

1985 Law 29/2015, of July 30, 2015 on international legal cooperation in civil matters

The Law 29/2015, of July 30, 2015, on international cooperation in civil matters (the "Law") was published in the Official State Gazette on July 31, 2015 and enters into force on August 20, 2015. It is an important new for the Spanish legal system in so far it is the first time an arrangement for international legal cooperation has been brought into the Spanish domestic law.

Applying in civil and commercial matters regardless of the type of court, including civil liability resulting from a criminal offense and employment contracts, this new law will acts as a general framework and come into place on a subsidiary basis to European Law and International Treaties as well as to specific sectorial legislation such as the Insolvency Law, the International Adoption Law, the Civil Registry Law, the Consumers and Users Law, the Arbitration Law, the Mortgage Law and Mortgage Regulations, the Commercial Code and Commercial Registry Regulations and the rules of international private law in the Voluntary Jurisdiction Law, which will have primacy, without precluding the subsidiary application of this Law's articles.

Taking on board the general cooperation obligation emanating from general international law, this Law starts out from a broad definition of international legal cooperation and from a general principle favorable to the development of international legal cooperation, even in the case of absence of reciprocity, but with an option to refuse cooperation where there is a repeated refusal of cooperation or a legal prohibition on providing it.

The Law is laid out in a Preliminary Title with a number of general provisions and five more titles defining the procedures for notification and service of judicial and nonjudicial documents; the taking and obtaining of evidence; the proof of foreign law; the information on foreign law; international lis pendens and related cases; and the recognition and enforcement of foreign judgments and authentic instruments and the exequatur procedure. It repeals Articles 951 through 958 of the 1881 Civil Procedure Law to design a new process geared towards reflecting the current trends of legal doctrine and the most recent new legislation, this last point being one of the key elements of the Law.

Regarding its final provisions, it is remarkable final provision two which amends the Civil Procedure Law 1/2000, of January 7, 2000, to adapt it and facilitate the implementation of Regulation (EU) 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and Regulation (EU) 650/2012 of July 4 2012, on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European certificate of Succession (in relation to this certificate it also amends the Mortgage Law in final provision one). And, lastly, final provision three amending Law 5/2012, of July 6 , 2010 on mediation in civil matters, in relation to the enforcement of cross-border mediation agreements and a final provision four amending Law 2/2014, of March 25, 2014 on the Action to the Foreign Service of the State to recognize the official nature of translations of documents by Spain's representation organizations abroad or done by foreign representation organizations in Spain of authentic instruments in their own country.

1. General provisions

The Preliminary Title defines the Law's purpose to establish the rules on international judicial cooperation between Spanish and foreign authorities in civil and commercial matters; its subsidiary nature; a general principle favorable to cooperation for the purpose of protecting the right to an effective remedy, unless cooperation is exceptionally not possible and the government so decrees (because the countries concerned repeatedly refuse international judicial cooperation) and it provides permission for the Spanish courts to communicate directly with foreign courts with observance of the legislation in force in each country (Articles 1 through 4).

2. General international legal cooperation system

In Title I the Law sets out the general system applying to international cooperation procedures and in particular to procedures for the communication and service of judicial and nonjudicial documents such as notifications, summonses and orders and to the letters of request issued to obtain and take evidence.

The Ministry of Justice is designated as the Spanish central authority, and its functions are detailed (Articles 7 and 8).

The procedure for transmitting requests and their contents is defined (Articles 9 and 10), determining that, where the legislation of both States so allows, they may be sent through consular or diplomatic channels, through the central authorities, between the courts directly or through a notary, if it is compatible with the nature of the cooperation procedure.

In the following articles, the Law determines the language in which the requests must be sent, their handling process, and the procedure for implementing the requests. On this last point it must be underlined that the implementation of the requests will be governed by Spanish procedural legislation, and exceptionally where a petition is made by the requesting foreign authority, by special procedural rules compatible with the Spanish law.

Article 14 sets out the grounds on which the Spanish judicial authorities will refuse the requests for international legal cooperation, providing that the reasons for the refusal must be given in all cases.

The grounds on which the request may be refused are: a subject or purpose contrary to public order; a matter over which Spain has exclusive jurisdiction; a step falling outside the duties of the addressed Spanish authority which may forward the request to the responsible authority; missing contents and requirements laid down in the Law and scenarios where cooperation is not allowed to be provided because the government has so decided in the event of repeated refusals by the country concerned or a legal prohibition in that country on cooperation with Spain.

The next legal provisions provide details of the performance by Spanish diplomatic and consular officials of procedures abroad; cases where the judicial authorities may travel to take part in procedural steps in other countries; the use of any technology to carry out all the steps involved in international legal cooperation; the costs associated with the process for handling the requests, which will be the responsibility of the authority or requesting party and data protection issues (Articles 15 through 19).

3. Notification and service of judicial and nonjudicial documents

Chapters II and III of Title I deal with the procedures for notification and service of judicial and nonjudicial documents, respectively.

Beyond the traditional means of communication, notification and service abroad through the relevant Spanish central authority or by direct service as provided in Article 12.1, the Law provides that communications may also be sent directly to the addressee by certified mail with acknowledgement of receipt or by a similar means that provides proof of receipt. This new addition, which is established in Article 21.2 for communications from Spain to other countries (insofar as it does not contradict the law of the addressed country) and in Article 22 for foreign communications in Spain, seeks to simplify notification and reduce the associated costs.

It stipulates that the notification date will be the date the document was effectively notified in accordance with the domestic law of the country addressed or of the place of notification and service.

The spirit of simplification embraced by the legislature in this Law can also be seen in Article 25 which allows the documents notified or served abroad or sent to Spain to be sent in a language that the addressee understands, which does not need to be the official language of the addressed country.

In relation to nonjudicial documents, the Law determines that those issued by a notary, authority or public official with authority to do so will be governed by the provisions established for court instruments and that other nonjudicial documents may be sent by a notary, authority or public official through the central authority or directly.

4. The taking and obtaining of evidence

Chapter IV of Title I deals with the taking and obtaining of evidence abroad, and the taking in Spain of evidence requested by a foreign authority, underpinned by principles of simplicity and subsidiary application.

It sets out in a straightforward way the procedure, contents and requirements for these procedures. It is worth noting that Article 30 of this Chapter adds a number of further requirements for the requests for the taking and obtaining of evidence, additional to the mandatory requirements in Article 10 of the Law for requests for cooperation.

Evidence will not be taken in Spain if the grounds for refusal provided generally for requests for cooperation are present (Article 14) and, in all cases, where the designated person's supporting reason for their refusal is an exemption or prohibition on making statements or on producing documents, established or recognized by Spanish law or by the law of the requesting state.

5. On proof of foreign law

Regarding the proof of foreign law the Law starts out from the system in force in Civil Procedure Law 1/2000, of January 7, 2000, and includes in the short Title II, Article 33, a new element related to matters concerning alleging and proving foreign law for which to date no uniform solution existed in cases where the party could not evidence the foreign law.

It is laid down in this connection that, exceptionally and for the sake of an effective legal protection, in cases where the parties cannot evidence the contents and validity of the foreign law, the courts may apply Spanish law. This fits in with the solution employed in the past in the Spanish legal system and in most of the private systems of international law of Spain's neighboring countries and with the decisions of the Spanish constitutional court. Any specific systems that may be provided in the special laws must be observed in all cases.

It is also stipulated that the proof of foreign law must be assessed under the principles of fair criticism and that reports or opinions will not be binding on the Spanish judicial bodies.

6. Information on foreign law

Title III is devoted to the process of requesting information on foreign law, which, like the rest of the Law, is subsidiary to the provisions in European Law and International Treaties which already contain precise provisions on this subject.

The information on foreign law may relate to the wording, validity and content of the legislation, to its meaning and scope, to the case law, to the procedural rules and to the organization of the courts in addition to any other relevant legal information.

The courts are allowed to make petitions for information on foreign laws, in addition to the option available for direct communication between courts and by notaries and registrars. Although, as mentioned in the preamble to the Law, there is no guarantee that the foreign authorities, in the absence of a specific treaty on this subject, will agree to provide information in relation to the laws of their countries, since this Law is classed as a Spanish domestic law, with the consequent effects.

7. Lis pendens and related cases

Title IV of the Law deals with international lis pendens and related cases, in view of the possible existence of parallel proceedings in other countries, in which contradicting judgments might be rendered.

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters lays down its own criteria on cases of pending proceedings before the courts of other countries. This will mean unavoidably that, in a European context, because of the subsidiary nature of the Law, its provisions on lis pendens will only apply to matters not covered by that Regulation, which are essentially, matters related to personal law, family law, succession and insolvency law.

The Law requires these cases to be alleged and handled as a plea of domestic lis pendens, and in Articles 39 et seq. it details the requirements for a proceeding to be stayed or resumed at the request of the party in the event of international lis pendens and related action, specifying that a prior report by the public prosecutor's office must be provided in all cases.

This title will apply to any action brought before the Spanish courts after the entry into force of the Law.

8. On the recognition and enforcement of foreign court judgments and authentic instruments, on the exequatur procedure and registration at Public Registries

The Law determines that the instruments able to be recognized and enforced in Spain in accordance with Title V are final foreign court judgments rendered in a contentious proceeding and definitive foreign judgments rendered in a voluntary jurisdiction process and preventive and provisional measures, where a refusal to do so entails a violation of the right to an effective remedy, and as long as a hearing of the other side has been adopted. It also specifies that foreign authentic instruments are also able to be enforced on the terms provided in the Law. Additionally, certain definitions are clarified in connection with the recognition and enforcement of foreign judgments.

As we have mentioned, this Law has introduced a new set of rules in Title V on the exequatur procedure, governed to date by Articles 951 through 958 of the 1881 Civil Procedure Law (LEC 1881) which were repealed on the entry into force of this Law, for the sought aim of modernizing and adapting the procedure for recognition and enforcement of foreign judgments to the case law of the Supreme Court, the special laws and the most authoritative doctrine.

It has thus been chosen to keep the exequatur procedure, in accordance with its new rules, as a special procedure to declare the recognition of a foreign judgment and, if applicable, authorize its enforcement, given that it will apply to non EU countries with which there are no specific international treaties, and therefore, as the Law specifies, it was seen fit to retain certain preventive measures rather than give validity to the judgments of the courts of those countries.

Among the main characteristics of the new exequatur procedure:

- The request for recognition may be handled in a court proceeding without needing a fresh ancillary proceeding to be commenced, thereby allowing the ancillary recognition to be carried out swiftly and simply (Article 44.2).
- If the foreign judgment contains a measure unknown in the Spanish legal system it may be adapted by the judge having jurisdiction to another known measure having equivalent effects and seeking a similar purpose and interests, as long as its adaptation does not have any further effects than those provided in the law of the country of origin. Such adaptations may be contested by the parties in all cases (Article 44.4).
- The option is provided to modify a final or definitive foreign judgment which are able to be modified on the basis of their subject-matter (such as, for example, in matters related to maintenance or minors). In these cases, the Spanish courts may modify the judgment, where the judgment has first obtained recognition in Spain (Article 45).
- The following grounds for refusal of recognition are provided (Article 46):
 - Being contrary to public policy. The preamble clarifies that where the judgment concerns minors, the greater importance of the minor's interests must be taken into account in the assessment of public policy, and a point that may be assessed for refusal purposes is whether it was rendered, except in urgent cases, without allowing the minor to be heard in violation of the fundamental principles of the procedure in Spain. It is specified that in these cases no exequatur procedure will be allowed.

- Judgments rendered with a patent infringement of the rights to defense of either party. It was decided to include this ground expressly even though it is subsumed in the first ground for refusal, and it is also specified, in relation to the cases where there has been default, that an infringement of the rights to defense will be considered to exist if service of process (i.e. a summons in the form of a *cédula de emplazamiento* or equivalent document) was not made on the defendant, in the correct manner and allowing him sufficient time to defend himself.
 - Judgments on a matter over which the Spanish courts have exclusive jurisdiction or with respect to other matters if the jurisdiction of the judge in the country of origin does not satisfy the reasonable connection test. A reasonable connection is presumed where the judge in the country of origin has based his international jurisdiction on similar rules to those established in Spanish law.
 - Judgments irreconcilable with a judgment rendered in Spain.
 - Judgments irreconcilable with a judgment from another State where that judgment satisfies the conditions to be recognized in Spain.
 - Existence of action pending in Spain between the same parties and on the same subject-matter, commenced before the foreign proceeding.
 - No foreign court settlements contrary to public policy will be recognized.
- It contains special provisions and a special rule concerning the recognition of foreign judgments rendered in proceedings resulting from collective action, which will be able to be recognized and enforced in Spain insofar as they satisfy the conditions in Article 47 of the Law relating in particular to their ability to be invoked against affected parties who have not expressly acceded, for which it is expressly required that they must have been made public in Spain in media equivalent to those required by Spanish law and to a more stringent jurisdiction test insofar as they will not be recognized if the jurisdiction had not been based on a forum equivalent to those provided in Spanish law.
 - In keeping with the concept of the exequatur procedure as purely and simply an approval procedure, Article 48 establishes a prohibition on entering into an examination of the facts of the case.
 - It gives, on the one hand, the option to grant partial recognition of a foreign judgment where it has been rendered on more than one petition and the whole of the judgment cannot be recognized (Article 49). And consequently, partial enforcement of a foreign judgment is also allowed (Article 50).
 - Articles 50 and 51 provide that once recognition of a judgment or court settlement has been obtained, they will be enforceable in Spain in accordance with the Civil Procedure Law including the provisions on the lapse of enforcement action.
 - Procedural matters have been placed in Chapter IV of the Law, which sets out the relevant rules on jurisdiction, free legal aid, process, and appeals (Articles 52 through 55).
 - Foreign authentic instruments will be enforceable in Spain without first needing to undergo a recognition procedure, if (i) they are enforceable in their country of origin; (ii) they are not contrary to public policy; and (iii) they have the same or an equivalent effect as authentic instruments issued or authorized by the Spanish authorities (Article 56).

Article 57 authorizes notaries and public officials to adapt to the Spanish legal system any legal elements unknown in Spain, by replacing them with others having equivalent effects under Spanish law and seeking similar aims and interests. This procedure may be contested at a court.

- On the registration at Spanish public registries of foreign judgments and authentic instruments, Article 58 provides that the rules of Spanish law will apply to their registration, and Articles 59 through 61 contain the specific provisions on the registration of foreign judgments.

To be able to registered at the Real Property, Commercial and Personal Property Registries they must be final or definitive foreign judgments in the voluntary jurisdiction against which no appeal is allowed under the law applicable to them.

The real property, commercial or person property registrars are responsible for verifying (i) the genuineness and formal authenticity of the filed documents; and (ii) the absence of any of the grounds for refusal.

The interested party in the registration is allowed in all cases to request the main recognition of the judgment, so as to proceed to register it later, which will then be done according to the general rules in the registry legislation in relation to Spanish court judgments.

Foreign authentic instruments can only be registered if they satisfy the requirements established in the specific legislation applicable to them and if the authority that has overseen their preparation discharges equivalent functions to those discharged by the Spanish authorities in the matter concerned (Article 60).

Registrars, like notaries, are allowed to make adaptations to unknown elements to conform to a measure or right provided or known in Spanish law. These adaptations may be contested in all cases (Article 61)

- There are provisions on the transitional application of this new exequatur procedure in Single Transitional Provision, paragraph 2, which determines that Title V of Law will apply to any exequatur requests that are filed before the Spanish courts after the entry into force of the Law, irrespective of the date on which the foreign judgment had been rendered.

9. Measures to facilitate the implementation in Spain of regulation (EU) 1215/2012 and of regulation (EU) 650/2012

Final Provision Two of this Law adds two new final provisions to the Civil Procedure Law.

One is a new Final Provision Twenty-five, setting out a number of measures for the implementation in Spain of Regulation (EU) No 1215/2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. For these purposes, it includes certain rules on the recognition of judgments of a member state; rules on the enforcement of judgments enforceable in a member state; matters related to notifications and translations of foreign judgments; rules on the refusal to enforce judgments enforceable in a member state also at the request of the person against whom it was requested and in trial procedures; request for a certificate of the judgment; adaptation; matters regarding the enforceability of authentic instruments; and matters concerning the enforceability of court settlements.

And a new Final Provision Twenty-six has also been added to the Civil Procedure Law, setting out a number of measures to facilitate the implementation in Spain of Regulation (EU) No 650/2012, on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

For these purposes, rules are also included on recognition and enforcement, jurisdiction to entertain the proceeding on enforceability; provisions on free legal aid; the procedure for a declaration of enforceability of a decision; appeals against the decision on the application for a declaration of enforceability; the procedure for that appeal; stay of appeals; matters concerning the enforceability of authentic instruments and of court settlements, and matters related to the issuance of certificates of judgments, authentic instruments or court settlements for the purposes of their enforceability in other member states; issuance by the court of the European Certificate of Succession; rectification, modification or withdrawal of the European Certificate of Succession issued by a court; refusal by a court to issue the European Certificate of Succession; issuance by notary of the European Certificate of Succession; rectification modification or withdrawal of that certificate; and on appeals and their effects;

The full wording of the law is available here:

<http://www.boe.es/boe/dias/2015/07/31/pdfs/BOE-A-2015-8564.pdf>

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