

ROMANIA

1. SUBSTANTIVE ASPECTS

1.1. Distinction

- 1.1.1. Does your national legislation differentiate between different categories of treaties? If it does, how are they categorised?

R: The national legislation differentiate among the following categories: state level treaties, governmental level treaties and departmental level treaties

- 1.1.2. What are the criteria for their classification into specific category (subject matter, scope, financial effects, etc.)? Does the form of the instrument lead to a different category of treaty?

R: The criterion for the classification of treaties into specific categories is the level at which they are concluded. The form of the instrument does not lead to different categories of treaties. However, the departmental treaties can only be concluded within the limits of the competences of the specific national authority concluding the treaty and if it is provided in the law governing the functioning and organisation of that authority that it can conclude international treaties.

- 1.1.3. What is the legal status of treaties not requiring parliamentary approval in the internal hierarchy of norms?

R: Treaties not requiring ratification can be applied without modifying the national laws.

1.2. Competence

- 1.2.1. Which authority is responsible for drafting the text of each category of treaty?

R: The texts of treaties are drafted by the national authorities (ministry or central public administration authority) which are competent to act in the main area regulated by the treaty.

- 1.2.2. In the process of drafting a treaty, which authority is responsible for the assessment of the legal character and category of an agreement?

R: The national authority (ministry or central public administration authority) which is competent to act in the main area regulated by the agreement decides upon the category it shall fall in. The Ministry of Foreign Affairs is always consulted on the matter and its position is decisive.

- 1.2.3. Which authority has the general responsibility for ratification/approval/confirmation procedures for treaties (is it generally the responsibility of the Parliament and only certain categories are confirmed by the government or vice versa)?

R: The Parliament adopts a *law* of ratification / acceptance / accession in the case of all state level treaties as well as in the case of governmental level treaties, regulating (i) political cooperation, (ii) military cooperation, (iii) state territory/border, (iv) status of persons/fundamental human rights and freedoms, (v) participation of Romania in international intergovernmental organizations, (vi) assumption of a financial commitment imposing additional burdens on the state budget, and (vii) treaties making necessary, for application, the adoption of new normative provisions or laws or the changing of existing law and those expressly requiring their ratification.

In extraordinary situations, the Government may adopt an *emergency ordinance* of ratification / acceptance / accession in the case of the governmental level treaties stated at (i)-(vii) above.

The Government adopts a *decision* of approval / acceptance / accession in the case of governmental level treaties which do not fall in the categories stated at (i)-(vii) above.

The Government adopts a *decision* of approval in the case of departmental level treaties.

- 1.2.4. What is the competence of autonomous regions/territories for the conclusion of a treaty?

R: In Romania there is no autonomous region/territory. The local public authorities do not have competences in the field of treaties.

- 1.2.5. Does the Ministry of Foreign Affairs have delegated competence to conclude less significant treaties on its own, by producing full powers signed by the Minister of Foreign Affairs? If it does, what typically characterises these agreements?

R: The Ministry of Foreign Affairs produces full powers signed by the Minister of Foreign Affairs for the signature of both state and governmental level treaties. The Ministry of Foreign Affairs also produces full powers signed by the Minister of Foreign Affairs for the signature of departmental level treaties, only if the partner requests such full powers.

The Ministry of Foreign Affairs can conclude treaties at departmental level in its field of competence.

2. PROCEDURAL ASPECTS

2.1. Procedure before conclusion/signature

- 2.1.1. What are the procedures required for the conclusion of different categories of treaties? Can a treaty be concluded through a simplified procedure? If yes, please provide a detailed presentation of the circumstances in which such procedures can be applied and describe the procedures.

R: The procedures involved by the conclusion of any type of treaties mainly consist in the following distinctive steps: approval of the initiation of negotiations, negotiation of the text of the treaty in between the parties, approval of the signature of the treaty convened upon. The first and third step require a specific approval in the Government. Additionally, if, during the negotiations the negotiating directives prove insufficient, the relevant national authority involved in negotiations must obtain from the Government additional negotiating directives.

There is also the possibility that, due to the emergency, the approval for the negotiation and signature of a treaty be done in one single document approved by the Government. In this situation the emergency requirement must be proved with solid arguments and there must be no difference in substance in between the text of the treaty submitted for governmental approval and the text to be signed following the negotiations. Formal changes are accepted, provided they do not affect the substance of the text.

Treaties can also be concluded through a simplified procedure, namely by exchange of verbal notes or letters, provided that they do not require parliamentary ratification. Treaties in the simplified form of the exchange of verbal notes are concluded only by

the Ministry of Foreign Affairs and enter into force on the date of the exchange or at another time provided in them, without being subject to any kind of subsequent approval procedure.

- 2.1.2. Do you have a procedure to review the harmonization and compliance of treaties not requiring parliamentary approval with existing national laws? What authority does the review and when?

R: Treaties requiring the adoption of a law by the Parliament, at any stage of their conclusion, may be analysed by the Constitutional Court regarding the compatibility of their provisions with the Romanian Constitution, at the request of any of the presidents of the two Chambers of the Romanian Parliament or a number of at least 50 deputies or at least 25 senators.

The negotiating authority must observe complete compatibility of the provisions of the treaty to be concluded with internal norms, as to assure the full implementation of the future treaty. This is an implicit competence of authorities which have the

- 2.1.3. Do these procedures have one or two phases (before and/or after signature)? Can a treaty enter into force upon signature?

R: The Constitutional Court's opinion may be requested before and after the signature of a treaty. The negotiating authority must permanently assure, especially during the negotiations and before the signing of the treaty, that the provisions of the treaty are compatible with internal norms.

The following categories of treaties may enter into force upon signature:

- a) Treaties at governmental or departmental level concluded in application of treaties in force that expressly provide for this possibility;
- b) Departmental cooperation protocols concluded by the Ministry of Foreign Affairs of Romania with the ministries of foreign affairs of other states;
- c) Cooperation programs at governmental and departmental level concluded in the field of education, culture, sport, research, with a maximum of 5 years validity, without the possibility of automatic extension;
- d) Treaties granting non-reimbursable financial assistance from the European Union or the member states, including those involving a contribution from the Romanian side, and which are negotiated and signed by the representatives of the ministry that manages the issue of European integration, respectively those regarding participation in community programs;
- e) Treaties, other than those mentioned at letter d), by which non-reimbursable financial assistance is granted, as well as those concluded at governmental or departmental level that regulate the development of specialized or technical projects, with the financial support of the foreign partner.

The above-mentioned treaties can be signed only after obtaining the approvals provided by the law for the signing procedure, as well as those for the entry into force as of the date of signing, and after the full powers have been awarded, if necessary.

- 2.1.4. Are there any differences in the procedures when considering multilateral vs bilateral treaties?

R: The procedural aspects involved in signing/approving bilateral and multilateral treaties are the same.

- 2.1.5. Are there certain denominations of treaties, which, according to your domestic law, always imply a treaty in simplified form? (for example, "Memorandum of Understanding", "Minutes" etc.)

R: No.

- 2.1.6. Is the procedure for obtaining the mandate for negotiations differentiated according to different categories of treaties? If yes, how?

R: The mandate for the negotiation of the treaties concluded at state level shall be approved by the President of Romania, following its endorsement by the Prime Minister. The mandate for the negotiation of the treaties concluded at governmental/departmental level shall be approved by the Government of Romania, the approval being granted by the signature of the Prime Minister.

- 2.1.7. Are the signatories of all categories of treaties required to produce full powers upon signature or just some of them?

R: The signatories of state and governmental treaties are issued full powers, with the exception of the President of Romania, the Prime Minister of the Government and the Minister of Foreign Affairs. The signatories of departmental treaties are issued full powers only if the partner requests the presentation of such an attesting document.

- 2.1.8. Do you allow for electronic signature of treaties? If so, are there certain requirements concerning what type of electronic signature is acceptable? Do you accept the electronic transmission of treaties instead of the exchange of physical copies? What is the procedure?

R: No. Domestic legislation does not allow for electronic signatures on any international instrument, be it legally binding or non-legally binding.

2.2. Procedure after conclusion

- 2.2.1. Does the internal procedure for expressing consent to be bound change based on different categories of treaties (i.e., ratification, approval, acceptance, etc.)? If so, please explain.

R: The Parliament adopts a *law* of ratification / acceptance / accession in the case of all state level treaties as well as in the case of governmental level treaties, regulating (i) political cooperation, (ii) military cooperation, (iii) state territory/border, (iv) status of persons/fundamental human rights and freedoms, (v) participation as a member state in international intergovernmental organizations, (vi) assumption of a financial commitment imposing additional burdens on the state budget, and (vii) treaties making necessary, for application, the adoption of new normative provisions or laws or the changing of existing law and those expressly requiring their ratification.

In extraordinary situations, the Government may adopt an *emergency ordinance* of ratification / acceptance / accession in the case of the governmental level treaties stated at (i)-(vii) above.

The Government adopts a *decision* of approval / acceptance / accession in the case of governmental level treaties which do not fall in the categories stated at (i)-(vii) above.

The Government adopts a *decision* of approval in the case of departmental level treaties.

- 2.2.2. Is entry into force of a treaty possible on the date of the signature? If yes, what are the procedural requirements that enable such entry into force?

R: Certain categories of treaties, with the exception of state level treaties and governmental level treaties which must be subject to ratification, may enter into force on the date of their signature, only after obtaining the approvals provided by the national law for signing and after the release of full powers for this, if necessary.

- 2.2.3. If entry into force is not possible on the date of the signature, is it possible to use provisional application for an earlier application of such treaty?

R: With the exception of state level treaties and governmental level treaties which must be subject to ratification, treaties can be applied provisionally from the date of their signature, either in full or with regard to some of their provisions, provided that an express provision to this effect is included in the treaty, on condition that the approval procedure is completed in the shortest possible time.

2.3. Form

- 2.3.1. Do different categories of treaties require specific form when the text is prepared for signature (i.e., printing on treaty paper, sealing, treaty folder)?

R: State level treaties and governmental level treaties are printed on treaty paper having a national flag border and are set in specific treaty folders wearing the Romanian coat of arms. The treaties are bound with a national flag thread. The State stamp may be applied on the last inner cover of the folder.

- 2.3.2. Who prepares the text of different categories of treaties for signature?

R: The texts of state/governmental level treaties are prepared for signature by the Ministry of Foreign Affairs. The texts of departmental level treaties are prepared for signature either by the Ministry of Foreign Affairs or by the national authority (ministry or central public administration authority) which is competent to act in the area regulated by the treaty.

2.4. Implementation

How are treaties not requiring parliamentary approval implemented in national legislation in order to ensure respect of the principle of *pacta sunt servanda* in accordance with Article 26 of the VCLT?

R: According to the national legislation, the obligations provided for by the treaties in force are fulfilled to the letter and in good faith. At the same time, the application and observance of the provisions of the treaties in force is an obligation for all the authorities of the Romanian state, including the judicial authority, as well as for the Romanian persons and legal entities or those located on the territory of Romania.

2.5. Publication, Registration and Depository

- 2.5.1. Do all categories of treaties have to be published?

R: As a rule, treaties are published in the Official Gazette of Romania, after the accomplishment of the internal legal procedure.

- 2.5.2. If not, which categories do not need to be published and made available to the general public? Is there room for discretion?

- 2.5.3. Which authority decides whether a treaty should not be published?

R: The national authority (ministry or central public administration authority) which is competent to act in the area regulated by the treaty may decide whether a treaty should not be published.

2.5.4. Where is each category of treaty published (Official Gazette, website, database, etc.)?

R: All categories of treaties are published in the Official Gazette.

2.5.5. Which categories of treaties are registered with the UN Secretariat?

R: The Ministry of Foreign Affairs undertakes the necessary steps for the registration with the General Secretariat of the United Nations Organization of state and governmental treaties that require registration, as well as those that, given their importance, make registration necessary.

2.5.6. Where are the originals (or certified true copies) of different categories of treaties kept (e.g., MFA, authority responsible for their implementation, state archives)?

R: The originals of bilateral treaties at state and governmental level, the originals of multilateral treaties that provide for the depositary capacity of Romania or the Government of Romania, as well as certified copies of multilateral treaties signed or to which Romania or the Government of Romania is a party are kept in the Treaty Archive of Ministry of Foreign Affairs.