

SPAIN

LEGAL BASIS

1. Has your State signed and/or ratified the *European Convention on State Immunity* (1972) and/or the *United Nations Convention on Jurisdictional Immunities of States and Their Property* (2004)? Do the authorities of your State consider the provisions on these treaties on service of process as a codification of customary international law? Does your State apply any other international legal instrument (apart from bilateral agreements)?

Spain is not a party to the *European Convention on State Immunity* (1972).

Spain acceded to the *United Nations Convention on Jurisdictional Immunities of States and Their Property* (2004) through Instrument of Accession deposited with the Secretary General of the UN on 21 September 2011. Spain considers the provisions on the UN Convention of 2004 on service of process as a codification of customary international law.

Spain is also a party to the *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (Instrument of Ratification deposited on 4 June 1987) and, as a EU Member State, applies *Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters*.

2. Please provide information on:

- a. National legislation (in particular its title, source and content; if available, please provide official translations and/or references to Internet sources).

In the Spanish national legislation, the issue of service of process on a foreign State is regulated in article 27 of *Ley 29/2015, de 30 de julio, de cooperación jurídica internacional en materia civil* (Law 29/2015, of July 30th, on international legal cooperation in civil matters; text available in the Official Journal of Spain, <https://www.boe.es/buscar/doc.php?id=BOE-A-2015-8564>).

Ley Orgánica 16/2015, de 27 de octubre, sobre privilegios e inmunidades de los Estados extranjeros, las Organizaciones Internacionales con sede u oficina en España y las Conferencias y Reuniones internacionales celebradas en España (Organic Law 16/2015, of October 27th, about privileges and immunities of foreign States, International Organizations with headquarters in Spain, and international conferences and meetings celebrated in Spain; text available in the Official Journal of Spain, https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-11545) regulates the issue of service of process to a foreign State in its articles 52, 54 and 55.

Service of process in civil matters is regulated at a general and subsidiary level in *Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil* (Law 1/2000, of January 7th, on civil procedure; text available in the Official Journal of Spain, <https://www.boe.es/buscar/act.php?id=BOE-A-2000-323>).

- b. Case-law and practice, specifying whether your national courts and tribunals review the lawfulness of the service of process by operation of law.

Spanish national courts and tribunals review the lawfulness of the service of process on the basis of relevant rules on civil procedure. There is no case-law concerning the specific issue of service of process on foreign States.

PROCEDURE

3. **Please describe the procedure(s) applicable to service of process on a foreign State, specifying the hierarchy between the different methods for serving process. In particular, please provide information on when the service is deemed to be effected, time-limits, the grounds to refuse service of process and the consequences of the unlawfulness of the service.**

Where *Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007* or an international agreement is not applicable, article 27.1 of the aforementioned *Ley 29/2015* establishes that all communications from courts directed to foreign States, including service of process, are effected via the Spanish Ministry of Foreign Affairs, which transmits it by diplomatic channels (Note Verbal) to the Ministry of Foreign Affairs of the foreign State. Service of process is deemed to be effected, according to article 27.3 of *Ley 29/2015*, two months after the date of written acknowledgement of receipt by the foreign State. See answers to questions 3.a and 3.b for further details

Regarding other time-limits, the grounds to refuse service of process and the consequences of the unlawfulness of the service, Spanish law has no specific provisions for the case of foreign States, and thus applies its general legislation on civil procedure except when otherwise specified in EU law or an international agreement.

- a. **How are the terms “diplomatic channels” (Article 16 § 2 of the European Convention and Article 22 § 1 c) i) of the United Nations Convention) interpreted by your national authorities? Please indicate whether these terms include a notification to the embassy of the State concerned in the State of forum.**

Article 54.1 of *Ley Orgánica 16/2015* provides that the Spanish Ministry of Foreign Affairs transmits the documents to be served to the Spanish diplomatic mission in (or accredited to) the defendant State, which in turns transmits them to the latter's MFA. The Spanish Embassy's delivery of the documentation must be carried out, as indicated in article 27.1 of *Ley 29/2015*, with a Note Verbale and in full respect of the Vienna Convention on diplomatic relations of 1961.

Spain law does not explicitly call for the embassy of the defendant State in Spain to be notified. Such information can be transmitted as a courtesy gesture towards the diplomatic mission.

- b. **How are the terms “if necessary” (Article 16 § 2 of the European Convention and Article 22 § 3 of the United Nations Convention) interpreted by your national authorities?**

Where *Regulation (EC) No 1393/2007* or an international agreement is not applicable, Spanish legislation does not specify the conditions under which a translation of the documents is necessary. It is generally interpreted, however, that “if necessary” means, in this context, when Spanish is not the official language of the defendant foreign State.

4. **Where your State is the defendant in the proceedings, what is accepted as an adequate service of process? Please specify whether your State accepts the service to its embassy in the State of forum.**

Spain does not generally consider service of process on its embassy in the State of forum as adequate. In such cases, the authorities of the forum State are generally requested to serve proceedings through their diplomatic mission in (or accredited to) Spain. However, Spain has accepted service of process on its embassies of the forum State in exceptional, well-justified cases, and always as long as it remained clear that the defendant is the State itself, not the diplomatic mission.