

No. 25941

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**SPAIN  
and  
FEDERAL REPUBLIC OF GERMANY**

**Agreement on the recognition and enforcement of judicial decisions and settlements and of enforceable official documents in civil and commercial matters (with declaration). Signed at Bonn on 14 November 1983**

*Authentic texts: Spanish and German.*

*Registered by Spain on 19 May 1988.*

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**ESPAGNE  
et  
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**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 (avec déclaration). Signé à Bonn le 14 novembre 1983**

*Textes authentiques : espagnol et allemand.*

*Enregistrée par l'Espagne le 19 mai 1988.*

## [TRANSLATION — TRADUCTION]

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

Spain and the Federal Republic of Germany,

Desiring to regulate the mutual recognition and enforcement of judicial decisions or settlements and other enforceable official documents in civil and commercial matters,

Have agreed as follows:

**CHAPTER 1****RANGE OF APPLICABILITY OF THE AGREEMENT***Article 1*

(1) The decisions, in civil or commercial matters, of the courts of a Contracting State, which pass judgement on claims by the parties in contentious or non-contentious proceedings shall be recognized and enforced in the other State in accordance with the provisions of this Agreement.

(2) Judicial settlements and enforceable official documents shall be deemed equivalent to judicial decisions.

(3) This Agreement shall also be applicable to decisions in civil or commercial matters rendered in criminal proceedings.

*Article 2*

For the purposes of this Agreement, the following terms shall have the meanings specified below:

1. The term "decision" shall mean:

- (a) Any judicial decision, however designated;
- (b) Orders of a competent judicial or auxiliary court official establishing the level of maintenance payments, and enforcement orders already in force handed down by such official;
- (c) Orders of the courts and other competent authorities in each State determining the costs of the proceedings, provided that they give effect to a decision which may be recognized or enforced on the basis of the present Agreement and that they could have been contested.

2. The term "State of origin" shall mean the State in whose territory the court or authority of origin has its seat, or before whose courts or authorities the enforceable document is drawn up.

<sup>1</sup> Came into force on 18 April 1988, i.e., 90 days after the date of the exchange of the instruments of ratification, which took place at Madrid on 19 January 1988, in accordance with article 27.

3. The term “court or authority of origin” shall mean the court or authority which handed down the decision or before which were held the settlement arrived at whose recognition or enforcement is in question.

4. The term “requested State” shall mean the State in whose territory recognition takes place or enforcement is sought.

5. The term “requested court or authority” shall mean the court or authority by which recognition or enforcement of the decision, the proceedings or the enforceable document is sought.

### *Article 3*

The provisions of this Agreement shall not apply to:

- (1) Decisions rendered in bankruptcy or composition proceedings, in prior conciliatory proceedings or other similar proceedings, including decisions in such proceedings on the validity of juridical acts affecting the creditors;
- (2) Decisions concerning social security;
- (3) Decisions concerning responsibility for nuclear damage;
- (4) Arbitral awards;
- (5) Interim measures, conservatory measures, provisional attachments and detentions.

## CHAPTER 2

### RECOGNITION OF COURT DECISIONS

#### *Article 4*

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

1. The court of the State of origin has jurisdiction in accordance with the provisions of articles 7 and 8 of this Agreement; and
2. In the State of origin the decision is enforceable.

#### *Article 5*

(1) Recognition may be refused only:

1. If the decision is clearly contrary to public policy of the requested State;
2. 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;
3. 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 in the following cases:

1. When the original claim or summons:
  - (a) Was not submitted to the defendant in accordance with the laws of the State of origin:

- (b) Was submitted to the defendant in a manner not in conformity with the provisions of an international Agreement in force between the two Parties; or
  - (c) Was submitted to the defendant in accordance with the laws of the State of origin but the courts of the requested State considered that the time allowed to enter an appearance was insufficient.
2. When the defendant can show that he was not able to defend himself because, through no fault of his own, the summons was not delivered to him or was not delivered in sufficiently good time.

#### *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 material or economic situation, family relations, legal capacity, legal representation, rights of inheritance, statement of absence or death of a national of the requested State, or except where the same results would have been obtained through the application of the rules of private international law of the requested State. This same criterion shall apply to decisions concerning the legal capacity or capacity to act of a legal person which has its domicile or its principal establishment in the requested State.

#### *Article 7*

(1) Without prejudice to the provisions of article 8, the jurisdiction of the courts of the State of origin shall be recognized for the purposes of article 4 (1):

1. If, on the date of the institution of proceedings, the defendant was domiciled or habitually resident in the State of origin, or, if a legal person, had its domicile or principal establishment there.

2. If on the date of the institution of proceedings, the defendant had a commercial establishment or branch in the State of origin and had been served with a summons in that State in an action relating to the operation of such establishments or branches.

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.

4. If the defendant, without jurisdiction of the court of the State of origin 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.

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.

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.

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, provided that under the law of the requested State such an agreement can establish jurisdiction. 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.

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.

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.

10. If the claim is based on an unlawful action in commerce, or on the infringement of a patent, registered design, trademark, guarantee of quality, drawing, model, or copyright or on an infringement of the law on patents, registered designs or guarantees of quality in the State of origin and the illegal action has taken place in the said State.

11. If the claim asserts an action in relation to immovable assets located in the State of origin, or to a right to such assets.

12. If the claim involves an action relating to maintenance and the recipient, on the date of the institution of proceedings, was domiciled or habitually resident in the State of origin.

13. If, in questions of inheritance, the plaintiff is a national of the State of origin or had his last domicile or habitual residence there, regardless of whether the inheritance consisted of movable or immovable assets.

14. 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, unless the law of the requested State, *ratione materiae*, opposes this jurisdiction.

(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, its courts or those 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*

(1) If recognition of the decision rendered by a court of one Contracting Party is being sought in the other, it may be examined only with respect 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 (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 (1)), the court of the requested State shall be bound by the findings of fact establishing the jurisdiction of the court of origin, except in the case of a decision in default.

#### *Article 10*

(1) Decisions rendered in one of the Contracting States shall be recognized in the other without need for special procedures, without prejudice to the provisions of the following paragraphs.

(2) If recognition is sought in a dispute before a court of one of the Contracting States, and the decision is dependent on the said recognition, that court shall have jurisdiction to decide on the recognition.

(3) When recognition of a decision constitutes in and of itself the object of the dispute, the party claiming recognition may request it in accordance with the procedure laid down in chapter 3.

(4) Without prejudice to the provisions of paragraphs 1 to 3, each of the Contracting Parties may establish a special simplified recognition procedure 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 13 and 14.

### CHAPTER 3

#### I. ENFORCEMENT OF LEGAL DECISIONS

#### *Article 11*

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

1. If they are enforceable in the State of origin;
2. If they fulfil the conditions required for recognition in the requested State.

### Article 12

Procedures for authorizing enforcement and subsequent enforcement shall be governed by the law of the requested State, except where otherwise stipulated in this Agreement.

### Article 13

(1) 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, has its principal establishment, in the State of origin.

(2) If the request for authorization of enforcement is denied, the decision shall be recognized and enforced in the other State without any examination of questions of jurisdiction.

### Article 14

If the party seeking enforcement has been exempted from payment of court costs in the State of origin, he shall also be so exempt, in accordance with the regulations of the requested State, as regards both the proceedings to authorize execution of the decision and the actual enforcement.

### Article 15

The request for authorization may be brought by any person who in the State of origin would derive rights under the decision concerned.

### Article 16

(1) The Party seeking enforcement shall submit:

1. A complete copy of the decision;
2. 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;
3. 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;
4. 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;
5. Where applicable, a document or documents proving that in the State of origin the applicant is exempt from payment of court costs;
6. Translation of the documents referred to in the preceding paragraphs into the language of the requested State, certified by a sworn translator, a diplomatic or consular agent, or any other duly authorized person of either of the Contracting States.

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

(3) The application will not be admitted unless accompanied by the documents listed in paragraph (1) of the present article.

### Article 17

If the application is admitted, the requested court shall be required to confine itself to examining whether the conditions of article 4 are fulfilled and whether any of the reasons for refusal referred to in articles 5 and 6.2 obtain.

### Article 18

The requested court may admit the partial enforcement of a decision, if:

1. The decision relates to one or more claims and the claimant requests that it be admitted only with respect to one or several of the claims or to a part thereof.
2. The decision relates to one or several claims and the claim was justified only with respect to one or several of the claims or to a part thereof.

### Article 19

If enforcement of the decision is authorized, the Court shall, if necessary, take at the same time the necessary measures for its enforcement.

## II. ENFORCEMENT OF JUDICIAL SETTLEMENTS AND OF ENFORCEABLE OFFICIAL DOCUMENTS

### Article 20

(1) The judicial settlements and official documents referred to in article 1.2 shall be recognized and enforceable in the other Contracting Party as legal decisions if they are enforceable in the State of origin.

(2) Articles 11 to 16 and 18 shall be applicable *mutatis mutandis* to the authorization of enforcement and to the procedure.

(3) The requested court shall confine itself to determining:

1. Whether the necessary documents have been submitted;
2. Whether enforcement is not clearly contrary to public policy of the requested State.

## CHAPTER 4

### “LIS ALIBI PENDENS” AND TRANSFER

### Article 21

(1) The courts of one of the Contracting Parties shall decline to hear an action — or, if appropriate, shall temporarily suspend hearing of 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, in urgent cases the courts of each of the Contracting Parties may decree the interim or conservatory measures provided for under their legislation, whichever court is considering the case.

### Article 22

The Contracting Parties shall facilitate, in accordance with their domestic legislation, financial transfers subject to enforcement which may result from the application of this Agreement.

## CHAPTER 5

## FINAL PROVISIONS

*Article 23*

(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 enforceable documents.

*Article 24*

(1) This Agreement shall apply only to judicial decisions which become final after the date of its entry into force, and to judicial settlements and enforceable official documents drawn up after that date.

(2) Without prejudice to the provisions of the preceding paragraph, this Agreement shall also apply to decisions in marital and family matters which became final before the date of its entry into force, provided that they were not handed down in default.

*Article 25*

This Agreement shall also apply to *Land Berlin* provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Spanish Government within the three months following the date of entry into force of this Agreement.

*Article 26*

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

*Article 27*

(1) This Agreement shall be subject to ratification. The instruments of ratification shall be exchanged at Madrid as soon as possible.

(2) This Agreement shall enter into force 90 days after the exchange of the instruments of ratification.

*Article 28*

(1) 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.

(2) This Agreement shall continue to be applicable to claims for recognition or enforcement submitted before the date on which the denunciation takes effect.

IN WITNESS WHEREOF, the plenipotentiaries have signed this Agreement.

DONE at Bonn, on 14 November 1983, in duplicate in the Spanish and German languages, both texts being equally authentic.

For Spain:

[*Signed*]

FERNANDO LEDESMA BARTRET  
Minister of Justice

For the Federal Republic  
of Germany:

[*Signed*]

HANS WERNER LAUTENSCHLAGER  
Secretary of State at the Federal  
Ministry for Foreign Affairs

[*Signed*]

HANS A. ENGELHARD  
Federal Minister of Justice

## DECLARATION

The exchange of the instruments of ratification of the Agreement signed on 14 November 1983 in Bonn between the Kingdom of Spain and the Federal Republic of Germany on the Recognition and Enforcement of Judicial Decisions or Settlements and of Enforceable Official Documents in Civil and Commercial Matters took place on today's date.

On this occasion a joint statement was made, for the purpose of giving a joint interpretation of article 2.1 (b), which is reflected in the present declaration.

“For the purposes of article 2.1, ‘judicial decisions’ shall mean both decisions by judges and decisions taken by competent judicial or auxiliary court officials (*Rechtspfleger*). The separate reference to the decisions of such officials in article 2.1 (b) is intended solely to prevent misunderstandings which might arise from the fact that the position of *Rechtspfleger* is not known in Spain. The precise definition of ‘*Rechtspfleger*’ in the Spanish language is ‘*funcionario de la administración judicial con determinadas funciones jurisdiccionales*’ (‘official of the judicial administration having specific jurisdictional functions’).”

Both parties welcome the successful completion of the negotiation and conclusion of this Agreement, which will assist in strengthening legal relations between the two countries.

Madrid, 19 January 1988

For the Government  
of the Kingdom of Spain:

[Signed]

FERNANDO PERPIÑA ROBERT

For the Government  
of the Federal Republic of Germany:

[Signed]

GUIDO BRUNNER