

Spanish Law on Mediation (Again)

The Spanish Law on Mediation in Civil and Commercial Matters (Ley 5/2012, BOE 7.7.2012), repealing the Royal Decree-Law of 5 March 2012, has been adopted on July 6; it will come into effect this week.

According to Article 2, the Act applies to mediation in civil or commercial cases, including cross border disputes, provided they do not affect rights and obligations which are not at the parties' disposal under the relevant applicable law. In the absence of express or tacit submission to the Act, it shall apply when at least one party is domiciled in Spain and the mediation is to be conducted in Spain. As for the material scope, the Act is not applicable to mediation in criminal, labor or consumer matters; mediation with the Public Administration is also excluded.

Article 3 deals with cross-border disputes, i.e., disputes where at least one party is domiciled or habitually resident in a State other than that of any other party at the time they agreed to use mediation or the obligation to use mediation arose according to the applicable law. Disputes are also considered to be "cross-border" when mediation is foreseen, or the conflict has been solved through mediation, regardless of the place of the agreement to use mediation when, following the transfer of residence of any of the parties, the enforcement of the agreement or its consequences is sought in the territory of a different State. In cross-border disputes between parties residing in different EU Member States, domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001.

Enforceability of agreements resulting from mediation is to be found in Articles 25 and 27. According to Article 25, paragraph 3, when the mediation agreement is to be executed in another State compliance with the requirements, if any, of the international conventions to which Spain is party and with the European Union rules is compulsory, in addition to notarization of the agreement. Pursuant to paragraph 4, when an agreement in mediation has been reached after the beginning of court proceedings, the parties may request the court approval following the Civil Procedure Act 2000 (*Ley de Enjuiciamiento Civil*).

Article 27 states that notwithstanding the rules of the European Union and international conventions in force in Spain, a mediation agreement that had

already become enforceable in another State will be enforced in Spain where enforceability results from the intervention of a competent authority developing functions equivalent to those of the Spanish authorities. A mediation agreement that has not been declared enforceable by a foreign authority may only be enforced in Spain after being converted into public deed by a Spanish notary upon request of both parties, or of one with the express consent of the other. The foreign document shall not be enforced if it is manifestly contrary to the Spanish ordre public.