

Ratification of international agreements by EU Member States

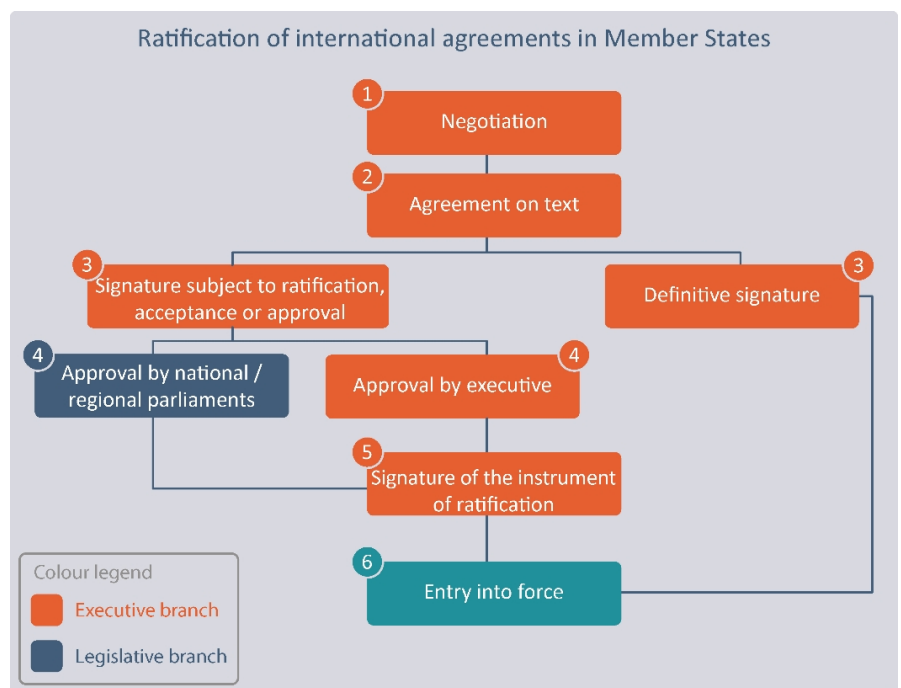
International agreements play a crucial role in defining international relations, and are a source of conventional international law. The Vienna Convention on the Law of Treaties defines a treaty as 'an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation'.

Ratification of international agreements (IAs) means the concluding party formally consents to be bound by the agreement or treaty. Ratification procedures follow certain principles but differ from one country to another depending on constitutional and legal requirements and the type of agreement. In EU Member States,¹ the national and regional parliaments' involvement varies, as does the possibility of holding referendums. For 'mixed' agreements between the EU with third countries where Member States need also to ratify, they each apply their own domestic procedures.

Procedure for concluding international agreements

The executive branch has near exclusive competence in the process of concluding IAs, although may be subject to a mandate voted in parliament. In general, the government negotiates an agreement, agrees on the text and subsequently the state representative, endowed with full powers,² signs it. A clear distinction should be made between definitive signature of an IA and a signature subject to ratification, **acceptance or approval**. A definitive signature does not require further ratification in order for the agreement to enter into force.

Conversely, a signature subject to ratification, acceptance or approval does not establish the party's consent to be bound. Such an agreement cannot enter into force³ unless it passes through a domestic ratification procedure. Depending on the specific state's constitution, approval of ratification involves either the executive or parliament. Agreements requiring parliamentary approval are in most cases those of greater political or financial importance, or otherwise significant.



The role of EU national parliaments

In accordance with the constitutions and legislation of each Member State, or if stipulated in the agreement itself, certain IAs require approval of national parliaments in order to be ratified and enter into force. In most cases, domestic legislation defines the types of IAs requiring parliamentary approval or, in some cases, exceptions for which approval is not necessary. Parliamentary approval normally involves the procedure for the adoption of an act, or in some cases (e.g. UK), parliament need only not object. In the EU, all unicameral parliaments and the lower chambers of bicameral parliaments are always involved. In the 13 Member States with bicameral parliaments, the upper chamber's role varies. The Belgian⁴ and Irish Senates are not involved in ratifications, while the Slovenian⁵ National Council has only limited competence in adoption of legislation. In Germany and Austria, the involvement of the upper chamber depends on the treaty type and its relevance for the regions (represented in those chambers). In the remaining Member States (Czech Republic, Spain, France, Italy,⁶ the Netherlands, Poland, Romania and the UK) both chambers are involved.

Bicameral parliaments - the role of the upper chamber

Approval required for all international agreements considered by Parliament

CZ ES FR IT NL PL RO UK

Approval required for certain international agreements

DE AT

Upper chamber not involved / without influence

BE IE SI

Unicameral parliaments

BG DK EE EL HR CY LV LT
LU HU MT PT SK FI SE

Involvement of EU regions and their parliaments or assemblies

With the exception of Belgium, regional parliaments do not play a major role in the ratification procedure of IAs, other than through their seats in second chambers. In Belgium,⁷ an agreement needs to be approved by all parliaments concerned. That means that, for Belgium, when all levels are concerned, the agreement needs to be approved by eight parliaments.⁸ In other Member States with regional parliaments, their approval is not needed for the ratification of IAs and involvement of regions is limited mainly to negotiations (e.g. Portugal and Spain). Belgian regions and communities can conclude their own treaties in fields within their competences. In Germany⁹ and Austria,¹⁰ regions (*Länder*) can conclude IAs on their own, with the federal government's approval. Similarly, in Spain and Italy, in areas falling within their responsibility, regions can enter into IAs with foreign states. In the UK, regional parliaments have no role in IAs.¹¹

Regional parliaments in the Member States

Approval required if concerned

BE

Approval not required

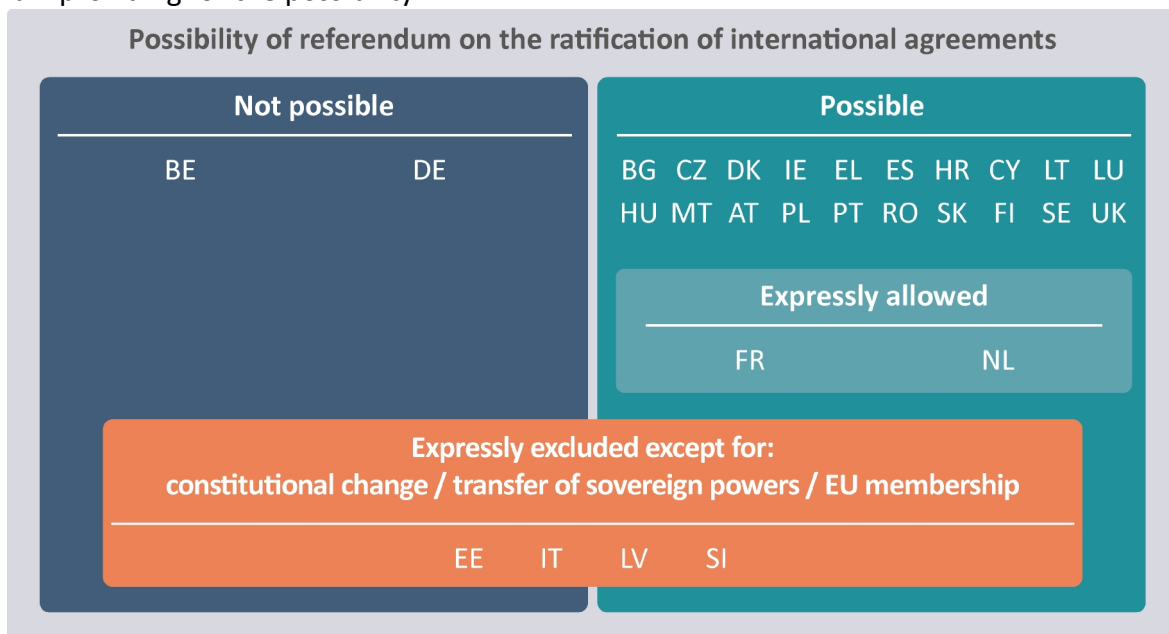
DE ES IT AT PT UK

No regional parliaments

BG CZ DK EE IE EL FR HR CY LV LT
LU HU MT NL PL RO SI SK FI SE

Referendums and international agreements

Referendums for ratification of IAs are possible in the majority of Member States. Which countries allow for that possibility in a specific case depends on the type of IA. Some Member States exclude the possibility of a referendum for ratification of an IA but allow/require referendums in case of constitutional change, transfer of sovereign powers or EU membership (Estonia,¹² Italy,¹³ Latvia,¹⁴ Poland¹⁵ and Slovenia¹⁶). The possibility of a referendum for IA ratification is rarely mentioned expressly in national constitutions or applicable legislation (e.g. France¹⁷ and the Netherlands¹⁸ which specifically allow for referendums on ratification of IAs), but on the other hand a referendum for ratification is not excluded under existing legislative provisions. In Denmark¹⁹ and Hungary²⁰ there is no possibility of a referendum on the obligations arising from existing IAs. The Czech Republic²¹ provides for a referendum only in the case of transferring sovereign powers. Belgium and Germany do not allow referendums for ratification of an IA. Belgium²² provides for referendums only at regional level, while in Germany,²³ a referendum is possible only in connection with a revision of the country's existing territorial division. Cyprus²⁴ does not have provisions on referendums in the constitution, but has adopted a law providing for the possibility.



National ratification of EU international agreements – mixed agreements

The European Union, having legal personality (Article 47 TEU), is a subject of international law and can negotiate and conclude international agreements within the scope of its competences (Article 5 TEU, Articles 2-4 TFEU).

At EU level, the [procedure](#) for concluding IAs is set out in Article 218 TFEU; other articles may have specific provisions on the conclusion of IAs (e.g. Article 207 TFEU on the common commercial policy). Depending on the competences involved (EU exclusive competences or shared competences), the conclusion of EU IAs may or may not require ratification by Member States according to their national procedures. If an agreement falls under exclusive EU competence, the EU has the authority to negotiate and conclude the agreement, without any process of national ratification in Member States. When an agreement falls under shared or concurrent competences, the agreement is then considered 'mixed' and needs to go through a two-stage ratification process: the EU and the Member States both need to ratify the agreement, with each Member State following its own national procedures. This two-stage ratification of mixed agreements gives more say to Member States, and even certain regions within them, but also makes the ratification process longer.

Endnotes

- ¹ Country codes used – Belgium (BE), Bulgaria (BG), Czech Republic (CZ), Denmark (DK), Germany (DE), Estonia (EE), Ireland (IE), Greece (EL), Spain (ES), France (FR), Croatia (HR), Italy (IT), Cyprus (CY), Latvia (LV), Lithuania (LT), Luxembourg (LU), Hungary (HU), Malta (MT), Netherlands (NL), Austria (AT), Poland (PL), Portugal (PT), Romania (RO), Slovenia (SI), Slovakia (SK), Finland (FI), Sweden (SE), United Kingdom (UK).
- ² In accordance with Article 7 of the [Vienna Convention on the Law of Treaties](#), these are heads of state, heads of government and ministers of foreign affairs, heads of diplomatic missions, or any person that produces full powers.
- ³ Save for [provisional application](#) if provided for in the agreement and agreed upon signature.
- ⁴ Since 2014 constitutional reform, only the House of Representatives needs to approve at federal level – Article 167(2) of the [Constitution](#).
- ⁵ Article 97 of the [Constitution of the Republic of Slovenia](#).
- ⁶ A referendum on [constitutional reform](#) will be held in Italy on 4 December 2016. If the proposed constitutional reform is approved, then only the Lower Chamber would be involved in the approval of IAs.
- ⁷ Article 167(3) of the [Belgian Constitution; Accord de coopération entre l'État fédéral, les Communautés et les Régions, relatif aux modalités de conclusion des traités mixtes](#).
- ⁸ At federal level, the House of Representatives; Regions: Flanders, Wallonia, Brussels-Capital; Communities: French-Community, German-speaking Community, French Community Commission (COCOF), Common Community Commission (COCOM). NB The Flemish Parliament encompasses representation of the Flemish Community and the Flemish Community Commission, together with the Flemish region.
- ⁹ Article 32(3) of the [Basic Law](#).
- ¹⁰ Article 16 of [Austrian Constitution](#).
- ¹¹ In the UK, ratification of international agreements, and foreign affairs in general, is a 'reserved matter', i.e. not devolved to regional level.
- ¹² Article 163 of the [Constitution of Estonia](#).
- ¹³ Article 138 of Italian [Constitution](#).
- ¹⁴ In Latvia, agreements with other states may not be submitted to a referendum (Article 73, [Latvian Constitution](#)); EU membership and changes to it is subject to referendum (Article 68(3)(4), as are constitutional changes (Article 79).
- ¹⁵ Article 90(3) of the [Constitution of Poland](#) provides that granting consent for ratification of an international agreement delegating to an international organisation or institution the competence of organs of state authority in relation to certain matters may also be subject to a nationwide referendum.
- ¹⁶ Article 90(2) of the [Constitution of Slovenia](#) stipulates that a referendum may not be called on laws on the ratification of treaties. However, according to Article 3A a referendum is possible in the case of transfers of part of sovereign rights, and obligatory for constitutional change (Article 170).
- ¹⁷ Article 11 of the [French Constitution](#).
- ¹⁸ Article 4 of the Act of 30 September 2014 on the advisory referendum ([text](#) in Dutch language). Under this act a referendum can be called with the support of 300 000 voters.
- ¹⁹ Section 42(6) of the [Danish Constitutional Act](#) stipulates inter alia 'Bills introduced for the purpose of discharging existing treaty obligations shall not be decided by a referendum', while Section 20 provides for an obligatory referendum if a 5/6 majority is not reached in the Folketing for a bill on transferring sovereign rights.
- ²⁰ Article 8 of [Fundamental Law of Hungary](#) '2) National referendums may be held about any matter falling within the functions and powers of the National Assembly'. However, '(3) No national referendum may be held on: (d) any obligation arising from international treaties'.
- ²¹ Article 10a of the [Constitution of the Czech Republic; Constitutional Act 215/2002 Sb concerning accession to the EU](#).
- ²² Article 39bis of the [Belgian Constitution](#); see also a [parliamentary document from 2013](#).
- ²³ Article 29 of the [Basic Law](#).
- ²⁴ According to the Law on Referendums 206/89, a referendum may be held in Cyprus on an important matter of public interest, and in 2004 a referendum on the Annan Plan was held.

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