

Final approval of law on measures for the efficiency of the public service

The Organic Act 1/2025 imposes Appropriate Means of Dispute Resolution ("MASC") as a requirement for civil claims.

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ASPECTOS CLAVE

The Organic Act 1/2025, of January 2, on measures regarding the efficiency of the Public Justice Service includes the following changes to civil procedures that affect businesses:

- The most outstanding measure is the introduction of the Appropriate Means of Dispute Resolution ("MASC") as a requirement for the admissibility of judicial (civil and commercial) claims.
- The regulation includes other procedural amendments; e.g., (i) if electronic summonses do not work, an attempt must be made to deliver a summons to the company's physical address before using public notices; and (ii) reforms to the process for "oral proceedings" (juicio verbal).
- It also reorganizes the courts of first instance by creating new "first instance tribunals."





The Organic Act on measures for the efficiency of the public justice service

Parliamentary procedure and other efficiency measures already passed

The [Organic Act 1/2025, of January 2, on measures regarding the efficiency of the Public Justice Service](#) (the "OA 1/2025" or "OA") has been published in the Official State Gazette (BOE). The text had been definitively approved by the Plenary of Congress on December 19, 2024, following the lifting of the veto that had been imposed by the Senate.

The OA contains organizational and procedural efficiency measures under the "Justice 2030 Plan" promoted by the Ministry of the Presidency, Justice and Relations with the Courts, which was completed with digital efficiency measures. In this way, the regulation is added to others already approved through which other digital and procedural efficiency measures have been implemented, most notably [RDL 5/2023](#) (See [post](#) and [podcast](#)), which reformed civil cassation and [RDL 6/2023](#) (See [post](#)), which introduced digital and procedural measures, such as including the first electronic summons to companies, extending the scope of application of the "oral proceedings" (*juicio verbal*) and the witness procedure (*procedimiento testigo*).

Initially, the transposition of the [Representation Shares Directive](#) was included in the Draft Law, but the articles aimed at transposing it were removed during the parliamentary procedure, so that the OA 1/2025 does not regulate this matter.

In this Legal Flash about the new regulation we explain the most important measures in civil procedural matters (also applicable to commercial matters) that will affect companies, such as the new requirement for companies to attempt to resolve issues through alternative dispute resolution methods (MASC) before filing a lawsuit. The regulation also includes other changes, such as, (i) if an electronic summons is unsuccessful, an attempt must be made to deliver a summons to the company's physical address before resorting to making notices through the Single Judicial Notice Board ("TEJU"); and (ii) reorganizing first instance courts into first instance tribunals, which is the most important change in terms of organizational efficiency.

Procedural efficiency measures

Appropriate Means of Dispute Resolution ("MASC")

The most important procedural measure the OA 1/2025 introduces is the **requirement** that a **MASC procedure must have been started before the claim is filed for it to be admissible**.

This measure had been included in a draft law that lapsed with the end of the 14th legislature. However, it was not included in [RDL 6/2023](#), which contained most of that bill's other procedural measures. Finally, this OA 1/2025 has introduced it into our legislation.

The most important questions about this measure are addressed below.

> What is MASC?

The OA 1/2025 defines MASC as "any type of negotiation activity, recognized in this or other national or regional laws, to which the parties to a conflict resort in good faith to find an out-of-court solution to the conflict, either by themselves or through a neutral third party" (art. 2 OA).

Article 5.1 OA refers to **mediation, conciliation and the neutral opinion of an independent expert, a confidential binding offer or any other type of negotiating activity**, recognized in this or other laws, state or autonomous, but which complies with the regulation (particularly articles 2 to 13 OA; the reference does not specify these and there is no list of requirements) or in a sectoral law. It also states the possibility of resorting to a **collaborative law process**.



According to the OA 1/2025 negotiation activity may be carried out either through a **neutral person, directly by the parties**, or between their **lawyers** under their guidance and with their agreement (arts. 5.1 and 14.1 OA)

Under article 6 OA, if the parties are using a **binding offer** as a method to resolve their dispute (MASC), they **must** do this with the assistance of **legal professionals**. This rule does not apply if the amount is less than €2,000 or there is a sectoral law that does not require it. If a party decides to hire a lawyer for MASC, they must inform the other party, so the other party can consider if they want to hire a lawyer (art. 6.3 OA).

The initiative to use MASC may come from one of the parties, from both parties by mutual agreement, or from a court decision or the court clerk referring the parties to this type of remedy (art. 5.4 OA and art. 19 of the Spanish Civil Procedural Law, “LEC”).

If all parties agree to use a dispute resolution method but cannot decide on which one to use, they must use the method proposed earlier (art. 5.4 OA).

➤ **Matters that need (or do not need) to use MASC before filing a claim**

- Included matters

Under the rule, parties must try to resolve disputes using MASC before taking **civil** (including **commercial** cases) to court. This is required before the court will accept the claim (art. 5 OA). This rule also applies to **crossborder** cases (art. 3 OA).

- Excluded matters

Under article 3.2 OA, some cases do not have to use MASC before going to court, including **labor, criminal and insolvency** matters.

Cases involving a **public sector entity** are also excluded, regardless of their jurisdiction (art. 3.2 OA). However, the government must create and submit a draft law to the Spanish Parliament within two years of the OA's entry into force. This draft law will address how to handle dispute resolution in administrative matters when one of the parties is the administration (DF 31^a OA).

Certain **matters cannot be resolved through MASC** (except the effects and measures of articles 102 and 103 Civil Code relating to annulment, separation or divorce). Also, matters excluded from mediation under the new wording of 89.9 The Organic Courts Act (“LOPJ”) (art. 4 OA) cannot be submitted to MASC.

➤ **Acts and proceedings that cannot be submitted to MASC before filing a claim**

Article 5.2 OA contains the general clause on the procedures to which the procedural requirement will apply. Articles 5.2 and 5.3 OA list a number of exceptions.

- Procedures covered by general clause (art. 5.2 OA)

Generally, negotiation must be attempted before starting court proceedings in the following cases:

- **Declaratory proceedings** in Book II of the LEC, which include **ordinary trials** and **oral trials**
- **Special proceedings** in Book IV of the LEC, including the **order for payment procedure** and the procedure for **dividing an inheritance**).

However, enforcement proceedings are not included because they are regulated in Book III of the LEC. Article 5.3 OA also exempts claims seeking enforcement proceedings from this requirement.

- Excluded acts and procedures (arts. 5.2 and 5.3 OA)

Under articles 5.2 and 5.3 OA, MASC is not required for the following acts and types of proceedings:



- **Enforcement proceedings:** These are not covered by the general rule since they are not included in Book II or Book IV of the LEC, which means they are not included in the general clause of the scope of application of the procedural requirement.
- Application for pre-suit **injunctions**.
- Request for **preliminary proceedings**.
- **Voluntary jurisdiction proceedings**, except in cases of (i) marital disagreement and in the administration of marital property; and (ii) disagreement in exercising parental authority.
- Application for a **European order for payment** under [Regulation \(EC\) No 1896/2006 creating a European order for payment procedure](#).

The **order for payment** procedure in Book IV of the LEC is not excluded, so MASC applies to this procedure.

- Application for a **European Small Claims Procedure** under [Regulation \(EC\) No 861/2007 establishing a European Small Claims Procedure](#).
- **Exchange proceedings**.
- **Summary protection of the tenure or possession of an item or right** for someone who has been deprived of it or its benefit.
- Application for court ordered demolition or **destruction** of a structure, building, tree, column or any other similar object in a state of **ruin** that threatens to cause damage.
- Civil judicial protection of **fundamental rights**.

The rule also excludes family law and personal law matters, including judicial measures to support people with disabilities.

> **How to meet the procedural requirement to use MASC for claim admissibility**

To meet the procedural requirement for the claim to be admitted, the following is necessary:

- **Use MASC:** An attempt must be made to resolve the issue through MASC, as outlined in articles. 5.1 and 14.1 OA. If it is a consumer dispute, the specific rule in A.D. 7 OA will apply.
- **Prove that MASC has been used:** Under article 10 OA, it is necessary to **document the negotiation efforts or attempts**:
 - If a neutral third party is involved, it will be easier to prove this, because it will be done with a **document issued by the neutral third party** (art. 10.3 OA).
 - If no neutral party was involved, a **document signed by both parties** is needed, including the identities of all parties who have advised them, the subject of the dispute, the dates of any meetings held, and a declaration that both parties participated in good faith. However, this can be challenging and may not always be practical.

Alternative proof: if it is not possible to collect the above information, attempts to negotiate can be proved by **any document** proving that the other party **received** the request or invitation to negotiate or, where appropriate, the proposal, the date, and that the other party **had access to its full content** (art. 10.2 OA).

- Article 439 LEC states that claims by consumers for refund of amounts wrongly paid due to floor clauses or other clauses in loan or credit contracts secured with a real estate mortgage will not be accepted unless accompanied by a document showing that the consumer has first made an out-of-court claim. The claim must be made under new article 439 bis LEC.



LEC has also been reformed to align with these requirements (see arts. 264.4, 399.3, 403.2 LEC).

- For the procedural requirement to be considered met, the **subject of the negotiation and the subject of the dispute must be identical**, although, according to the rule, it seems that the specific claims that may be brought to court on that subject can vary (art. 5.1 OA).
- The **application** must be **filed within the maximum time limit** specified by article 7.3 OA:
 - This period is generally **one year** from the date of receiving the unanswered negotiation request or from the date the negotiation process ended without agreement.
 - However, if pre-suit injunctions have been agreed, the period is **20 days** from the end date the negotiation ended without agreement. If pre-suit injunctions have been agreed before the negotiation process starts, the period will be suspended and resumed under the terms of article 7.1 OA.

➤ **When is a MASC termination without agreement considered to have occurred?**

Under article 10.4 OA, MASC is considered **terminated without agreement** in the following cases:

- If **30 calendar days** have passed since the other party received the request for negotiations and there has been no written reply or first meeting or contact to reach an agreement.
- If **30 days** pass after one of the parties has made a **specific proposal for agreement** and there is no agreement or written reply. The 30-day period starts from the date the specific settlement proposal was received.
- If **three months** have passed since the date of the **first meeting** without an agreement having been reached. However, the parties may choose to continue negotiations beyond this period.
- If either party **writes** to the other party **terminating the negotiations**, keeping proof of having tried to notify the other party of that communication.

➤ **Confidentiality of information and documents used in MASC**

Article 9.1 OA ensures that **the negotiation process and the documentation** used in it are kept confidential. This means that the details of the negotiation cannot be shared, except for information relating to whether the parties attended the pre-negotiation attempt and the subject of the dispute. The confidentiality obligation applies to the parties involved, their lawyers, and any neutral third party.

The second paragraph of this article states that documentation or information from these proceedings cannot be used in court. If an attempt is made to include this confidential information in legal proceedings, it will not be accepted or added to the case file. Article 287.1 LEC has been amended accordingly.

This issue is important, because breaching the confidentiality obligation can lead to more than just disciplinary actions. It can also have procedural consequences that prevent the information and documents from being used effectively. This is in line with recently approved **article 16 of the Law on the Right of Defense**, which protects the confidentiality of communications "maintained exclusively between the parties' lawyers in litigation or proceedings," even in the extrajudicial phase, and stipulates that they **may not be used in court or be considered proof**.

There are some **exceptions** to the confidentiality obligation, such as requests from criminal judges, public order reasons and cases where all parties agree to waive confidentiality. This information and the documents may be used to contest the assessment of costs and the application for exoneration or moderation.



> Effects of starting MASC on the statute of limitations and lapse of actions

Under article 7.1 OA, the **interruption of the statute of limitations** and the **suspension of the limitation period** start from the date of the attempt to notify the other party of the request to initiate the negotiation procedure (which may be done by sending an email to the address the other party has been using) until the agreement is signed or the negotiation process is terminated without reaching agreement. The OA also establishes the rules for **restarting or resuming** the time limit.

However, when a neutral third party is involved at this point, **specific MASC rules apply** (art. 7.2 OA).

> Effects on costs if an agreement is not reached. Potential fines or penalties

If the issue goes to court, the judge will consider how well the parties "cooperated to try to find a solution" and the "possible abuse of the justice system." This will influence the court's decision on costs, fines or penalties (art. 7.4 OA).

According to the rules (articles 32.5, 244, 245.5, 245.5, new 245 bis regulating the processing and decision of the application for exoneration or reduction, 246, 247, 394 and 395.1 of the LEC), a party is acting in bad faith if they agreed to settle only after the claim was filed, despite being asked to comply earlier in a clear and justified way, or if they rejected a reasonable agreement or participation in a MASC.

The new article 395.3 LEC states that if the defendant has not used an alternative dispute resolution method, without a good reason, and later agrees to the claim during the trial, when it was legally mandatory, or decided by the judge, the court or the court clerk (LAJ) during the proceedings, the defendant will be ordered to pay the costs. However, the court may decide not to impose these costs if there are special reasons.

> Effects and formalization of the agreement

To make the agreement enforceable, it must be notarized (art. 13.2 OA). Both parties can require each other to have it notarized. If one party does not attend the notary, the other can still have it notarized, without needing the other party or the neutral third party to be there (art. 12.3 OA).

The OA 1/2025 states that you cannot file a lawsuit on the subject of the agreement. The only way to challenge an agreement is by claiming it is invalid, based on the reasons contracts can be invalidated (art. 13.1 OA). Objections can still be raised during enforcement proceedings.

> Regulations for MASC

MASC will follow the rules in articles 14 and following of the OA, in addition to other rules that may apply (depending on the method chosen, the Mediation Act, the Notaries Act, the Mortgage Act, the Voluntary Jurisdiction Act and the LEC).

Also, the regulation includes an amendment to the Mediation Act (DF 20ª OA).

> Enforceability and entry into force of MASC requirements

The MASC provisions will enter into force **three months after the law is published** in the BOE (DF 38ª).

The new rule will apply only to **proceedings "initiated after its entry into force"** (transitional rule ("DT") no. 9). Similar to the transitional provisions in RDL 6/2023, there may be concerns about what "initiation" (*incoación*) means in civil cases and whether the rule applies to cases that move to a higher court after the rule takes effect. Some provincial courts agreed that the reforms in RDL 6/2023 apply only to claims filed after the rule took effect, not to ongoing cases moving to a higher court.

> Other relevant issues in the reform related to MASC

- Amendment of Personal Income Tax Act ("LIRPF")



Section "d" of article 7 LIRPF now includes a new tax-exempt compensation for damages.

This exemption covers compensation for damages arising from civil liability for **physical or psychological** damage paid by the responsible party's **insurer**.

The compensation must result from a mediation agreement or other legally established alternative dispute resolution method involving a **neutral third party**.

The agreement must be formalized in a **public deed, up to the amount resulting from applying the system for valuing damages caused from traffic accidents** (according to the annex to the Law on Civil Liability and Insurance in the circulation of motor vehicles, approved by Royal Legislative Decree 8/2004, of October 29).

- Change to article 19.1 of RDL 1/2007, approving the revised General Law for the Defense of Consumers and Users ("TRLGDCU"): higher interest rates for traders who do not help resolve disputes involving contract terms with an "identical meaning" to those already declared unfair and invalid.

DF 16^a OA changes article 19.1 TRLGDCU.

Traders who do not help resolve disputes based on a **clause that has been declared unfair** by the Supreme Court, by a final judgment recorded in the Register of General Contracting Conditions, or by a judgment of the Court of Justice of the European Union ruling specifically on the matter, the court will require the trader to pay higher interest rates when ordering them to refund money, unless the trader has a valid reason for not paying or if **the non-payment is not the trader's fault**.

The new article explains "**identical meaning**": a term is considered to have the same meaning as another term if its content and effects are the same, even if there are minor differences in the wording.

Regarding the amount of interest, the compensation will consist of the payment of an annual interest equal to the legal interest rate in effect at the time it accrues, increased by 50 percent if more than two years pass after the order to refund money, the annual interest will be at least 20%.

Interest will be calculated daily. The calculation term starts from the date consumers pay the amounts to be refunded and ends when the full amount is repaid.

The rule will take effect three months after THE OA 1/2025 is published and will apply to proceedings started after that date.

The OA establishes that Royal Decree-Law 1/2017, of January 20, on urgent consumer protection measures for floor clauses, will be repealed when Title II, which regulates MASC, comes into effect.

Other procedural reforms in the LEC

The OA 1/2025 includes other amendments related to the LEC.

- **The reform of article 155 LEC: before using the TEJU, an attempt must be made to deliver a summons to the company's physical address if an electronic summons attempt is unsuccessful.**

Article 155 LEC had been reformed by RDL 6/2023 to include the possibility of making the first summons to companies electronically, after which unsuccessful attempts would be notified directly through TEJU (*Tablón Judicial Edictal Único*). However, after concerns were raised about whether this provision met constitutional requirements for notifications, **this article was changed again. Now, it requires trying to deliver the notification to the company's address (art. 161 LEC) before using edictal notices if the first attempt to serve the summons is unsuccessful.** In line with this reform, article 399.1 LEC has also been amended.



> Reduction of cases requiring hearings in oral proceedings (*juicio verbal*)

Article 438 LEC is amended to include a new written phase to discuss procedural exceptions, present and admit evidence, and handle challenges. If the judge or magistrate decides a hearing is not necessary, they will issue an order to proceed directly to judgment. This order may be appealed with a suspensive effect.

If, after the written phase, the only evidence admitted consists of uncontested documents, or expert reports that do not need the experts to be present, the judgment will be handed down without holding a hearing.

> Possibility of oral verdicts in the oral proceedings (*juicio verbal*)

The possibility of oral judgments in oral proceedings is included, except in cases in which no lawyer is involved (art. 210.3 LEC, and changes to related articles).

The judgment **will be announced at the end of the hearing** and then drawn up by the judge or magistrate. If all parties are present and agree not to appeal, the judgment will be declared final immediately.

If an appeal is to be filed, the time to appeal starts from the date the written judgment is notified. The parties have five days from the date of the hearing to file a written statement of their interest in appealing the judgment, stating the grounds. The time limit for filing the appeal starts to run the day after the date the party is notified of the judgment in writing, stating the judgment and grounds of appeal.

> Experts and solicitors

Article 340.1 LEC now requires expert witnesses to be accredited in their field. In addition, the duties and roles of court representatives (*procuradores*) have been extended.

> Procedural costs

Some changes in the regime of procedural costs have been implemented as, for instance, the increase to €24,000 of the value of unquantifiable claims for the purposes of awarding costs.

The OA 1/2025 includes other changes, such as those relating to enforcement procedures, auctions, and eviction procedures.

Organizational efficiency measures

Reorganization of courts into tribunals of first instance

The OA 1/2025 modifies the LOPJ the Law of Demarcation and Judicial Plan, to reorganize courts by creating tribunals of instance.

Instead of having several courts of first instance, there will be a single tribunal of first instance in each judicial district. The tribunal will be located in the capital of the district and divided into sections. Each tribunal of first instance may have a single civil and investigation section or, where applicable under the Demarcation and Plan Law, a civil section and an investigation section. They may also have one or more of the following sections: Family, Children and Capacity, Commercial, Violence against Women, Violence against Children and Adolescents, Criminal, and Minors.

Some sections might extend their jurisdiction to several judicial districts in the same province or under the same Superior Court of Justice.

The assignment of judges and magistrates to the sections will be functional, focusing on organizational efficiency. This reorganization is expected to lead to better coordination of judicial criteria at the provincial level.



The OA 1/2025 (DF 38) states that the reform will take effect 20 days after its publication in the BOE (with some exceptions relating to criminal matters taking effect 9 months later). There is also a transitional period (mainly covered in DT 1) during which the courts of first instance will be reorganized in three phases:

- July 1, 2025: Courts of First Instance and Instruction and Courts of Violence against Women, in areas without other types of courts, will be reorganized into Single Civil and Instruction Sections and Sections of Violence against Women.
- October 1, 2025: Courts of First Instance, Courts of Instruction and Courts of Violence against Women, in areas without other types of courts, will be reorganized into Civil Sections, Sections of Instruction and Sections of Violence against Women.
- December 31, 2025: The remaining courts will be reorganized into the respective sections.



For additional information, please contact our [Knowledge and Innovation Group lawyers](#) or your regular contact person at Cuatrecasas.

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