, except for the documents that imply financial impact. Otherwise, they become the subject of examination by competent state institutions from the point of view of the qualification of the project and the eventual application of the procedures of the national legislation applicable to state contracts.

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 are no such express provisions. But the evaluation is done by coordinating the text with the ministries involved and especially the Ministry of Foreign Affairs, in order to establish whether it is a bidding or non-bidding instrument. The Ministry of Foreign Affairs is responsible for assessing non-legally binding arrangements to ensure that no legal obligations are accidentally included into non-legally binding arrangements and there will be no legal implications.

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

The decisive assessment is usually provided following the examination performed by the Department of International Law of the Ministry of Foreign Affairs.

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

Normally the assessment is necessary at the moment that the draft is elaborated or is received from other side. If any subsequent consultations or negotiations result in changes to the reviewed draft, the final text will be assessed again.

18. If sub-national territorial units/bodies or specialized agencies are competent to conclude non-legally binding agreements (cf. question 10), are such agreements subject to the same formal assessment applicable for agreements of the (federal) government/international organisation?

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.

Administrative territorial units, such as rayons, municipalities, cities or other administrative subdivisions, usually do not conclude neither non-legally binding agreements, nor treaties.

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?

The Ministry of Foreign Affairs is currently working on developing a guide regarding the procedure for examining, qualifying and concluding non-legally bidding instruments.

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

The Republic of Moldova has normative acts that very well prescribe procedures regarding the conclusion of international treaties, state contracts and international loans, therefore other documents to be qualified as non-legally bidding are examined considering these legal provisions, the process being monitored by the Ministry of Foreign Affairs and the Government. Also, the MFA offers its expertise upon request and thought different training.

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

The legislation of the Republic of Moldova in the field of treaties contains the provisions that the status of the future document proposed for conclusion is to be established in the process of preliminary consultations between the parties, prior to the drafting of the text. Before concluding agreements with foreign elements, which do not constitute international treaties, the opinion of the Ministry of Foreign Affairs will be requested.

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, guidance is provided through the distribution of standard instructions for agreements and the organization of regular training sessions. Standardized agreement templates, as well as guidance elements are provided by the Ministry of Foreign Affairs upon request.

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?

No, the Parliament is involved only in the process of concluding the strategic and state level treaties.

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

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

No, it is not the case.

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?

No. Parliament's involvement is consultative only for the treaties and states contracts with financial implications.

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?

No. Such authorization is not provided by the legislation of the Republic of Moldova.

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

No, it is not mandatory, but according to normal practice they are 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?

The legislation of the Republic of Moldova does not regulate the electronic signing of documents with foreign elements. Therefore, even in the case of non-legally binding instruments, there are no electronic signing practices.

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)?

For non-legally binding instruments there are no provisions that would create obligations regarding the language. Most of them are in Romanian and English, or only in 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)

There are no special formal requirements for concluding 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, digital database is not required but upon practice these instruments are included in Registry of the state treaties of the MFA with a specific remark that these documents are non-treaties.

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

The entity that is responsible for the area that is covered by the non-legally binding instrument is also responsible for keeping them.

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

This detail is decided by the responsible entity. It can be published on the website of responsible institutions.

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?

The non-legally binding instruments are not required to be published. As noted in response to question 36 this is considered on a case-by-case basis. The need for confidentiality is decided by the responsible entity.

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?

Information about the differences between the types of agreements is disseminated through training sessions, workshops, and the distribution of practical instructions for the civil servants. Standard agreement templates could be provided upon request.

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 main benefit of using non-legally binding agreements is their flexibility in establishing collaborations. The main concern is the lack of a legal enforcement mechanism and in some cases the lack of transparency that certain state institutions can make use of.

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?

The Ministry of Foreign Affairs has registered an increased number of non-binding agreements in 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?