

## SLOVENIA

<b>A. SUBSTANTIVE ASPECTS</b>
<b>I. Definitions</b>
<p>1. In your practice, do you use the term “non-legally binding agreement”? If so, how do you define it?</p> <p><i>We do not use term "non-legally binding agreement". Instead, we usually use the term "non-legally binding instrument" (in Slovenian "pravno nezavezujoč mednarodni akt").</i></p>
<p>2. If not, what term do you use instead (e.g. arrangements) and how do you define it?</p> <p><i>We usually use the term "non-legally binding instrument" (in Slovenian "pravno nezavezujoč mednarodni akt"). Non-legally binding instruments are those "international instruments" that do not create or establish rights and obligations under international law. While not binding under international law, such instruments may carry significant moral or political weight. They are often used in international relations to establish political commitments.</i></p> <p><i>In bilateral relations, states often conclude Memoranda of Understanding (MoUs) or Memoranda of Cooperation (MoCs). At multilateral or universal level, declarations and other international instruments may be adopted on important global issues.</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>We determine the legal nature of each international instrument solely on its content and never by its title.</i></p>
<b>II. Distinction</b>
<p>4. How do you differentiate between treaties, international civil law contracts and non-legally binding agreements?</p> <p><b>International treaties</b></p> <p><i>An international treaty is an agreement concluded in writing by the Republic of Slovenia with one or more States or international organisations, which is governed by international law, irrespective of the number of instruments of which it is composed and irrespective of its specific denomination.</i></p> <p><b>International civil law contracts</b></p> <p><i>An international civil law contract is contract involving a foreign element and is a contract between two parties from different countries. Usually, civil courts have jurisdiction over these contracts. In the Republic of Slovenia general civil law contracts are those contracts to which the general rules of civil law apply with regard to formation, validity, termination and other matters.</i></p> <p><b>Non-legally binding agreements</b></p> <p><i>Non-legally binding instruments (agreements) are those that do not create/establish rights and obligations under international law. While not binding under international law, non-legally binding acts/instruments may carry significant moral or political weight. They are often used in international relations to establish political commitments.</i></p> <p><i>We usually consider a non-legally binding instrument an instrument concluded between two or more States or their governments/authorities or adopted/concluded within the framework of a particular international organization or group of States, which does not create rights and obligations under international law. These may be various declarations, MOUs, letters of intent, etc.</i></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)?

*There are few essential elements, which generally qualify an instrument as a non-legally binding, namely:*

- *The ability to conclude agreements: non-legally binding instruments (agreements) may be concluded on behalf of subjects of international law by their authorities, and for States by their governments and other authorities;*
- *Legal nature: The participants concluding non-legally binding instruments (agreements) must agree that the instrument (agreement) does not create rights and obligations under international law;*
- *Form and method of conclusion: The wording of the text of non-legally binding instruments (agreements) (i.e. the use of "will" instead of "shall", "Participants" instead of "Parties", "entry into effect" instead of "entry into force"). The method of conclusion is simplified and most authorities may conclude non-legally binding instruments (agreements), which is not necessarily the case when concluding treaties;*
- *Content and purpose: Non-legally binding instruments (agreements) usually express a political intention to cooperate between States or within international organisations;*
- *Prior instruments: In deciding whether to conclude any instrument (agreement), it is important to assess whether the deepening of relations or the cooperation is necessary and beneficial for the country with regard to the already existing instruments (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?

*We do distinguish between "MoUs" and other types of non-legally binding agreements, such as "joint declarations of intent" or "arrangements" and others.*

*MoUs are usually concluded in different fields of cooperation and are more substantial than letters of intent.*

*Usually we conclude "joint declarations" or "letters of intent" as an official announcement or statement. Joint declaration of intent may provide a framework in which the participants may identify different areas in which they might wish to cooperate in future.*

*However, "Arrangements" are rarely non-legally binding. We usually conclude them for the purpose of implementing a treaty.*

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

*We do distinguish between different types of non-legally binding instruments (agreements), but we do not have different internal rules applying to them.*

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 distinguish between the type of non-legally binding instruments (agreements) concluded with international organisations or States.*

*There are no different rules which apply to non-legally binding instruments (agreements) depending on whether the other side is State or an International Organisation.*

### **III. Competence**

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

*State representative (by function) has the competence to sign a non-legally binding agreement. The Government's authority is not necessary.*

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?

*In the Republic of Slovenia, all other national authorities in addition to the government, ministries, constituent bodies and some public agencies may conclude their own non-legally binding instruments (agreements). Under certain conditions, authorised public law bodies may also conclude non-legally binding instruments (agreements). These are independent holders of rights and obligations and, apart from the initial acts, which fall within their field of activity, and which they may conclude independently within the scope of their own competence, they may also conclude international instruments on behalf of the State with regard to international cooperation.*

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 theory, non-legally binding agreements are capable of producing (indirect) legal effects, however when we conclude non-legally binding instruments (agreements) they are not capable of producing (indirect) legal effects.*

*We do not consider non-legally binding agreements as a prerequisite before the conclusion of a binding instrument of international law.*

#### **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?

*Decision to opt for non-legally binding instrument (agreement), depends on the need or interest to conclude it and is based on the desire of the competent authority to conclude the non-legally binding instrument (agreement) with the chosen authority of another state.*

*Usually, we do not conclude non-legally binding agreements to facilitate the conclusion of a legally binding agreement in the future and we very rarely conclude non-legally binding agreements in a situation in which a legally binding agreement cannot be reached with the involved sides.*

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

*In accordance with the provision of the second paragraph of Article 69 of Foreign Affairs Act, the opinion on whether an international instrument is an international treaty or non-legally binding*

agreement (instrument) is given by the Ministry of Foreign and European Affairs (International Law Department) before commencement of the procedure for its conclusion.

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

*The internal procedure for the conclusion of international instruments is governed by the Foreign Affairs Act.*

*Under the above-mentioned act, the procedure for concluding a treaty has to be initiated by the competent administrative authority or another state authority. When a competent authority is not the Ministry of Foreign and European Affairs, the initiative must be accompanied by its written consent. The Ministry of Foreign and European Affairs must therefore issue an approval or reject the initiative within 30 days of its receipt. The decision on the initiative is adopted by the Government. If ratification of the treaty falls within the competence of the National Assembly (Parliament), the Government submits the initiative for approval by the National Assembly working body responsible for foreign affairs. The initiative must contain:*

- rationale of the initiative for conclusion of an international treaty;*
- essential elements of the treaty, including possible reservations and provisional application;*
- proposed positions of the delegation;*
- proposed composition of the delegation, a cost estimate of its work and how the costs will be covered;*
- proposal as to who should initial or sign the treaty;*
- indication as to which body will ratify the international treaty and whether the conclusion of the international treaty will require the adoption of new regulations or the amendment of regulations in force;*
- an estimate of the financial resources needed for the implementation of the international treaty, and the manner of providing such resources;*
- a proposal for the approval of provisional application of the treaty;*
- a statement by the competent authority regarding the suitability of the conclusion of the treaty from the standpoint of consistency with the acquis and guidelines of the European Union.*

*When deciding on the initiative, the Government also designates a delegation for negotiations, and determines its powers and possible obligation to submit a report together with initialled text before the signing of the treaty. If the text of the treaty is in conformity with the adopted positions, the authorised person may sign the treaty. During negotiations the delegation must act within the framework of the positions and powers contained in the initiative.*

*The procedure of ratification of a treaty is commenced by the Ministry of Foreign and European Affairs, at the proposal of the competent authority which conducted negotiations for conclusion of the treaty. The treaties may be ratified either by the Government or the National Assembly.*

*When concluding non-legally binding agreement (instruments) the procedure for concluding is initiated by the competent administrative authority or other competent authority. After the competent authority receives the opinion from Ministry of Foreign and European Affairs on its legal nature it may proceed with negotiations. After the text of the non-legally binding instrument (agreement) is finalised, the competent authority informs the Government on its intent to conclude such instrument. The Government issues a decision with regard to the conclusion of a non-legally binding agreement (instrument). After the Government's issues a decision, the competent authority may proceed with the signature of such instrument.*

## 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?

*Yes, there is a mandatory centralised formal assessment of non-legally binding instruments (agreements) concluded by any government ministry or other authority.*

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

*The International Law Department within the Ministry of Foreign and European Affairs performs this formal assessment.*

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

*The formal assessment is carried out before the commencement the procedure for its conclusion, i.e. as soon as the draft of the instrument (agreement) is prepared or received.*

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 Republic of Slovenia does not have sub-national territorial units/bodies, which is why this issue only applies to non-legally binding agreements concluded by certain public agencies.*

*Non-legally binding instruments (agreements) that are concluded by certain public agencies are subject to the same formal assessment.*

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?

*We do have a handbook, which includes certain guidelines with regard to the assessment of non-legally binding instruments (agreements).*

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

*According to Article 69 of the Foreign Affairs Act, the Ministry of Foreign and European Affairs is responsible for assessing the legal nature of any international instrument. According to the mentioned Act, the competent authority must send the draft of an international instrument to the Ministry of Foreign and European Affairs for an opinion.*

*The Ministry of Foreign and European Affairs must be informed of the intended conclusion of any legally binding or non-legally binding agreement before any discussions or negotiations take place with other side(s)/participant(s).*

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

*We do not have concrete measures to ensure that all non-legally binding instruments (agreements) are submitted for the centralised formal assessment procedure, but in accordance with Article 69 of The Foreign Affairs Act the competent authority is obliged by law to obtain the opinion of the Ministry of Foreign and European Affairs on the legal nature of the international instrument.*

<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.

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, the Ministry of Foreign and European Affairs – International Law Department does provide guidance to other government departments and agencies on best practices with respect to non-legally binding agreements (instruments) and organises regular workshops and provide information materials (handbooks, manuals and guidelines) on how to properly draft and conclude all international instruments.*

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?

*Usually not, only in certain situations is the legislature notified or consulted.*

*There are, however, provisions in the Foreign Affairs Act (Article 3) and in Decree on Cooperation, Communication and Coordination of Positions in Foreign Affairs and International Relations (Article 5) governing notification of and cooperation with the Parliament. The Ministry of Foreign and European Affairs may inform the Parliament about important matters in the field of foreign affairs and international relations, which may also include the conclusion of non-legally binding agreements (instruments).*

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

*Deadlines or timeframes (at what stage of the process) are not predetermined.*

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

*At the initiative of the Parliament and its working bodies, the Ministry of Foreign and European Affairs gives explanations on foreign policy activity, and the Minister of Foreign and European Affairs answers questions from deputies (members of Parliament) within his/her competence.*

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?

*Normally there is no legislative participation. As mentioned above the Government (the Ministry of Foreign and European Affairs) may inform the Parliament about important matters in the field of foreign affairs and international relations.*

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?

*There is an obligation under Article 75, paragraph 10 of the Foreign Affairs Act to inform the Government before the conclusion of a non-legally binding instrument (agreement).*

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

Yes

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?

*Yes, but only in exceptional circumstances as electronic signature of international instruments is not yet fully regulated. Only the official electronic signature is accepted, not for example a scan of the signature. In exceptional circumstances, we do accept the electronic transmission of non-legally binding agreements.*

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)?

*No, we do not always require non-legally binding agreements to be in the Slovenian language. They may be concluded in the English language or other neutral language. However, they cannot be concluded exclusively in the partner's language. If the partner's official language is English, then the non-legally binding instruments (agreements) has to be concluded also in the Slovenian language.*

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).

*We do not have any formal requirements exclusively for concluding non-legally binding agreement (e.g. we do not use a special kind of paper to print only non-legally binding agreements). Non-legally binding instruments (agreements) are printed out one-sided on an A4 paper and inserted into the signature folder.*

## **IX. Registration and Publication**

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

*We do not have a special digital register/archive/database only (especially) for non-legally binding agreements (instruments) signed by our country; however, we do maintain an electronic register of all international instruments (in Slovenian Elektronska evidenca mednarodnih aktov – EEMA), which also includes non-legally binding instruments (agreements).*

*The International Law Department of the Ministry of Foreign and European Affairs registers, archives and preserves the originals and certified copies of all non-legally binding instruments (agreements) which were signed and/or applied by the Republic of Slovenia.*

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

*Pursuant to Article 79, paragraph 2 of the Foreign Affairs Act, all international instruments are deposited with and registered by the Ministry of Foreign Affairs (International Law Department) after their signature.*

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

*Usually, we do not publish non-legally binding agreements in the Official Gazette of the Republic of Slovenia, but they may be published based on a proposal by the competent authority and decision of the Government of the Republic of Slovenia.*

*In this case, the Government of the Republic of Slovenia publishes such non-legally binding instrument (agreement) in the Official Gazette of the Republic of Slovenia by passing a decision on its publication.*

*Non-legally binding instruments (agreements) are openly accessible to all.*

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?

*There are no reasons why non-legally binding agreements can be withheld from central registration.*

## **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 usual form of disseminating the information internally regarding the differences between legally binding and non-legally binding agreements is by organising periodic workshops (aimed at all employees of the ministries and other authorities) and by preparing handbooks, manuals and guidelines.*

*Currently the Ministry of Foreign and European Affairs does not organise specific workshops exclusively for the units, which draft international instruments, however we are planning to organise such workshops in the future.*

*In certain fields of cooperation, the standard form ("model MoU") does exist and the units can use it as a drafting aid.*

## **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 is a simplified procedure of conclusion, entry into effect and application as soon as they are signed, the participants usually negotiate a non-legally binding agreement (instrument) faster than a treaty and are more flexible, the text is usually shorter and the wording is simplified. In a multilateral framework more participants/states may be interested in its conclusion.*

*Our main concern is that lately the number of non-legally binding agreements (instruments) is rapidly increasing. Sometimes, instead of concluding a treaty, other party/participant prefers to conclude a non-legally binding agreement (instrument), even though it would be more appropriate to conclude a treaty. The concern may also be (especially in a multilateral framework), that other participant(s) may not necessarily consider such instrument as non-legally binding and such instrument may have a different (legal) status in different states.*

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 been concluding an increased number of non-legally binding instruments (agreements) in recent years for several different reasons. The main reasons are:*

- Simplified procedure of conclusion,*



- *Legally binding agreement cannot be reached with the other side/participant,*
- *There is not enough time available to conclude a legally binding agreement before a certain event or (official) visit,*
- *In some fields of cooperation, the competent authorities prefer to conclude a non-legally binding instrument (agreement),*
- *Occasionally the conclusion of a non-legally binding instrument (agreement) is more appropriate considering which competent authorities will conclude such non-legally binding instrument (agreement) and be responsible for its application,*

*In a multilateral framework, the conclusion of a non-legally binding instrument (agreement) is sometimes the only option.*

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?