

36. Romania

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Relevant national legislation

With regard to the particular issue of provisional application of treaties, in its *Law no. 590 of 22 December 2003 on treaties* Romania has relevant provisions concerning specifically the matter of provisional application. At a national level, international treaties are categorized by the level at which they were concluded, resulting in three categories: state level, governmental level and department level treaties.

Article 27 of the said law states that Treaties signed at [the] governmental level that do not require ratification according to Article 19 para. (1) and, respectively, at departmental level may be applied provisionally from the date of signature, either in full or in respect of some of their provisions, provided that an express provision to that effect is included in the treaty.

Paragraph 2 of article 27 states that treaties concluded at state level, as well as the treaties at governmental level which, according to Article 19 para. (1) must be ratified cannot enter into force at the date of the signing and may not be applied provisionally from the date of signature.

This rule has only one exception, which is stipulated in *Law no. 276 of December 7, 2011 on the procedure by which Romania becomes a party to the treaties concluded between the European Union and the Member States, on the one hand, and third countries or international organizations, on the other hand*. Article 7, par. (1) of the said law states that treaties (even those requiring ratification by Parliament) between the European Union and its Member States, on the one side and third States, on the other side, can be applied provisionally before their entry into force if the treaty expressly provides so.

It is worth mentioning that the rules mentioned above did not exist in previous national laws that regulated the matter of international treaties.

Procedures

The national procedure for concluding international treaties that will be provisionally applied does not differ substantially from the procedure used for other types of treaties. However, *Law no. 590/2003* does provide that the procedure for approving the signing of such treaties must be completed in an expeditious manner and that the signing of the document can take place only after it has been approved by the competent authorities, and full powers have been awarded.

Relevant practice

Bilateral treaties

On a bilateral level, Romania has applied some treaties provisionally, although practice on this subject is quite scarce, given the extraordinary nature of provisional application of treaties in Romania under the current national law.

Because the national law forbids provisional application of treaties at a date sooner than the date of signature and since there is no regulation on how late after the date of signature a treaty can be provisionally applied, the practice on this matter varies. For example, in one case⁹¹, the parties agreed that the treaty will be applied provisionally starting [from]

⁹⁰ Edited by the United Nations Secretariat.

⁹¹ *Agreement between the Government of Romania and the Government of the Republic of Hungary on cooperation in the field of natural gas transmission pipelines and transmission power lines intersecting*

the 45th day from the date of signature. In other cases⁹², treaties were applied provisionally starting [from] the 15th day from the [date] of signature.

However, today the usual practice for Romania is that whenever the parties agree on provisional application of bilateral treaties, the treaty is provisionally applied starting [from] the date of its signature.

For reference it is worth mentioning that, even if there was no regulation on provisional application under the laws that preceded the current national law in effect, Romania has still applied some treaties or parts of the treaties it has concluded, starting [from] the date of signature or later.

Multilateral Treaties

Multilateral treaties are very rarely applied provisionally in Romania due to the fact that these treaties are usually concluded at state level and, as stated before, the national law forbids the provisional application of treaties concluded at this level.

However, multilateral treaties concluded at governmental level that do not require ratification can be applied provisionally, for example the *Memorandum of Understanding concerning cooperation in fighting corruption through the South Eastern European anti-corruption initiative* was applied provisionally in Romania as of the day of the signature by the Romanian party on 31 August 2007.

Even if the national law does provide strict rules on which treaties can be applied provisionally, there are some instances where multilateral treaties concluded at state level were applied in Romania before their entry into force.

One such case is the *Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the Establishment of a European Common Aviation Area (ECAA)*. This Agreement states that “the European Community and its Member States and at least one Associated Party, may decide to apply provisionally this Agreement among themselves from the date of signature, in accordance with the application of domestic law”.

Because in order for this treaty to be applied in Romania, it had to be ratified, the Romanian delegation presented a declaration stating that:

Romania declares that it can provisionally apply this Agreement pursuant to paragraph 3 of Article 29 only from the date on which it has notified the European Community as the Depository of this Agreement of the completion of its internal procedures necessary for the entry into force of this Agreement.

As such, from the national Romanian law viewpoint, the Agreement was applied fully (following the usual procedure), but from the viewpoint of the other participants to the treaty, it was applied provisionally.

the Romanian-Hungarian border, signed at Budapest, on 12 May 2010.

⁹² *Agreement between Romania and Spain on the readmission of persons in an illegal situation*, signed at Bucharest, on 29 April 1996 and the *Agreement, by exchange of verbal notes, between the Government of Romania and the Government of Spain regarding the movement regime of the citizens of the 2 countries, holders of diplomatic passports*, signed at Bucharest, on 29 April 1996.