

Treaties to which Spain is a Party Concerning Matters of Private International Law, 2003

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This survey covers the treaties and other international agreements published in the *Boletín Oficial del Estado* (Official Journal of the State) during 2003. Its purpose is to record the legal consequences of such agreements and instruments for Spain, such as signature, ratification or accession, entry into force, provisional application, reservations or declarations, territorial application, personal sphere of application, material scope, termination, abrogation and relationship with other treaties or agreements.

I. SOURCES OF PRIVATE INTERNATIONAL LAW

II. INTERNATIONAL JURISDICTION

III. PROCEDURE AND JUDICIAL ASSISTANCE

– Convention on Judicial Assistance in Civil and Commercial Matters between Spain and the Dominican Republic, done at Madrid on 15 September 2003 (*BOE* 254, 23.10.03).

Provisional application: from 15 September 2003.

Note: “Article 1. *Scope of assistance*”

The Parties agree to cooperate with each other in the service of judicial documents and the furnishing of evidence in civil and commercial matters.

Article 2. Legal protection

1. The nationals of a Party shall enjoy the same legal protection that the other Party grants to its nationals and shall have free access to the Courts and Tribunals within the territory of the other Party and may appear before them in the same conditions as nationals of the other Party.
2. Neither of the Parties shall oblige nationals of the other Party to furnish bonds or deposits for court expenses solely on the grounds they are foreign nationals.
3. The provisions of the present Convention which relate to the nationals of either of the Parties shall also be applicable to legal persons incorporated pursuant to the legislation of either of the Parties and with registered office on their territory.

Article 3. Central authorities

1. Each Party shall designate an Authority which will be responsible for sending and receiving requests for service of judicial documents or rogatory letters for the procurement of evidence, and for abiding by the provisions of the present Convention.
 2. The Authority for the Kingdom of Spain is the Ministry of Justice and the Authority for the Dominican Republic is the *Procuraduría General de la República*, except for the sending and receiving of requests for service or judicial documents or rogatory letters for the procurement of evidence, for which the Dominican Republic Supreme Court of Justice shall be directly responsible.
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Article 19. More favourable provision

1. The provisions of the present Convention shall neither affect nor limit the provisions contained in other bilateral or multilateral Conventions concluded by the Parties on the same matters.
2. The provisions of the present Convention shall neither affect nor limit any other more favourable practices which Parties may observe in respect of the same matters under their national legislation”.

IV. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGEMENTS AND DECISIONS

Note: See section XXI for the recognition and enforcement of criminal judgments

V. INTERNATIONAL COMMERCIAL ARBITRATION

VI. CHOICE OF LAW: SOME GENERAL PROBLEMS

VII. ALIENS, REFUGEES AND CITIZENS OF THE EUROPEAN COMMUNITY

– Exchange of Notes between Spain and Bulgaria constituting an Agreement on the Abolition of Visas, done at Sofia on 6 November 2001 and 13 December 2002 (*BOE* 36, 11.02.03).

Entry into force: 1 January 2003.

– Agreement between Spain and Guinea-Bissau on Immigration Matters, done at Madrid on 7 February 2003 (*BOE* 74, 27.03.03).

Provisional application: from 7 February 2003.

Note: “Article 2. National laws on immigration

Pursuant to the provisions of the present Agreement, the Contracting Parties shall deal with all immigration matters in accordance with their national laws and regulations.

Article 3. Admission

Each Contracting Party, at the request of the other Contracting Party, shall admit to its own territory any person who does not have or has ceased to have the right to enter or reside in the territory of the requesting Contracting Party, provided that the person in question is proven . . . to be a national of the requested Contracting Party.

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Article 4. Repatriation procedure

1. Repatriation procedure shall be carried out without the issuance of a travel document if the person in question possesses a valid national passport of any kind (national passport, group passport, family passport) or other valid and internationally recognized travel document.

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3. All repatriation cases shall be coordinated by the requesting Contracting Party together with the representative of the requested Contracting Party, which may be the diplomatic or consular authority of the latter in the territory of the requesting Contracting Party or, failing that, when Guinea-Bissau is the requested Contracting Party, a representative of the consular authority of Guinea-Bissau in any European Union Member State.
4. The requesting Contracting Party shall provide the relevant flight information and information on the people who are to be repatriated at least forty-eight hours before the date of repatriation.

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Article 11. Readmission of repatriated people

1. If the person is subsequently proven not to be a national of the requested Contracting Party, the Contracting Party shall readmit the person to its territory.
2. The application for returning the person mentioned in paragraph 1 shall be submitted within 14 days of the repatriation and shall be implemented in the following 16 days, readmitting the person to the territory of the requesting Contracting Party.

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Article 13. Entry of repatriated people

Repatriation carried out under the present Agreement shall not affect the right of the people concerned to re-enter the territory of the Party, in accordance with the national regulations of the Contracting Parties.

Article 14. *Effects with respect to other international Agreements*

The provisions of the present Agreement shall not affect rights and obligations deriving from other international agreements, treaties, conventions or protocols signed by the Contracting Parties”.

- Framework Agreement on Cooperation between Spain and the Office of the United Nations High Commissioner for Refugees, done at Geneva on 9 December 2002 (BOE 123, 23.05.03).

Provisional application: from 9 December 2002.

Note: The purpose of this Agreement is to develop relations between Spain and the UNHCR with respect to this organization’s programmes, projects and activities financed by Spain’s voluntary contributions to the UNHCR.

- Convention between Spain, France and Andorra on the Movement and Stay in Andorra of Third-party Nationals, done “ad referendum” at Brussels on 4 December 2002 (BOE 153, 27.06.03 and 224, 18.9.03 (*corrigendum*)).

Entry into force: 1 July 2003.

- Convention between Spain, France and Andorra on the Entry, Movement, Residence and Establishment of their Nationals, done “ad referendum” at Brussels on 4 December 2002 (BOE 153, 27.06.03 and 224, 18.9.03 (*corrigendum*)).

Entry into force: 1 July 2003.

- Denunciation of the Exchange of Notes on the Abolition of Visas between Spain and Ecuador of 30 October 1963, done at Quito on 3 June 2003 (BOE 159, 4.07.03).

Denunciation effective: from 3 August 2003.

Note: The entry into force of the European Union Council Regulation of 6 March 2003 amending EC Regulation 539/2001 of 15 March includes Ecuador on the list of third countries whose nationals require a visa in order to cross the external borders of the Member States.

- Agreement between Spain and Macedonia on the Mutual Abolition of Visas for Diplomatic and Service Passports, done at Madrid on 3 June 2003 (BOE 168, 15.07.03)

Provisional application: from 3 July 2003.

- Agreement between Spain and Mauritania on Immigration Matters, done at Madrid on 1 July 2003 (BOE 185, 4.08.03).

Provisional application: from 31 July 2003.

Note: The procedures for the repatriation of nationals of the Contracting States and readmission of nationals of those States or of a third State are similar to those laid down in the aforementioned Convention between Spain and Guinea – Bissau.

- Agreement between Spain and Chile on the Free Exercise of Remunerated Employment for Dependents of Diplomatic, Consular, Administrative and Technical

Personnel of Diplomatic and Consular Missions, done at Madrid on 9 May 2001 (BOE 223, 17.09.03).

Entry into force: 12 September 2003.

– Agreement between Spain and the Dominican Republic on the Free Exercise of Remunerated Employment for Dependents of Diplomatic, Consular, Administrative and Technical Personnel of Diplomatic and Consular Missions, done at Madrid on 15 September 2003 (BOE 254, 23.10.03).

Provisional application: from 15 September 2003.

VIII. NATURAL PERSONS: LEGAL INDIVIDUALITY, CAPACITY AND NAME

IX. FAMILY LAW

– Protocol on International Adoption between Spain and the Philippines, done at Manila on 12 November 2002 (BOE 21, 24.01.03 and 265, 5.11.03).

Provisional application: from 12 December 2002.

Entry into force: 14 October 2003.

Note: In accordance with their respective legislation, the Parties have ratified The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, done at The Hague on 29 May 1993, and therefore undertake to abide by its provisions for the higher interest of the child.

“Title I. Scope of Application

Article 1. The purpose of the present Protocol is:

To establish a cooperation system between the Parties guaranteeing the full elimination and prevention of the abduction and sale of, and illicit trafficking in, children.

To achieve the mutual recognition of full adoptions carried out in the framework of the present Protocol, in accordance with the legislation of both countries.

Article 2. The Protocol shall be applicable in the case of the full adoption of a child residing habitually in Spain or the Philippines by people residing habitually in the other State.

For the purpose of the present Protocol “the child” shall be understood to be a minor aged under eighteen, unless the law of the State establishes a younger age (. . .)

The placement of the child shall be the responsibility of the competent central authorities of both Parties.

In Spain, the authorities in question are each of the Spanish institutions listed in Appendix A with respect to people residing in their respective territories. These are specifically the organizations and institutions responsible for protecting children in each of the various Autonomous Regions (Andalusia, Aragón, Asturias,

the Balearic Islands, The Canary Islands, Cantabria, Castile-La Mancha, Castile and León, Catalonia, Extremadura, Galicia, La Rioja, Madrid, Murcia, Navarra, the Basque Country, Valencia, Melilla and Ceuta). The Central Authority for the transmission of communications is the Directorate General for Social Action, Minors and Family Affairs, of the Ministry of Labour and Social Affairs.

In the Philippines, the institution designated as Central Authority is the Inter-Country Adoption Board (ICAB)".

X. SUCCESSION

XI. CONTRACTS

XII. TORTS

XIII. PROPERTY

1. Industrial and Intellectual Property

– Act revising the Convention on the Grant of European Patents of 5 October 1973, revised on 17 December 1991, done at Munich on 29 November 2000 (*BOE* 22, 25.01.03 and 84, 8.04.03).

Provisional application: by Spain as from the signature on 20 November 2000 of Article 1 paragraphs 4 to 6; and 12 to 25; Article 2 paragraphs 2 and 3; and Articles 3 and 7.

Note: "The revised text of the European Patent Convention shall enter into force two years after the fifteenth Contracting State has deposited its instrument of ratification or accession, or on the first day of the third month following the deposit of the instrument of ratification or accession by the Contracting State taking this step as the last of all the Contracting States, if this takes place earlier (Article 8.1).

– Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs and Regulations under the Geneva Act, done at Geneva on 2 July 1999 (*BOE* 297, 12.12.03).

Deposit of the Instrument of ratification: 23 September 2003.

Entry into force: 23 December 2003.

Note: Declarations

"In accordance with Rules 18.1.b) and 32.1 of the Regulations under the Geneva Act of The Hague Agreement concerning the International Registration of Industrial Designs, the Kingdom of Spain declares that the prescribed period for notification of refusal of the effects of an international registration referred to in Article 12.2 of the Act and Rule 18.1 a) shall be twelve months in Spain.

Likewise, pursuant to paragraph c) subparagraph I) of Rule 18.1 a) of the aforementioned Regulations, it is hereby notified that in Spain International Registration shall have the effect mentioned in Article 14.2 a) no later than six months from the date mentioned in that Article”.

XIV. COMPETITION LAW

XV. INVESTMENTS AND FOREIGN EXCHANGE

Note: See Treaties Involving Questions of Public International Law, section XI.5 Economic Cooperation.

XVI. FOREIGN TRADE LAW

XVII. BUSINESS ASSOCIATION/CORPORATION

XVIII. BANKRUPTCY

XIX. TRANSPORT LAW

Note: See, also, Treaties involving questions of Public International Law, section XI. 11, 12, 13 and 14.

XX. LABOUR LAW AND SOCIAL SECURITY

– Administrative Arrangement for the Implementation of the Agreement between Spain and Australia on Social Security, done at Canberra on 20 December 2002 (*BOE* 48, 25.02.03).

Entry into force: 1 January 2003.

– Convention on Social Security between Spain and Slovakia and Administrative Arrangement for its Implementation, done at Bratislava on 22 May 2002 (*BOE* 156, 1.07.03 and 212, 4.09.03 (*corrigendum*)).

Instrument of ratification: 12 May 2003.

Entry into force: 31 August 2003.

– Convention supplementing the Convention on Social Security between Spain and the United Mexican States of 15 April 1994, done at Madrid on 8 April 2003 (*BOE* 168, 15.07.03).

Provisional application: from 6 June 2003.

– Convention on Social Security between Spain and Poland, done at Madrid on 22 February 2001 and Administrative Arrangement for its Implementation, done at Warsaw on 17 June 2001 (*BOE* 234, 30.09.03 and 297, 12.12.03 (*corrigendum*)).

Instrument of ratification: 2 July 2003.

Entry into force: 1 October 2003.

– Convention on Social Security between Spain and Bulgaria, done at Valencia on 13 May 2002 (*BOE* 266, 6.11.03).

Instrument of ratification: 18 June 2003.

Entry into force: 1 November 2003.

– Agreement between Spain and Bulgaria on the Regulation of Migratory Labour Flows between both States, done at Madrid on 28 October 2003 (*BOE* 299, 15.12.03).

Provisional application: from 27 November 2003.

XXI. CRIMINAL LAW

Note: See, also, section II and Treaties concerning matters of Public International Law 2003, section X.14.

– Convention between Spain and Ukraine on Cooperation in Combatting Crime, done at Kiev on 7 November 2001 (*BOE* 38, 13.02.03).

Entry into force: 28 January 2003.

– Convention between Spain and Tunisia on Judicial Assistance in Criminal Matters, done at Tunis on 24 September 2001 (*BOE* 52, 1.03.03).

Instrument of ratification: 28 October 2002.

Entry into force: 1 March 2003.

Note: Article 1.

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2. The present Convention shall not apply to the enforcement of judgments relating to detentions or convictions.

Article 2. Exceptions

Judicial assistance may be denied

- a) If the request refers to infringements that the requested State considers to be political infringements or politically-related infringements, or infringements consisting merely of failure to fulfil military obligations.
- b) If the requested State deems that implementation of the request could infringe its sovereignty, security or public policy.

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Article 12. Manner of requesting judicial assistance

Requests for judicial assistance should include the following details:

authority making the request

reason for and purpose of the request

if possible, identity and nationality of the person in question

name and address of the recipient, if appropriate

any other information the requesting authority possesses on the request for assistance

2. Requests for assistance will furthermore mention, when appropriate, the charges and will contain a brief description of the facts.
3. The request for a search or embargo must be accompanied by an order from the competent judge of the requesting State.

Article 13. Procedure

Without prejudice to the use of diplomatic channels, the request for assistance and documentation relating to its implementation shall be handled by the central authorities of both Parties.

The Central authority for Spain will be the Ministry of Justice (Directorate General for Legislative Policy and International Legal Cooperation) and for Tunisia the Ministry of Justice (Directorate for Criminal Affairs).

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Article 17.

Pursuant to the present Convention, documents and translations drafted or certified by courts or other competent authorities of either of the Parties will not require any type of legalization provided they bear an official stamp.

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Article 20. Exchange of information on national law

1. The Contracting Parties undertake to exchange information on their criminal legislation and on their criminal procedure and judicial organization.

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2. Exceptions: The requested State may refuse a request for information if its interests were affected by the lawsuit or if it deemed that answering could infringe its sovereignty or security.

– Extradition Treaty between India and Spain, done at Madrid on 20 June 2002 (*BOE* 74, 27.03.03).

Entry into force: 31 March 2003.

– United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000 (*BOE* 233, 29.09.03).

Deposit of instrument of ratification: 1 March 2002.

Entry into force: in general and for Spain 29 September 2003.

– Convention on Mutual Assistance in Criminal Matters between the members of the European Union, done at Brussels on 28 May 2000 (*BOE* 247, 15.10.03).

Provisional application: between Spain and Portugal from 6 October 2003.

Note: Article 27.5. provides for the possibility of any State declaring it will apply the present Convention in its relations with other States that have made the same declaration. States that have made this declaration are Portugal (5 November 2001) and Spain (9 July 2007).

Declarations of Spain: “Pursuant to Article 24.1.b) Spain designates as its Central Authority, in accordance with paragraph 2 of Article 6, the Ministry of Justice (Directorate General for Legislative Policy and International Legal Cooperation).

Pursuant to Article 24.1.c) and for the purpose of Article 18 and Article 20, the Competent Authority is the ‘Audiencia Nacional’ when Spain acts as a requested State. With respect to paragraph 4 of Article 20 on the designation of contact points in Spain, these will be the local criminal courts and the central criminal courts”.

– Convention between Spain and the Dominican Republic on the enforcement of criminal judgments, done at Madrid on 15 September 2003 (*BOE* 254, 23.10.03).

Provisional application: from 15 September 2003.

Note: Purpose of the Convention: To facilitate the rehabilitation of convicted people by allowing them to serve their sentences in the country of which they are nationals.

Article 3. Conditions of applicability

The present Convention shall be applicable under the following conditions:

1. When the acts or omissions giving rise to the criminal conviction are also punishable in the receiving State, even if they do not constitute the same offence
2. When the convicted person is a national of the receiving State
3. When the convicted person requests transfer, or, if the request is filed by the transferring State or receiving State, when the convict gives his express consent. If the convicted person is legally incompetent, consent must be given by his legal representative
4. When the term of the sentence or security measure that remains to be served is more than six months at the time of the request
5. When the sentence is final and there are no other pending proceedings in the transferring State
6. When the other provisions of the judgment, such as loss of liberty or those relating to civil liability have been implemented, unless the convicted person has been declared bankrupt”.

– Agreement between Spain and Poland on Cooperation in Combatting Organized Crime and other Serious Offences, done at Madrid on 27 November 2000 (*BOE* 289, 3.12.03).

Entry into force: 26 November 2003.

– Protocol against the Smuggling of Immigrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime of 15 November 2000, done at Palermo on 13 December 2000 (*BOE* 295, 10.12.03).

Deposit of Instrument of Ratification: 1 March 2002.

Entry into force: 28 January 2004.

– Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 15 November 2000, done at Palermo on 13 December 2000 (*BOE* 296, 11.12.03).

Deposit of Instrument of Ratification: 1 March 2002.

Entry into force: 25 December 2003.

– Exchange of Notes constituting an Agreement between Spain and Ireland for the Extradition of Nationals, supplementing Article 6 of the European Convention on Extradition of 13 December 1953, done on 12 February 2003 and 21 February 2003 (*BOE* 294, 9.12.03).

Entry into force: 20 November 2003.

Note: Ireland's proposal is accepted that when applying the European Convention on Extradition, done at Paris on 13 December 1953, a request for extradition should not be refused on the grounds that the person whose extradition is requested is a national of the requested country.

XXII. TAX LAW

– Convention between Spain and Belgium for the Prevention of Double Taxation and Tax Evasion and Tax Fraud in matters of taxes on income and capital, and Protocol, done at Brussels on 14 June 1995 and Act amending it, done at Madrid on 22 June 2000 (*BOE* 159, 4.07.03 and 295, 10.12.03 (*corrigendum*)).

Ratified by Instruments: 22 July 2000.

Entry into Force: 25 June 2003.

Note: Following entry into force, the Convention will be applicable to taxes withheld at source on income earned or paid from 1 January 2004, to other established taxes on income or capital relative to tax periods ending from 31 December 2003 onwards.

The provisions of the Convention between Spain and Belgium for the prevention of double taxation and regulation of certain aspects of taxes on income and capital and of the additional Protocol signed at Brussels on 24 September 1970 shall cease to be applicable to any Spanish or Belgian tax in respect of which the present Convention and Protocol are applicable.