Spanish Draft Law on Mediation

The Spanish Draft Law on Mediation in Civil and Commercial Matters was published on the BOCG OF APRIL 29, 2011 (see here). The future Act would incorporate into Spanish law Directive 2008/52/EC of the European Parliament and the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (just for the record, the deadline for bringing into force the laws, regulations, and administrative provisions necessary to comply with the Directive is May 21, 2011, so we will be late). However, the proposed regulation goes beyond the content of the Directive, in line with the third additional provision of Law 15/2005 of 8 July, amending the Civil Code and Civil Procedure Act relating to separation and divorce. While Directive 2008/52/EC lays down only minimum standards to encourage mediation in cross-border civil and commercial matters, the Spanish regulation sets a general scheme that takes into account the provisions of the UNCITRAL Model Law on International Commercial Conciliation, and would be applicable to any mediation (limited to the field of civil and commercial matters) that takes place in Spain and intends to be legally binding.

Some interesting provisions of the draft read as follows:

Article 2. In the absence of express or tacit submission to this law, it shall apply when at least one of the parties is domiciled in Spain and the mediation is to be conducted in Spanish territory.

Article 3. Cross border conflicts mediation.

1. For the purposes of mediation governed by this law, “cross-border conflict” means a conflict in which at least one party is domiciled or habitually resident in a State other than that in which any of the other affected parties is domiciles or has habitually residence at the time they agree to use mediation (or they have to use it in accordance with the applicable law).

2. In cross border disputes between parties residing in different Member States of the European Union, domicile will be determined in accordance with Articles 59 and 60 of Regulation (EC) no. 44/2001 of 22 December 2000 on the jurisdiction and recognition and enforcement of judgments in civil and commercial matters.

Article 28. Enforcement of cross border mediation agreements.

1. Without prejudice to the rules of the European Union and international conventions in force in Spain, a mediation agreement that has already become enforceable in another State shall only be executed in Spain where such enforceability results from the intervention of an authority competent to perform functions equivalent to those played by Spanish authorities.

2. A mediation agreement that has not been declared enforceable by a foreign authority will only be executed in Spain after having been notarized by a Spanish notary public at the request of the parties, or of one of them with the express consent of the other.

3. The foreign document will not be executed if it is manifestly contrary to the Spanish ordre public.