

No. 23578

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**SPAIN  
and  
AUSTRIA**

**Agreement on the recognition and enforcement of judicial decisions or settlements and of enforceable official documents in civil and commercial matters. Signed at Vienna on 17 February 1984**

*Authentic texts: Spanish and German.  
Registered by Spain on 1 October 1985.*

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**ESPAGNE  
et  
AUTRICHE**

**Convention relative à la reconnaissance et à l'exécution des décisions ou transactions judiciaires et des actes publics ayant force exécutoire en matière civile et commerciale. Signée à Vienne le 17 février 1984**

*Textes authentiques : espagnol et allemand.  
Enregistrée par l'Espagne le 1<sup>er</sup> octobre 1985.*

## [TRANSLATION — TRADUCTION]

AGREEMENT<sup>1</sup> BETWEEN SPAIN AND THE REPUBLIC OF AUSTRIA  
ON THE RECOGNITION AND ENFORCEMENT OF JUDICIAL DECISIONS OR SETTLEMENTS AND OF ENFORCEABLE OFFICIAL DOCUMENTS IN CIVIL AND COMMERCIAL MATTERS

The King of Spain and

The Federal President of the Republic of Austria,

Desiring to regulate the recognition and enforcement of judicial decisions or settlements and other enforceable official documents in civil and commercial matters between both States, have decided for that purpose to conclude an Agreement on this matter and have appointed as their plenipotentiaries:

The King of Spain: His Excellency Mr. Fernando Morán López, Minister for Foreign Affairs,

The Federal President of the Republic of Austria: His Excellency Mr. Erwin Lanc, Federal Minister for Foreign Affairs.

The Plenipotentiaries, having exchanged their full powers, found in good and due form, have agreed on the following provisions:

*Article 1.* 1. The decisions of the courts of a Contracting State, in civil or commercial matters, in contentious or non-contentious proceedings, shall be recognized and enforced in the other State in accordance with the provisions of this Agreement.

2. This Agreement shall also be applicable to decisions in civil or commercial matters rendered in criminal proceedings on the claims and rights of the victim.

*Article 2.* For the purposes of this Agreement, the following terms shall have the meanings specified below:

(a) The term “decision” shall mean any judicial decision, however designated.

(b) The term “court of origin” shall mean the court which rendered the decision whose recognition or enforcement is being sought.

(c) The term “State of origin” shall mean the State in whose territory the court of origin has its seat.

(d) The term “requested court” shall mean the court in which recognition or enforcement of the decision is sought.

(e) The term “requested State” shall mean the State in whose territory recognition is to occur or enforcement is sought.

*Article 3.* The provisions of this Agreement shall not apply to:

1. Decisions rendered in bankruptcy, composition or other similar proceedings, including decisions in such proceedings on the validity of legal proceedings affecting the creditors;
2. Decisions concerning responsibility for nuclear damage;

<sup>1</sup> Came into force on 1 October 1985, i.e., the first day of the third month following the exchange of the instruments of ratification, which took place at Madrid on 23 July 1985, in accordance with article 22 (2).

3. Interim measures, except those pronounced in maintenance proceedings, and attachments;
4. Decisions concerning social security;
5. Arbitral awards.

*Article 4.* The decisions of the courts of one of the Contracting Parties shall be recognized in the territory of the other when:

1. In the State of origin the decision is enforceable; and,
2. The court of the State of origin has jurisdiction in accordance with the provisions of articles 7 to 10 of this Agreement.

*Article 5.* 1. Recognition may be refused only:

- (a) If the decision is clearly contrary to the public policy of the requested State;
- (b) If an action between the same parties, based on the same cause and relating to the same subject matter, is pending before a court of the requested State and the action was first instituted before this court;
- (c) If the decision is in contradiction with any other final decision, rendered between the same parties and relating to the same subject-matter in the requested State.

2. In cases where the defendant has not participated in the proceedings, recognition may also be refused if the defendant did not receive the summons in sufficient time to contest the claim.

*Article 6.* 1. Recognition shall not be refused solely on the ground that the court which rendered the decision applied a law other than the law which would have been applicable under the rules of private international law of the requested State.

2. Recognition may, however, be refused on such ground if the decision is based on the marital situation, family relations, marital property system, legal capacity, or the capacity for performing legal acts, legal representation, statement of absence or death of a national of the requested State or of the inheritance rights of an heir of such national, or on the evaluation of the legal capacity of a legal person or company which has its headquarters or its principal establishment in the requested State. The provisions of the preceding paragraph shall not apply if the same results would have been obtained through the application of the rules of private international law of the requested State.

*Article 7.* 1. Without prejudice to the provisions of articles 8 to 10, the jurisdiction of the courts of the State of origin shall be recognized for the purposes of article 4(2):

- 1.1 If, on the date of the institution of proceedings, the defendant was domiciled or habitually resident in the State of origin, or, in the case of legal persons or commercial firms, their domicile or principal establishment.
- 1.2 If, on the date of the institution of proceedings, the defendant had a commercial establishment or branch in the State of origin and has been served with a summons in that State in an action relating to the operations of such establishments or branches.
- 1.3 If the parties have, by agreement, submitted to the jurisdiction of the courts of the State of origin for a decision in specific disputes, unless such an agreement is not permitted under the laws of the requested State. For the purposes of this provision, an agreement shall exist only if it has been done in writing or confirmed in writing in the case of a verbal agreement.
- 1.4 If the defendant, without jurisdiction being established, has entered a defence on the merits without contesting the jurisdiction, unless submitting to jurisdiction

through agreement is inadmissible under the laws of the requested State; contesting the claim shall not be considered to imply acceptance of jurisdiction in those cases where the defendant has stated that he submits to the proceedings only in regard to property situated in the State of origin or in order to oppose an attachment or to seek the lifting of an attachment.

- 1.5 If, in the case of a counter-claim, the court of the State of origin has been recognized as having jurisdiction within the meaning of this article in respect of the principal claim, and if the counter-claim bears a relation to the action asserting the principal claim or to the appeals or other defences used against the principal claim.
- 1.6 If, as part of the claim, an indemnization or restitution has been sought as a consequence of the total or partial success, in the State of origin, of an appeal for review against a decision of that same State enforced in the requested State.
- 1.7 If the subject of the action is a contract or an action arising from a contract and the obligation has been or should be discharged in the State of origin. Within the meaning of this provision, an agreement exists only if it has been done in writing or confirmed in writing in the case of a verbal agreement.
- 1.8 When the site of provision of services is in the State of origin, where the subject of the action is the existence or non-existence of a work contract or other legal conflicts arising from such a relationship.
- 1.9 If the claim is based on an unlawful act or on an act deemed unlawful under the law of the State of origin and such act has occurred or the result has taken place in said State of origin.
- 1.10 If, on the date of the institution of proceedings the defendant owned property in the amount claimed in the territory of the State of origin and was neither domiciled nor habitually resident in the territory of the other State.
- 1.11 If the subject of the action is a dispute relating to maintenance and the recipient, on the date of the institution of proceedings, was domiciled or habitually resident in the State of origin, unless the plaintiff is of age, in which case the jurisdiction of the court of the State of origin shall be recognized if both parties were last domiciled or habitually resident in the territory of that State.
- 1.12 If the person against whom recognition is sought has been a plaintiff in proceedings before a court of the State of origin and the claim has been denied or declared inadmissible.

2. Nevertheless, the jurisdiction of the courts of the State of origin shall not be recognized in those cases in which, under the law of the requested State, the courts of a third State have exclusive jurisdiction over the action which gave rise to the decision.

*Article 8.* 1. In all matters relating to marriage, family relations, legal capacity or the capacity for performing legal acts, and legal representation which involve the participation of a national of one of the Contracting Parties, for the purposes of article 4 (1), the courts of the State of origin shall have jurisdiction if, on the date of the institution of proceedings, the defendant was a national of that State or was domiciled or habitually resident in that State.

2. In matters relating to marriage, the jurisdiction of the courts of the State of origin shall also be recognized if, on the date of the institution of proceedings, one of the parties was a national of one of the Contracting States, both parties had their last joint habitual residence in the State of origin and the plaintiff, at the institution of proceedings, was habitually resident in the State of origin.

3. In questions relating to marriage, the jurisdiction of the courts of the State of origin shall also be recognized if the married couple is habitually resident in a third State, provided that, on the date of the institution of proceedings, the plaintiff was a national of the State of origin and the defendant was a national of a State other than the requested State.

*Article 9.* The courts of the State in which immovable property is situated shall have jurisdiction, in accordance with article 4 (2), over proceedings which have as a subject a right *in rem* with respect to this property. Those courts shall likewise have jurisdiction in matters concerning succession with respect to immovable property.

*Article 10.* The courts of the State of origin shall have jurisdiction, in accordance with article 4 (2), in matters concerning succession with respect to personal property when the deceased was a national of this State or was last domiciled or habitually resident in the territory of this State.

*Article 11.* 1. The decision rendered by a court of one Contracting Party for which recognition is being sought in the other can only be examined with respect to points, relating to compliance with the stipulations of article 4 or to whether there exist any of the reasons for refusal referred to in articles 5 and 6, paragraph 2. Except for the above-mentioned matters, the decision may not be submitted to further examination.

2. In ascertaining the jurisdiction of the court of origin (article 4 (2)), the court of the requested State shall be bound by the findings of fact establishing the jurisdiction of the court of origin.

*Article 12.* 1. Decisions rendered in one of the Contracting States shall be recognized in the other without need for special procedures, with the exception of the provisions of the following paragraph.

2. Each of the Contracting Parties may establish a procedure of recognition for issues concerning marriage and family relations. In any case, the plaintiff shall not be in a less favourable position than that to which he would be entitled under the provisions of articles 14 and 15.

*Article 13.* 1. The decisions of the courts of one of the Contracting Parties shall be enforced in the other by a rapid and straightforward procedure:

1.1 If they fulfil the conditions required for recognition in the requested State; and

1.2 If they are enforceable in the State of origin.

2. Procedures for authorizing enforcement and subsequent enforcement shall be governed by the law of the requested State.

*Article 14.* No security or deposit of any kind shall be required to guarantee the payment of costs by reason of the nationality or domicile of the applicant, if that individual is habitually resident or, in the case of a legal person or commercial firm, its principal establishment is located in the State of origin.

*Article 15.* The party seeking enforcement shall be exempt from payment of court costs in the requested State in the same circumstances as nationals of that State who are domiciled there.

*Article 16.* 1. The party seeking enforcement shall submit:

(a) A complete copy of the decision;

(b) A legal document or documents or certified copies indicating that the decision is final and is enforceable under the law of the State of origin;

- (c) The original or a certified copy of the official notification or any other document indicating that the decision has been communicated to the party against whom the enforcement is to be carried out;
- (d) If the defendant failed to appear at the proceedings in which the decision was rendered, an original or a certified copy of the document or documents proving that the summons instituting the proceedings was duly transmitted to the defendant;
- (e) Translation of the documents referred to in the preceding paragraphs into the language of the requested State, certified by a sworn translator or a diplomatic or consular agent of either of the Contracting States.

2. The documents referred to above shall be exempt from authentication and any other formality.

*Article 17.* 1. Legal settlements, official documents and notarial documents relating to civil and commercial matters shall be recognized and enforceable in the other Contracting Party as legal decisions if they are enforceable in the State of origin.

2. The same shall apply to settlements and agreements pertaining to maintenance which are concluded before the Austrian public authorities responsible for the protection of minors, between the authority itself, as a representative of the individual receiving the maintenance and the individual responsible for providing the maintenance.

3. Articles 13 to 16 shall be applicable by analogy to the authorization of enforcement and procedure.

4. The requested court shall confine itself to determining:

- (a) Whether the necessary documents have been submitted;
- (b) Whether enforcement is not clearly contrary to the public policy of the requested State.

*Article 18.* 1. The courts of one of the Contracting Parties shall decline to hear an action where another action, based on the same cause and relating to the same subject-matter and between the same parties, is pending before a court of the other State whose decision may be recognized and enforced under this Agreement.

2. Nevertheless, the courts of each of the Contracting Parties may decree interim or conservatory measures provided for under their legislation, whichever court is considering the case.

*Article 19.* 1. This Agreement shall not affect other agreements which, in specific areas, govern the recognition and enforcement of judicial decisions and other enforceable documents and which are in force between the two parties.

2. This Agreement shall not affect any more favourable provisions of the domestic law of the Contracting Parties which facilitate the recognition and enforcement of judicial decisions or settlements and notarial acts.

*Article 20.* This Agreement shall apply only to judicial decisions rendered or to judicial settlements concluded or to enforceable official documents or notarial acts drawn up on or after the date of its entry into force.

*Article 21.* Any disputes concerning the application or interpretation of this Agreement shall be settled through the diplomatic channel.

*Article 22.* 1. This Agreement shall be subject to ratification. The instruments of ratification shall be exchanged at Madrid as soon as possible.

3. This Agreement shall enter into force on the first day of the third month after the exchange of the instruments of ratification.

*Article 23.* This Agreement is concluded for an unlimited period. It may be denounced in writing at any time. It shall cease to have effect six months after the date of receipt of the denunciation by the Ministry of Foreign Affairs of the other State.

IN WITNESS WHEREOF the Plenipotentiaries have signed this Agreement.

DONE at Vienna, on 17 February 1984, in duplicate in the Spanish and German languages, both texts being equally authentic.

For Spain:

[*Signed*]

FERNANDO MORÁN

Minister for Foreign Affairs

For the Republic of Austria:

[*Signed*]

ERWIN LANC

Federal Minister for Foreign Affairs