

SLOVAK REPUBLIC

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?

The national legislation differentiates between three categories of international treaties in the Slovak Republic: presidential, governmental and ministerial.

The President of the Slovak Republic, upon his decision, has partially delegated competence to conclude international treaties to the Government of the Slovak Republic (presidential and governmental treaties) and its members (ministerial 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?

1. "presidential treaties" require the consent of the National Council of the Slovak Republic before ratification by the President,

2.) "governmental treaties" do not require the consent of the National Council and the scope of obligations exceed the scope of the central body of state administration established by a special law,

3) "ministerial treaties" do not require the consent of the National Council or the government and the scope of obligations do not exceed the scope of the central body of state administration established by a special law.

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

The governmental and ministerial treaties have the same legal force as laws.

International treaties on human rights and fundamental freedoms and international treaties for whose exercise a law is not necessary and international treaties which directly confer rights or impose duties on natural persons or legal persons, and which were ratified and promulgated, shall have precedence over laws.

1.2. Competence

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

In accordance with valid law on the organization of governmental activities and the organization of central state administration and Rules setting forth the guidelines for the conclusion of international treaties and treaties practice dated 21 October 2009, each line ministry/managing authority is responsible for drafting the text of an international treaty in their competence. If the competent authority/ministry deems it necessary, it shall send the draft of

an international treaty in written and electronic form at any stage of expert negotiations for the opinion to

- a) If the competent authority/ministry deems it necessary, it shall send the draft of an international treaty in written and electronic form at any stage of expert negotiations for the opinion to the Ministry of Foreign and European Affairs of the Slovak Republic, in particular for its international legal and foreign policy assessment,
- b) the Ministry of Finance of the Slovak Republic, if the treaty will have an impact on the public administration budget and the National Bank of Slovakia, if the treaty concerns the area of the status and competence of the Central Bank, in particular monetary issues, foreign exchange relations, money circulation or supervision of the financial market,
- c) the participating central government bodies and other participating bodies and institutions.

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?

In the Slovak Republic, the category of international treaty is determined by the Ministry of Foreign Affairs and European Affairs of the Slovak Republic (MFA), i.e. it determines whether it is a presidential, governmental or ministerial treaty. The line ministry/managing authority is fully bound by the position of the Ministry of Foreign and European Affairs of the Slovak Republic. Regardless of whether it is a presidential, governmental or ministerial treaty, the Slovak Republic is equally bound by its provisions.

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)?

- The **President** of the Slovak Republic **ratifies** international treaties pursuant to the Constitution of the Slovak Republic.
- Pursuant to the Constitution of the Slovak Republic international treaties on human rights and fundamental freedoms, international political treaties, international treaties of a military character, international treaties from which a membership of the Slovak Republic in international organizations arises, international economic treaties of a general character, international treaties for whose exercise a law is necessary and international treaties which directly confer rights or impose duties on natural persons or legal persons, **require the approval of the National Council of the Slovak Republic before ratification.**
- The **Government** of the Slovak Republic approves governmental and presidential treaties; both categories are not the subject of ratification.

1.2.4. What are the responsibilities of the line ministries and the Ministry of Foreign Affairs throughout the procedure of conclusion and ratification of each category of treaty?

The line ministry/managing authority is responsible for preparing the agreement externally, i.e. in relation to the partner state, but also internally, i.e. responsible for its proper national negotiations and approval in accordance with the legal order of the Slovak Republic. The line Ministry is also responsible for carrying out expert negotiations and preparing the arrangement of agreements (presidential, government and ministerial). The departmental minister, on behalf of the Ministry, submits the material for the government's negotiation and, if necessary, the National Council's negotiation to the national approval procedure. The Ministry, represented by the departmental minister, asks the minister of Foreign and European affairs to co-sign the material for the government's session. He also asks the minister of Foreign and European Affairs for an opinion on the proposal for the conclusion, amendment or termination of any international agreement. After the completion of the national approval process, he asks the minister of Foreign and European Affairs to implement the relevant measures. In this case, it is basically about preparing powers of attorney and ensuring their signing by the President of the Slovak Republic (in the case of presidential treaties) or by ministers (in the case of government and departmental treaties), ensuring the preparation of documents related to the entry into force of the treaty (e.g. ratification instruments, instruments of accession, etc.), as well as ensuring their signing by the relevant constitutional officials.

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

There are no autonomous regions/territories in the Slovak Republic.

1.2.6. 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?

The general delegated competence for the MFA of the Slovak Republic is not fixed by national law. The MFA of the Slovak Republic ensures the coordination of the preparation, negotiation, arrangement, conclusion and performance of treaties, including their termination. The Minister of Foreign and European Affairs can conclude/sign a governmental and ministerial treaty at the request of line Ministry without written authorization; the presidential treaty can be concluded at the request of competent Ministry with written authorization signed by the President of the Slovak Republic.

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?

Slovak legislation distinguishes three types of international agreements, ministerial, governmental and presidential, depending on the range of entities that are the subject of the relevant agreement.

According to the Constitution, the President of the Slovak Republic is authorized to negotiate and ratify international agreements. One of the powers, namely the power to negotiate international agreements, is transferred to the government and ministerial ministers pursuant to the presidential decision on the transfer of presidential powers. This means that the

President can always reserve the right to perform any act if the power to perform it has been transferred to the government of the Slovak Republic.

Before the actual negotiations on the conclusion of any international agreement begin, the gestor may conduct a so-called "probing". Its purpose is to determine the position of the other party on the conclusion of an international treaty, the preliminary scope of issues, the category of the international treaty from the point of view of the legal regulations of the other party's state, etc.

The position of the other party during the sounding is usually ascertained through the Ministry of Foreign and European Affairs of the Slovak Republic. If this position is ascertained directly by the relevant ministry and concerns an international treaty that was not included in the concept of concluding international treaties, this ministry informs the Ministry of Foreign and European Affairs of the Slovak Republic of its intention to conduct sounding sufficiently in advance so that it is possible to apply a foreign policy perspective to the conclusion of an international treaty before contacting the other party.

As part of the sounding, it is possible to submit to the other party the texts of treaties that the Slovak Republic has already concluded with other states in the given area. This proposal may serve as a basis for negotiations on the conclusion of an international treaty in the same area with different states and must be marked as such.

Can a treaty be concluded through a simplified procedure?

No. The simplified procedure for concluding an international contract is not legally regulated by Slovak legislation.

If yes, please provide a detailed presentation of the circumstances in which such procedures can be applied and describe the procedures.

-

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?

The Constitutional Court, upon a proposal from the President or the Government, decides on the compliance or non-compliance of already agreed presidential international treaties (i.e. those whose text is final and original). The President may submit a proposal to the Constitutional Court at any time after the negotiation of an international treaty before its ratification.

The Government of the Slovak Republic may submit a proposal to the Constitutional Court even after the negotiation of an international treaty, but only until the treaty is submitted for parliamentary consideration. An international treaty may be ratified only after the Constitutional Court has decided on its compliance with the Constitution or a constitutional law. Otherwise, it may not be ratified.

In accordance with the Rules setting forth the guidelines for the conclusion of international treaties and treaties practice approved by Resolution of the Government of the Slovak Republic No. 743 of 21 October 2009, the line ministry/managing A plays a key role in

assessing the text of a draft international treaty in cooperation with the Ministry of Foreign and European Affairs of the Slovak Republic. If the text of an international treaty does not concern Article 7, paragraphs 4 and 5 of the Constitution of the Slovak Republic, such an international treaty may be concluded by the Government of the Slovak Republic or the relevant ministry, depending on whether the implementation of the international treaty falls within the competence of one ministry (ministerial treaty) or two or more ministries (governmental treaty).UTZORIY

The assessment of whether an international treaty will be concluded at the level of a ministry or government is carried out after consultation of the relevant ministry with the Ministry of Foreign and European Affairs before submission to the Government of the Slovak Republic for negotiation (in the case of a governmental treaty). Ministerial treaties are not subject to the approval of the Government of the Slovak Republic.

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

At the national level, negotiations are held on: ministerial international treaties (concluded at the level of one ministry), governmental international treaties (if the implementation of the treaty concerns two or more ministries) and presidential treaties (which refer to Article 7, paragraphs 4 and 5 of the Constitution of the Slovak Republic and are subject to the consent of the National Council and ratification by the President of the Slovak Republic).

The signing of a ministerial treaty is decided by the departmental minister. At the request of the relevant ministry, the Ministry of Foreign and European Affairs of the Slovak Republic prepares a written authorization to sign the treaty. The Minister of Foreign and European Affairs of the Slovak Republic signs the authorization for a ministerial and governmental treaty. The departmental ministry approves the text of the ministerial treaty. At the request of the relevant ministry, the Ministry of Foreign and European Affairs of the Slovak Republic informs the other contracting party of the national approval of such a treaty through diplomatic channels

A proposal for expert negotiations, a proposal for concluding a presidential agreement or a proposal for approving a government agreement is submitted by the relevant ministry. The proposal for concluding a presidential agreement is also submitted by the relevant ministry to the Office of the President of the Slovak Republic for comments.

Approval of the agreement after its signing only concerns presidential international agreements that are subject to approval by the parliament and ratification by the President of the Slovak Republic.

In practice, an international agreement does not enter into force after its signing. The most common way for an international agreement of a governmental type to enter into force is the exchange of diplomatic notes on the fulfilment of the national legal conditions necessary for the entry into force of the international agreement. In the case of presidential type agreements, the agreement enters into force after the exchange of ratification instruments.

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

In the case of multilateral international agreements, a distinction is made as to whether Article 7(1) applies to them. 4 and para. 5 of the Constitution of the Slovak Republic. If so, the approval regime is the same as for presidential international treaties, which are subject to the consent of the Parliament and ratification by the President of the Slovak Republic. If they are not subject to Article 7 para. 4 and para. 5 of the Constitution of the Slovak Republic, the text of an international treaty of the governmental type must be approved by the Government of the Slovak Republic. The Government of the Slovak Republic always approves the text of an international treaty of the governmental and presidential type, but not of the ministerial type (the powers belong to only one ministry).

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.)

The national law of the Slovak Republic does not recognize an international treaty concluded in a simplified form and always distinguishes between internationally binding documents (treaty, agreement, convention) and internationally non-binding documents - political declarations. Treaty documents are always assessed regardless of their name, whether or not they are internationally binding.

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

The Government of the Slovak Republic has a mandate to negotiate the text of an international treaty based on the Decision of the President of the Slovak Republic No. 205/1993 of the Collection of Laws of the Slovak Republic of 30 August 1993 on the transfer of authority to negotiate certain international treaties based on Article 102(a) of the Constitution of the Slovak Republic, whereby the President of the Slovak Republic transferred authority:

a) to negotiate bilateral and multilateral international treaties that do not require the consent of the National Council of the Slovak Republic to the Government of the Slovak Republic. In relation to these treaties, he also transferred to the Government of the Slovak Republic the right to express consent to the Slovak Republic being bound by them by signature, acceptance or in another agreed manner, and to approve these treaties. In relation to multilateral international treaties, it transferred to the Government of the Slovak Republic the right to express its consent that the Slovak Republic will be bound by the treaty by accession to it;

b) in accordance with the Resolution of the Government of the Slovak Republic of 17 August 1993 No. 560, the negotiation of bilateral and multilateral international treaties for which the consent of the National Council of the Slovak Republic is not required and which do not exceed the scope of competence of the central body of state administration established by law, their adoption and accession to them by the member of the Government entrusted with the management of the relevant central body. In relation to these treaties, it also transferred to the relevant member of the Government the right to express its consent that the Slovak Republic will be bound by them by signature, acceptance or in another agreed manner. In relation to multilateral international treaties, it transferred to the relevant member of the Government the right to express its consent that the Slovak Republic will be bound by the treaty by accession to it.

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

Yes. When signing each international contract, the authorized person must have a power of attorney issued by the Minister of Foreign and European Affairs for ministerial and governmental international contracts. To sign a presidential-type international contract (as defined in Article 7, paragraphs 4 and 5 of the Constitution of the Slovak Republic), the authorized person must have a power of attorney signed by the President of the Slovak Republic.

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?

The national law of the Slovak Republic does not regulate electronic signature of contracts.

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.

Yes. The procedure varies by treaty category.

According to Article 4 of the Rules setting forth the guidelines for the conclusion of international treaties and treaties practice dated 21 October 2009:

- treaties categorized as presidential treaties require the consent of the National Council prior to ratification/approval/acceptance/accession by the President,
- treaties categorized as governmental do not require parliamentary approval, only the governmental approval is necessary for the Slovak Republic's consent to be bound by this category of the treaty,
- treaties categorized as ministerial do not require parliamentary nor governmental approval, if the scope of the obligations does not exceed the scope of the line Ministry/managing authority's power as defined by a special law. The member of the government responsible for managing the line ministry/managing authority expresses the Slovak Republic's consent to be bound by the ministerial treaty.

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?

Yes, entry into force of a treaty is possible on the date of its signature. It is common mostly for the so called "ministerial treaties" which do not require the approval of the National Council or the government because the scope of the obligations does not exceed the scope of competence of the ministry/other central government body established by a special law. Such treaties enter into force following procedures defined within the treaty, usually using the following form: *This Agreement shall enter into force on the date of its signature.*

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?

Yes, provisional application is possible, if the treaty explicitly provides for it. According to the Rules setting forth the guidelines for the conclusion of international treaties and treaties practice dated 21 October 2009 if important circumstances or the interests of Slovak foreign policy so require, it is possible to agree in the treaty on its implementation before it enters into force. The provisional implementation of a treaty that is published in the Collection of Laws shall also be announced in the Collection of Laws.

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)?

All treaties require specific form when their text is prepared for signature. The treaties are printed on treaty paper and bound with a tricolor ribbon. They are stored in a special, burgundy-colored case (treaty folder) bearing the Slovak national emblem and are sealed.

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

The Ministry of Foreign and European Affairs of the Slovak Republic prepares and prints the text of the treaties for signature. However, the line ministry/managing authority – the relevant ministry/other central government body depending on the subject matter – is responsible for the text and its accuracy.

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?

According to the Rules setting forth the guidelines for the conclusion of international treaties and treaties practice dated 21 October 2009, the government shall take measures to ensure the implementation of governmental treaties. The line ministry/managing authority shall be responsible for the proper fulfillment of contractual obligations.

The line ministry/managing authority shall take measures to ensure the implementation of ministerial treaties and shall also be responsible for the proper fulfillment of contractual obligations.

2.5. Publication, Registration and Depository

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

According to the Act no. 400/2015 Z.z. on the Creation of Legal Regulations and the Collection of Laws, an international treaty binding on the Slovak Republic shall be published in the Collection of Laws if it is

a) an international treaty ratified by the president, or

b) other international treaties containing provisions relating to the legal status of persons or their legitimate interests.

Other international treaties shall be published in the Collection of Laws if so decided by the Ministry of Foreign and European Affairs of the Slovak Republic.

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?

See the answer 2.5.1.

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

See the answer 2.5.1.

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

Treaties are published in the Collection of Laws (see the answer 2.5.1).

Also, according to the Rules setting forth the guidelines for the conclusion of international treaties and treaties practice dated 21 October 2009, the Ministry of Foreign and European Affairs of the Slovak Republic publishes on its website a list of all treaties binding on the Slovak Republic, together with basic information about the treaty, as well as their texts or hypertext links to the officially published text of the agreement.

The treaties can also be published on the website of the line ministry/managing authority – the relevant ministry/other central government body depending on the subject matter

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

According to article 102 of the UN Charter every treaty and every international agreement shall be registered with the Secretariat and published by it.

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)?

The originals of different categories of treaties are archived by the Ministry of Foreign and European Affairs of the Slovak Republic.