

NORWAY

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| 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>Norway does normally not use the term “non-legally binding agreement”. In Norway we use the word “agreement” only on legally binding agreements.</i></p> |
| <p>2. If not, what term do you use instead (e.g. arrangements) and how do you define it?</p> <p><i>Norway uses the term “non-legally binding documents”.</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>Pursuant to Norwegian practice, a Memorandum of Understanding (MoU) could be both legally binding and non-legally binding. An MoU must be interpreted in accordance with international law. If the MoU after an interpretation is regarded as legally binding, it has to be concluded in accordance with the procedure for conclusion of treaties.</i></p> |
| II. Distinction |
| <p>4. How do you differentiate between treaties, international civil law contracts and non-legally binding agreements?</p> <p><i>Differentiating between treaties, international civil law contracts and non-legally binding “agreements” (or documents), is a question of interpretation. Treaties are regulated by international law. International civil law contracts are regulated by national law. Non-binding “agreements” may be regulated by international law but are not legally binding documents.</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>If the document contains a clause stating that the document is not intended to be an international (legally binding) agreement or does not create legal obligations etc., the document would most commonly be considered non-legally binding. If the document does not contain any clear clause regarding its legal status, it is a matter of interpretation.</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>Pursuant to Norwegian practise, all types of documents must be interpreted in accordance with international law, regardless of their title, form or whether they are legally binding or not. In Norway we do however not distinguish between different types of non-legally binding “agreements”. The distinction that has to be made is between legally binding agreements and non-legally binding documents.</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>See question 6.</i></p> |
| <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?</p> |

Norway does not distinguish between non-legally binding documents concluded with international organisations and such documents concluded with States. The same rules apply for non-legally binding documents concluded with international organisations, as for such documents concluded with States.

III. Competence

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

Signature to a non-binding document does further not require an internal decision or a full powers document signed by the Foreign Minister. Conclusion of a non-legally binding document requires however an internal political decision on the correct level, which again depends on the significance of the document (and its content).

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?

Norway has no territory or dependencies with competence to conclude treaties on their own. Non-legally binding documents could be concluded by an official body or agency within their own competence, including at county and municipal level.

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?

Pursuant to Norwegian practice a non-legally binding document will only produce political effects. Non-legally binding documents may however in certain circumstances serve as interpretative guidance for binding instruments, cf. e.g. Vienna Convention on the Law of Treaties art. 31 paragraph 2 and 3.

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?

Non-legally binding documents are more commonly used in more areas of cooperation between states, and to illuminate or establish a position or future aspirations, objectives and potential policy changes. A non-legally binding document could be concluded to facilitate the conclusion of a legally binding agreement. There are however examples of non-legally instruments that have been concluded to promote negotiations of legally binding agreements and the efficiency thereof. Furthermore, sometimes non-legally binding documents are concluded because it is impossible to achieve agreement on a legally binding agreement.

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

It is often clear whether it is necessary with a legally binding agreement or not. Tax agreements and free trade agreements, for instance, must be legally binding. It is a political decision to conclude a non-legally binding document. The Legal Department of the Ministry of Foreign Affairs could (read should) be consulted in the question of whether it is necessary with a legally binding agreement in the specific area – with any associated procedural consequences (see question 14). It is however ultimately for the Government to decide if a legally binding agreement should be concluded (particularly in matters of significance).

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

Conclusion of treaties must be done in accordance with the procedure of conclusion of treaties, by a formal decision by royal decree or a decision by the Director General of the Ministry of Foreign Affairs according to delegated competence. A non-binding document could normally be concluded by a political decision, rarely by a formal decision.

VI. Formal Assessment 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 of non-legally binding agreements concluded by any government ministry. The Legal Department in the Ministry of Foreign Affairs could be consulted.

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

The Legal Department in the Ministry of foreign Affairs, if relevant.

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

Before the negotiations start it should be decided whether one aim to conclude a legally binding agreement or a non-legally binding political document.

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?

The ministries and other official bodies have the competence to conclude documents within their own area of competence, and generally they do not have to consult the Ministry of Foreign Affairs about these documents.

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 Legal Department in the Ministry of Foreign Affairs has produced guidelines for the conclusion of international treaties, which also contains a description of non-legally binding documents and elements/factors relevant for the interpretation.

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

All the ministries are informed that treaties have to be concluded through a certain procedure through the Ministry of Foreign Affairs. The Legal Department in the Ministry of Foreign Affairs has produced guidelines for conclusion of international treaties. Political documents and non-legally binding documents could normally be handled by the ministries on their own.

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| <p>21. How do you ensure that non-legally binding agreements are, in fact, submitted for the centralised formal assessment procedure?</p> <p><i>Non-legally binding documents with the Government of the Kingdom of Norway as a party, should normally be concluded by the Ministry of Foreign Affairs, as the other ministries do not represent the Government as a whole. If the document is submitted to the Ministry of Foreign Affairs, the Legal Department will assess whether it is legally binding or not.</i></p> |
| <p>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)?</p> <p><i>The Legal Department in the Ministry of Foreign Affairs has produced guidelines for conclusion of international treaties, which also contains a description of non-legally binding documents and elements/factors relevant for the interpretation. The responsible ministry could contact the Ministry of Foreign Affairs about the drafting and conclusion of non-legally binding documents.</i></p> |
| <p><u>For International Organisations:</u></p> |
| <p>23. If such a process exists, please describe the regular process of formal assessment of non-legally binding agreements within your organisation.</p> |
| <p>VII. Democratic Review/Parliamentary Participation</p> |
| <p><u>For States:</u></p> |
| <p>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?</p> <p><i>The Parliament is only informed about non-legally binding political documents if they are of particular significance. The Parliament receives the Government's protocols of the last year. If the non-legally binding document is of importance and concluded by the Government, the Parliament will be able to see it in the Protocol.</i></p> |
| <p>25. If so, at what stage of the process is the legislature usually involved?</p> <p><i>Only at a later stage when they receive the Government protocol from the last year.</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 will review non-legally binding documents concluded by royal decree, as all royal decrees within one year are sent to the Parliament.</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>Parliamentary approval is generally not a requirement for non-legally binding documents.</i></p> |
| <p><u>For 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> |

A non-legally binding document could be signed without a full powers document signed by the Minister of foreign affairs. Decision to sign (on to) a non-legally binding document could be made in the Ministry of Foreign Affairs at the appropriate level.

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

According to Norwegian practice, non-legally binding documents are signed in the same way as treaties. Both parties will sign 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?

Norway does not practise electronic signature at state level.

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)?

Non-legally binding documents do not necessarily have to be concluded in Norwegian, except if the counterpart requires conclusion in its own national language. A non-legally binding document can for instance be concluded solely 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)

Norway uses treaty folders without national seal for non-legally binding documents.

IX. Registration and Publication

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

Norway has only a digital register for treaties, not for non-legally binding documents.

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

Non-legally binding documents are, with few exceptions, kept in the ordinary archive.

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

Norway rarely publishes non-legally binding documents. Treaties are always published.

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?

Non-legally binding documents are rarely confidential.

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 Legal Department in the Ministry of Foreign Affairs has produced guidelines for conclusion of international treaties, which also contains a description of non-legally binding documents and elements/factors relevant for the interpretation. The responsible ministry could contact the Ministry of Foreign Affairs for guidance on drafting and conclusion of non-legally binding documents. The Ministry of Foreign Affairs regularly informs the other ministries about international agreements as well as the distinctions between treaties and non-legally binding documents.

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?

Non-binding documents may to some extent formalize, improve, and render more efficient international cooperation without imposing positive obligations on the States. Non-binding documents could further be concluded by a simplified form and do not have to be concluded in accordance with the procedure for conclusion of treaties. Non-legally binding documents may however be vague in form and create unrealistic expectations and does not entail accountability.

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 number of international agreements Norway has concluded in recent years has decreased. We do not have an overview of the number of non-legally binding agreements.

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?