

SWEDEN

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>Yes, the Swedish Government uses the term non-legally binding international agreement or other instrument in respect of a quite large number of international agreements or other similar instruments. The Instrument of Government (regeringsformen) is not applicable in respect of such non-legally binding international agreements. These agreements are usually expressing the State Parties political intentions, their common understanding and their co-operation in various fields. They are usually more of a political than a legal character. They could have financial impacts. Such agreements are often described as a Memorandum of Understanding. In such cases, a government decision regarding the approval of the agreements is not required according to Swedish Constitutional law, for the reason that those agreements are not legally binding.</i></p>
<p>2. If not, what term do you use instead (e.g. arrangements) and how do you define it?</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>A Memorandum of Understanding is in most cases considered to be a non-legally binding international agreement or instrument.</i></p>
II. Distinction
<p>4. How do you differentiate between treaties, international civil law contracts and non-legally binding agreements?</p> <p><i>A treaty or other legally binding international agreements between sovereign States is binding for Sweden as a State Party to the treaty and it creates rights and obligations which can be invoked by a State Party to the treaty or other binding international agreement.</i></p> <p><i>International civil law contracts are governed by Private International Law and can be referred to a court of law by a Contracting party, usually a private party. The government is normally not involved in these matters.</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>Regarding non-legally binding agreements or instruments, please see the answers to questions 1 and 3 above.</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>No, the government does not distinguish between “MoUs” and other types of non-legally binding international agreements or instruments. The same internal legislation applies in respect of all non-legally binding instruments.</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>Please see the answer to question 6 above.</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>

No, the same internal legislation applies in respect of non-legally binding international agreements or instruments in all cases.

III. Competence

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

The government official who signs a non-legally binding agreement or instrument does not need a formal proxy issued by the government. Such non-binding agreements or instruments can inter alia be signed by the Head of a Department within the Ministry responsible for the issues at hand. In some cases, an official within a Public Agency responsible for the issues at hand may sign such an agreement or other instrument.

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?

Sweden is a single Nation State, and not a federation of states or provinces. In some cases, an official within a Public Agency responsible for the issues at hand may sign a non-legally binding agreement or other instrument.

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?

A non-legally binding international agreement could be 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. Moreover, a non-legally binding international agreement under certain circumstances could have other indirect legal effects in relation to a yet not concluded 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?

The government considers that CADHI has pointed out two very pertinent examples regarding the government's decision whether to opt for a legally binding or a non-legally binding agreement or other non-legally binding instrument. More examples are not necessary.

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

Such matters are usually decided on a political level within the government.

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

Swedish Constitutional law (The Instrument of Government) is only applicable in respect of treaties and other legally binding agreements. Hence, a government decision is not required for

the approval of a non-legally binding agreement. No formal proxy is needed for the official who signs such an agreement.

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 is no mandatory procedure for a centralised formal assessment of non-legally binding international agreements concluded in Sweden, apart from general rules and procedures concerning joint preparation within the government offices. A draft international agreement is always examined by legal experts within the Government Offices to ensure that the draft agreement is clearly identifiable as non-legally binding.

As has been stated above, a decision to conclude a treaty or a legally binding international agreement is usually decided on a political level within the Government.

Non-binding international agreements (for example MOUs) are normally assessed by the responsible Ministry, in certain cases in co-operation with other involved Ministries or Governmental Agencies.

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

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

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?

Draft non-legally binding international agreements are always assessed by the responsible Ministry or Government Agency. Legal experts within the Government offices and Government Agencies examines all draft international non-legally binding agreements to ensure that they fulfil the criteria for being non-legally binding according to applicable international and internal law.

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?

See 18

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 relevant actors are continuously informed concerning the relevant practise which should be followed

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

All non-legally binding international agreements will be examined according to our relevant practise.

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)?

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.

Yes, the responsible ministry provides guidance to other actors regarding the practise which should be followed in these cases.

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?

Non-legally binding international agreements, such as MoUs, are not subject to Democratic Review or Parliamentary Participation.

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

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

No

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?

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

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

Not necessarily.

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?

Electronic signatures on our non-legally binding international agreements are not in use.

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 international agreements are usually set out in English and/or in Swedish language and in the partners' language.

For International Organisations:

<p>What language do you usually require for the text of your non-legally binding agreements?</p>
<p>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).</p> <p>No</p>
<p>IX. Registration and Publication</p>
<p>34. Do you have a (digital) register/archive/database for all non-legally binding agreements signed by your country?</p> <p><i>There is no digital register/archive/database covering all non-legally binding agreements in use.</i></p>
<p>35. If so, what entity keeps the non-legally binding agreement after signature?</p>
<p>36. Do you publish your non-legally binding agreements and are they openly accessible?</p> <p>No</p>
<p>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?</p>
<p>X. Education/Training</p>
<p>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?</p> <p><i>Education and training of administrators and other involved employees within the Government Offices and within the Public Agencies regarding these issues are continuously on-going. "Model MoUs" are used in this context.</i></p>
<p>C. GENERAL OBSERVATIONS ON STATE PRACTICE (AND WAY FORWARD)</p>
<p>39. What, in your view, is the main benefit of using non-legally binding agreements? What is your main concern?</p> <p><i>If the involved State Parties does not wish to opt for a legally binding international agreement, since they prefer to state only their political intentions, their common understandings and their intentions to co-operate in various fields, the only realistic alternative is to opt for a non legally-binding international agreement. Against this background, such agreements are quite common.</i></p>
<p>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?</p> <p><i>No, the government has not concluded an increased number of non-binding agreements in recent years.</i></p>
<p>For International Organisations:</p>
<p>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?</p>
<p>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?</p>