

### 3. Belarus

Statement made in the Sixth Committee, Sixty-seventh session (2012), 21st meeting, 5 November 2012:<sup>4</sup>

The Republic of Belarus actively uses provisional application in its international treaty practice. Provisional application of international agreements allows the Belarusian side to start cooperation within these agreements with the parallel execution of domestic procedures, required for its entry into force.

The Law of the Republic of Belarus on “International Treaties” stipulates that an international treaty provisionally applied by the Republic of Belarus prior to its entry into force is subject to execution in the same manner as an international treaty that has entered into force (Art. 32). Thus, within the framework of national legislation, the principle is established of full implementation by Belarus of a provisionally applied international treaty from the date of its signing.

In the Republic of Belarus, the decision on the provisional application of the international agreement or part thereof is taken, as a rule, simultaneously with the decision on its signing or conclusion by exchange of notes, letters or other documents forming an international treaty. In case of agreement between the parties, the commencement of the provisional application of an international treaty, or part thereof, is possible on the basis of acceptance by the relevant government authority of the Republic of Belarus with a separate decision without reference to signing.

Communication transmitted to the Secretariat, 1 August 2022:<sup>5</sup>

#### **Provisional application of international treaties by the Republic of Belarus**

##### *1. General information*

The mechanism for provisional application of international treaties by the Republic of Belarus is governed by article 35 of Act No. 421-Z of the Republic of Belarus of 23 July 2008 on international treaties to which the Republic of Belarus is a party (hereinafter “International Treaties Act”).

An international treaty or a part of an international treaty may be provisionally applied by the Republic of Belarus prior to its entry into force if the treaty itself so provides or if the parties have so agreed in writing in another form (a separate treaty or protocol, a resolution adopted by an international organization or at an intergovernmental conference, or a unilateral statement).

A decision to provisionally apply an international treaty is usually made at the same time as the decision to sign or conclude it through an exchange of notes, letters or other documents constituting an international treaty, but the International Treaties Act provides for the possibility of a separate decision on provisional application. The rule on the provisional application of an international treaty shall be included both in the international treaty itself and in the normative legal act of the Republic of Belarus on the signing or conclusion of the treaty by an exchange of documents, and the date of commencement of provisional application in the treaty and in the legal act must be identical.

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<sup>4</sup> Unofficial translation (from Russian) by the United Nations Secretariat. Full text available at: [https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/belarus\\_3.pdf](https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/belarus_3.pdf).

<sup>5</sup> Unofficial translation (from Russian) by the United Nations Secretariat. The original submission is available at: [https://legal.un.org/legislativeseries/pdfs/chapters/book26/belarus\\_r.pdf](https://legal.un.org/legislativeseries/pdfs/chapters/book26/belarus_r.pdf).

The legislative acts of the Republic of Belarus do not prohibit the provisional application of any international treaties.

Provisional application is provided for in the case of both bilateral and multilateral international treaties to which the Republic of Belarus is a party.

A rule on the provisional application of a bilateral international treaty shall be included in the international treaty if the law of the other contracting party does not prohibit or restrict the provisional application of international treaties.

In accordance with the current practice of the Republic of Belarus in concluding multilateral international treaties, including within regional international organizations such as the Commonwealth of Independent States, if, at the stage of drafting an international treaty, its text includes a provision on provisional application of the treaty or on provisional application of certain provisions of the treaty, it is also recommended to include in the draft text a provision allowing any party to the treaty to declare that it will not apply that treaty provisionally or will apply it provisionally from a date other than the date set out in the treaty.

On the basis of recognized international treaty practice, Belarus does not consider the mechanism of provisional application to be a substitute for the entry into force of an international treaty. Provisional application is used only in special cases requiring the application of international treaty rules before the signatories have expressed their consent to be bound.

So far, the Republic of Belarus has had recourse to the practice of provisional application of international treaties in more than 200 cases.

## 2. *Decision-making procedure for inter-State and intergovernmental international treaties*

In accordance with the sixth paragraph of article 35 of the *International Treaties Act*, a proposal agreed upon with the Ministry of Foreign Affairs, the Ministry of Justice and other interested State bodies of the Republic of Belarus to provisionally apply an inter-State or intergovernmental international treaty or to terminate the provisional application of such an international treaty shall be submitted to the Council of Ministers of the Republic of Belarus by the State body competent for the subject matter of the international treaty not later than one month prior to the planned date of negotiation or signing, and, in exceptional cases, not later than 10 working days prior to that date, if no other date has been specified by agreement with the Prime Minister of the Republic of Belarus.

A decision to provisionally apply an inter-State or intergovernmental international treaty or to terminate the provisional application of such an international treaty shall be made:

- In the form of an edict of the President of Belarus, in the case of inter-State treaties and intergovernmental treaties that establish rules different from those contained in the laws of the Republic of Belarus or the decrees and edicts of the President of the Republic of Belarus and/or that concern only matters of legislative regulation but are not regulated by the laws of the Republic of Belarus or by decrees and edicts of the President of the Republic of Belarus; or intergovernmental treaties aimed at attracting resources of international organizations to the Republic of Belarus;
- In the form of a decision of the Council of Ministers of the Republic of Belarus, in the case of other intergovernmental treaties.

### 3. *Decision-making procedure for international inter-agency treaties*

In accordance with the eighth paragraph of article 35 of the *International Treaties Act*, a proposal to provisionally apply an international inter-agency treaty or to terminate the provisional application of such an international treaty shall be prepared by the State body competent for the subject matter of the international treaty and shall be agreed upon with the Ministry of Foreign Affairs, the Ministry of Justice and other interested State bodies, or, where necessary, with the President of the Republic of Belarus, the State Secretariat of the Security Council of the Republic of Belarus and the Ministry of Finance.

A decision to provisionally apply an international inter-agency treaty or to terminate the provisional application of such an international treaty shall be made:

— In the form of a decision of the Council of Ministers of the Republic of Belarus, in the case of international inter-agency treaties concerning matters that fall within the competence of two or more national public authorities subordinate to the Government of the Republic of Belarus, or the conclusion of which is provided for by inter-State or intergovernmental treaties;

— In the form of an edict of the heads of a State body of the Republic of Belarus or of a department of a State body, in the case of international inter-agency treaties concerning matters that fall within the competence of a State body of the Republic of Belarus or a department of a State body subordinate (accountable) to the President of the Republic of Belarus;

— In the form of an order of the heads of the relevant State body of the Republic of Belarus or department of a State body, in the case of other international inter-agency treaties.

### 4. *Commencement of provisional application*

An international treaty shall be applied provisionally by the Republic of Belarus from the date of its signature or from another date specified by the parties until its entry into force or until the date specified by the parties.

In accordance with the practice of the Republic of Belarus with regard to international treaty law, the date of signature of a treaty and the date of commencement of its provisional application may differ, if it is necessary to take preparatory measures for the effective implementation of its provisions and to communicate the content of those provisions in advance to the persons affected.

### 5. *Termination of provisional application*

The provisional application of an international treaty by the Republic of Belarus shall, unless otherwise provided in the treaty, be terminated:

— After the entry into force of the international treaty; or

— After other States or international organizations that are provisionally applying the international treaty have received notification from the Republic of Belarus of its intention not to become a party to the international treaty being provisionally applied by the Republic of Belarus; or

— After the Republic of Belarus has received notification from other States or international organizations that are provisionally applying an international treaty in their relations with the Republic of Belarus of their intention not to become a party to the international treaty being provisionally applied.

#### 6. *Performance of a provisionally applied international treaty*

In accordance with article 31 of the *International Treaties Act*, international treaties to which the Republic of Belarus is a party, including those being provisionally applied, must be officially published through the posting, on the National Legal Internet Portal of the Republic of Belarus, of the texts of such treaties in the Belarusian and/or Russian languages or of the official translations of such treaties into the Belarusian and/or Russian languages.

The principle that treaties must be performed (*pacta sunt servanda*) applies equally to treaties that have entered into force and to treaties that are provisionally applied. State bodies of the Republic of Belarus are endowed with all the necessary competence to make decisions regarding the provisional application of a treaty within the national legal system.

An international treaty, or a part of an international treaty, that is applied provisionally by the Republic of Belarus pending its entry into force must be performed under the same procedure as international treaties to which the Republic of Belarus is a party that have entered into force.

The Republic of Belarus considers that a violation of the provisions of provisionally applied international treaties entails responsibility in accordance with international law.