

TÜRKİYE

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?

Yes, Turkish legislation differentiates between different categories of treaties.

Pursuant to Article 90 of the Constitution of the Republic of Türkiye (hereinafter referred to as the “Constitution”), treaties are divided into two groups: those requiring approval of ratification by the Turkish Grand National Assembly (hereinafter referred to as the “Assembly”) through a law, and those not requiring such approval and which may be ratified directly by a Presidential Decision.

As a general rule, the ratification of the treaties concluded with foreign states and international organizations on behalf of the Republic of Türkiye is subject to approval by the National Assembly by a law approving the ratification to be followed by a Presidential Decision.

Agreements regulating economic, commercial or technical relations, covering a period not exceeding one year, may be ratified directly by a Presidential Decision and put into effect through promulgation, provided that they do not entail any financial commitments for the State, and do not interfere with the legal status of individuals or the property rights of Turkish nationals abroad. In such cases, these agreements shall be submitted to the information of the Assembly within two months following their promulgation.

Implementation agreements based on an international agreement, as well as economic, commercial, technical, or administrative agreements, concluded pursuant to an authorization granted by law, do not require approval by the Assembly and may be ratified directly by a Presidential Decision. However, economic or commercial agreements or agreements relating to the rights of individuals, may not enter into force unless they are promulgated.

Any agreements that introduces amendments to Turkish domestic law must be ratified by the Assembly through a law.

Additionally, pursuant to Article 7 of Law No. 3212 on the Sale, Grant, Transfer, and Disposal of Surplus Goods and Services of the Armed Forces; on the Conduct of Foreign and Domestic Procurements on Behalf of Other States and on the Training of Foreign Personnel, agreements concerning grant, exchange or assistance of goods or services to friendly or allied states as well as to public or private institutions and organizations located therein, enter into force by a Presidential Decision as of the date of signature, unless otherwise provided in the agreement.

Similarly, pursuant to Article 9 of Law No. 4749 on the Regulation of Public Finance and Debt Management, grant agreements -except those related to defense and security- enter

into force by a Presidential Decision as of the date of signature, unless otherwise stipulated in the agreement.

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?

Under Turkish law, the main factor in determining the category of an international treaty is not its title or form, but rather its content, scope, financial implications, and legal consequences.

Therefore, referring to a text as a “memorandum of understanding (MoU),” “protocol,” “declaration,” or “agreement” does not automatically determine or alter its legal category.

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

International agreements that are duly put into effect have the same force of statutes enacted by the Parliament. Therefore, in terms of legal status, there is no difference in the internal hierarchy of norms between treaties that require parliamentary approval and those that do not require the parliamentary approval.

1.2. Competence

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

The texts of the treaties are prepared by the relevant ministry or public authority, which is responsible for the subject matter.

The MFA coordinates the preparation, negotiation, signing, ratification, and entry into force of international agreements concluded on behalf of the Republic of Türkiye. Thus, the text of each category of treaty must pass through the diplomatic and legal review of the MFA.

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?

The Ministry of Foreign Affairs is responsible for determining the legal character and category of an international agreement.

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 ratification of treaties concluded with foreign states and international organisations on behalf of the Republic of Türkiye is carried out either by an act of Parliament in the form of an Act of Approval and/or by a Presidential Decision, depending on the category of the treaty.

There is no other procedure other than ratification by law or by Presidential Decision in the Republic of Türkiye.

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 ministries provide technical content and subject-matter expertise, irrespective of the category of the treaty. However, regardless of the category of the treaty, the MFA acts as the central coordinator of the entire process, conducts legal evaluation and carries out the necessary procedures for the ratification and entry into force of the treaties.

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

Not applicable.

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?

No.

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?

For the conclusion of a treaty, the representative(s) of the Republic of Türkiye is/are appointed for the purposes of signing the text of the treaty by a decision of the President.

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?

All international texts, including treaties not requiring parliamentary approval, undergo a standard review in terms of their legal nature and compatibility with existing national law.

On the other hand, according to the Turkish legislation all treaties that are duly put into effect have the force of law. Moreover, according to paragraph 5 of Article 90 of the Constitution in case of conflict between international agreements duly put into effect concerning fundamental rights and freedoms and the laws, the provisions of the international agreements shall prevail.

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

In principle, the procedure consists of two phases: signature and ratification. Following the signature, authorities move on to the ratification stage.

As a general rule, a treaty does not enter into force upon signature. However, as stated above under question 1.1.1., if an international agreement falls within the scope of Article 7 of Law No. 3212 or Article 9 of Law No. 4749, and provided that the conditions stipulated in those provisions are met, such an agreement may enter into force on the date of signature by a Presidential Decision.

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

No, there is no difference in the procedures applied to multilateral and bilateral treaties.

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.)

As stated above, the fact that a document bears the title “Memorandum of Understanding” or “Protocol”, or similar denominations does not automatically mean that it will be executed through a simplified procedure.

In determining whether a document is legally binding, the provisions contained in the text are taken as basis, rather than its title.

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

No.

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

Yes, in Turkish practice, the signatories of all categories of treaties are required to possess full powers at the time of signature.

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?

No, in the practice of the Republic of Türkiye, the signing of international treaties is only carried out through physical signatures or exchange of original texts.

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.

No.

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?

In principle, a treaty does not enter into force on the date of the signature, as domestic legal requirements for ratification must be completed after the signature.

However, as stated above under question 1.1.1., if an international agreement falls within the scope of Article 7 of Law No. 3212 or Article 9 of Law No. 4749, and provided that the conditions stipulated in those provisions are met, such an agreement may enter into force on the date of signature by a Presidential Decision.

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?

No.

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)?

No.

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

The relevant Ministries prepare (finalize) the text of the treaties in coordination with the Ministry of Foreign Affairs.

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 VCLT¹?

Whether subject to the approval of the Assembly or not, each and every treaty duly put into effect has the force of law upon its entry into force.

2.5. Publication, Registration and Depository

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

The general rule is that the text of a ratified international agreement is published in the Official Gazette in Turkish language, as well as the text written in one of the languages specified in the international agreement, together with the Presidential Decision regarding the ratification.

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?

The representatives of the Republic of Türkiye to be appointed for the initialing, signing, exchanging of Notes or declaration of accession to international agreements, as well as the powers of these representatives, are determined by a Presidential Decision. These decisions are not published in the Official Gazette.

Agreements of a technical or administrative character, ratified by the President on the basis of an international agreement or under an authority granted by law may not be published in the Official Gazette, provided that they are not of an economic or commercial nature, do not affect the rights of natural and legal persons, and do not introduce changes to Turkish laws.

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

The President of the Republic of Türkiye ultimately decides whether a treaty should be published or not. This decision is generally made based on the proposal by the MFA and

¹ Türkiye is not party to the VCLT.

the technical assessment of the Presidency's Directorate General of Legal Affairs and Legislation.

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

Treaties that are duly put into effect are published in the Official Gazette.

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

In the practice of the Republic of Türkiye, regardless of the category, binding treaties that are duly put into effect may be registered with the UN Secretariat by the MFA.

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 the treaties are kept in the archives of the MFA (Directorate General of Diplomatic Archives).