



Confederación Empresarial de Sociedades Laborales

Act 4/1997 on Employee-owned Companies dated 25 March 1997

H.M. King Juan Carlos I of Spain

To all those who may see and hear of the present

Be it known: That the Spanish Parliament has approved and I hereby sanction the following Act

PREAMBLE

The aim of devising new ways to create employment while at the same time increasing employee participation in their companies, pursuant to the provisions of article 129.2 of the Constitution, is a constant social concern to which the legislator is not insensitive. Act 15/1986 of 25 April on employee-owned public limited companies was, in the business domain, an important step in this direction. The far-reaching reforms effected under Act 19/1989 of 25 July, however, which laid down the regulations for the adaptation of public limited companies to Community standards, together with the change of direction taking place in the framework of company law in Spain which led to the approval and enactment of new Act 2/1995 of 23 March on limited liability companies, call for regulation of employee-owned companies in keeping with such changes and the above-mentioned Community standards.

It has been observed that since the 1989 reform the proportion of companies adopting limited liability status has risen dramatically from a very few prior to that date to the current 92% of all newly formed companies. Under the Act on Limited Liability Companies, moreover, such organisations are afforded greater flexibility than public limited companies. Some of the major features of limited liability firms, which make this a more appropriate legal formula for workers' financial organisation and a more suitable vehicle for their participation in an enterprise, are: less demanding capital stock requisites, lower start-up expenses, unlimited number of shareholders and the combination of a personalistic nature with stock company status. Nonetheless, the present text envisages both kinds of company status, leaving to those concerned the ultimate choice of one or another.

The new regulation respects the broad outlines of the definition of employee-owned companies, foremost among which are: a majority of the capital is owned by worker-owners rendering remunerated services to the company, directly and personally and under permanent employment terms; limitation of the number of permanent employees who are not shareholders; ceiling on the capital stock that may be held by any one shareholder; existence of two kinds of shares and holdings, depending on whether they are owned by workers or otherwise; preferred purchase rights in the event of transfer of worker-owned shares or holdings; constitution of a special reserve fund to offset losses. All these characteristic features, together with tax rebates, contribute to the promotion and development of this kind of organisation.

The inclusion of the adjective "employee-owned" to the denomination for these companies; the designation of the Ministry of Labour and Social Affairs as the authority competent to determine whether a given company qualifies as employee-owned; the creation of an administrative registry to monitor compliance with established requisites, primarily in connection with the proportion of capital that must be represented by each of the two kinds of shares and holdings envisaged and the effects that any alterations in this regard may have on



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their eligibility for worker-owned status; these features are the outcome of the above basic concepts and serve as a guarantee for the tax benefits to which these firms are entitled, all without prejudice to the powers of the authorities in the respective Autonomous Regions.

For all issues not addressed in the text, employee-owned companies shall, in general, be subject to the rules applicable to public limited or limited liability companies, depending on their respective legal status, with certain indispensable exceptions required to maintain the features characteristic of employee-owned companies. One of these exceptions, which distinguishes them from both public limited and limited liability companies, is the right to preferred purchase in the event of transfer of employee-owned shares or holdings. Established legally, this stipulation purports, firstly, to increase the number of worker-owners to the benefit of non-owner workers and secondly, to ensure that the number of worker-owners does not decrease. Another such exception, which distinguishes these firms from limited liability companies, is that all holdings in an employee-owned company must be absolutely equal: the creation of holdings with different kinds of rights is not lawful. Another difference compared to the regulation of limited liability companies is the provision that the management body must be appointed by a proportional system, rather than by a majority vote, the rule by which limited liability companies are governed.

Another feature worthy of mention is a provision to obviate the loss of eligibility for employee-owned status, whereby, to avoid forfeiting qualification on the occasion of acquisitions, either inevitable, such as those acquired by virtue of inheritance, or simply beneficial, such as those ensuing from the right of preferred purchase, the number of shares or holdings that may be owned by any one partner has been raised to one third, with the exception of companies in which public entities hold stakes. Finally, if discrepancies arise over the price of shares in preferred purchase operations, the price to be paid must be the actual value as established by the Company's Auditor or, if it is not lawfully obliged to appoint one, by the auditor designated by the managers for this purpose. These arrangements are fairer than the provisions set out in the prior legislation and are wholly in keeping with the regulations applied to stock companies in general in this regard.

Finally, companies qualifying for this status are entitled to certain tax benefits, in recognition of the social, in addition to the economic, purposes served by their creation and existence.

CHAPTER I **Legal Status**

Article 1. Definition of "Employee-owned company"

1. Public limited or limited liability companies with a majority of capital stock owned by the workers directly and personally rendering remunerated services thereto under terms of permanent employment may qualify for "Employee-owned Company" status when the requisites established in the present Act are met.
2. The number of hours worked per year by non-owners hired under permanent employment terms may not be over fifteen per cent of the total hours worked per year by worker-owners. If the company has fewer than twenty-five workers, such percentage may not



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be above twenty five per cent of the total hours worked per year by worker-owners. No account is taken of employees with fixed-term contracts in the computation of these percentages.

Should the limits specified in the preceding paragraph be exceeded, the company shall be obliged to reach the prescribed levels within the following three years, by reducing the initial excess over and above the lawful maximum by at least one third per year.

The Registry of Employee-owned Companies must be notified when limits are exceeded for the intents and purposes of authorisation by the body competent to do so, pursuant to the terms and requisites to be established in the Regulations referred in Final Provision Two.

Article 2. Administrative competence

1. It shall be incumbent upon the Ministry of Labour and Social Affairs or, as appropriate, the Autonomous Regions to which the respective functions and services have been devolved, to grant "Employee-owned Company" status, and to enforce the requisites laid down in this Act, as well as to disqualify companies for such status, where appropriate.

2. The above status shall be granted on the basis of the application submitted by the company concerned, together with any documentation that may be required by the respective regulations.

In any case, newly-created companies shall submit a duly notarised copy of the respective Memorandum of Incorporation constituting a public limited or limited liability company, which shall expressly state the determination of the parties delivering the said Memorandum to constitute an Employee-owned Company. Where the applicant Company already exists, a copy of its Memorandum of Incorporation shall be required, as well as, where appropriate, any amendments to its articles of association, duly registered in the Mercantile Registry, along with a literal certification issued by the said Registry regarding the entries in force affecting the Company and, finally, certification of the General Shareholders' Meeting resolution to apply for Employee-owned Company status.

Article 3. Company name

1. The company name must include the term "Employee-owned Public Limited Company" or "Employee-owned Limited Liability Company" or the respective abbreviations, SAL or SLL, as appropriate.

2. The adjective "employee-owned" may not be included in the name of companies not qualifying for "Employee-owned Company" status.

3. All company documentation, correspondence, order forms and invoices, as well as any notices it may publish as lawfully or statutorily required, must bear reference to the fact that it is an "employee-owned" concern.

Article 4. Administrative Registry of Employee-owned Companies and co-ordination with the Mercantile Registry .

1. The Ministry of Labour and Social Affairs shall create a Registry of Employee-owned Companies for administrative intents and purposes, which shall keep a record of the events specified in these presents and any regulations enlarging hereon, all without prejudice to the executive competence assumed by Autonomous Regions.

2. The company shall be endowed with legal personality from the time it is registered with the Mercantile Registry although, in order for a company to be registered in such Registry under employee-owned status, it must submit a certificate as evidence that the company was



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granted such status by the Ministry of Labour and Social Affairs or the competent body in the respective Autonomous Region and is registered in the Administrative Registry referred to in the preceding paragraph.

The entry of a company's employee-owned status shall be made in the Mercantile Registry by means of a marginal note on the page for the company in question, subject to regulatory provisions on formalities and time intervals, in this regard, and the Administrative Registry shall be duly notified thereof.

3. The Mercantile Registry shall record no amendment to employee-owned company articles of association affecting capital stock ownership or change of address of registered offices outside the municipal district, unless the company submits a certificate issued by the Registry of Employee-owned Companies stating, respectively, either that such amendment does not affect the company's employee-owned status, or that due note has been made in the Registry of the change of address.

4. Recognition of a public limited or limited liability company's qualification for employee-owned status shall not be considered to constitute corporate conversion nor shall it be subject to the rules applicable thereto.

5. Employee-owned companies must notify the Administrative Registry from time to time of transfers of shares or holdings via certification of its stock ledger of registered shares or list of shareholders.

Article 5. Capital stock and shareholders

1. The capital stock shall be divided into registered shares or corporate holdings. In the event of "Employee-owned Public Limited Companies", the capital calls must be paid up within the deadlines established in the articles of association.

2. It shall not be lawful to issue employee-owned shares with no voting rights.

3. None of the shareholders may own shares or corporate holdings representing over one third of the capital stock, except in the event of employee-owned companies in which the State, Autonomous Regions, Local Entities or State-owned Companies hold a stake, in which case the public entities' holdings may exceed such limit, but may not be over fifty per cent of the capital stock. The same percentage may be held by not-for-profit associations or other entities.

Where the above limits are exceeded, the company shall be obliged to accommodate its distribution of shareholdings to lawful provisions within one year from the date the first of such limits is exceeded.

Article 6. Kinds of shares and holdings

1. Shares and holdings in employee-owned companies shall be divided into two categories: those owned by permanent workers and all others. The former shall be denominated "employee-owned" shares and the latter "general shares".

2. In the event of "Employee-owned Public Limited Companies", shares must necessarily be represented by individual or multiple consecutively-numbered certificates which shall bear reference to the category of the share or shares in question, in addition to all other requisites of a general nature.

3. Workers, owners or otherwise, with open-ended employment contracts who acquire "general" shares or corporate holdings in any manner whatsoever are entitled to demand that the company acknowledge the "employee-owned" status of such shares, providing compliance with all lawful requirements is substantiated. The directors shall proceed to formalise such



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change of category and amend the clause or clauses of the articles of association affected, subject to no further General Shareholder Meeting approval, and they shall deliver the relevant public document for entry in the Mercantile Registry.

Article 7. Preferred purchase rights in the event of voluntary inter vivos transfers

1. Any owner of shares or corporate holdings pertaining to the employee-owned category who intends to transfer all or part of such shares or holdings to a person who is not a permanent company employee must advise the company's management body in writing thereof in a manner in which service of the notice is ensured; such notification shall state the number and characteristics of the shares or holdings concerned, the identity of the purchaser and the price and other terms of the transfer. The company's management body, in turn, shall notify the company's permanent non-shareholder staff within fifteen days of receipt of the above notification. The shareholder's notification shall constitute an irrevocable offer.
2. Permanent non-shareholder staff may purchase such shares within one month of the notification.
3. Should no-one exercise the preferred purchase rights referred in the preceding paragraph, the company's management body shall notify the worker-owners of the proposed transfer, who may opt to purchase the shares or holdings during the month following receipt of such notification.
4. In the event none of the worker-owners exercises the preferred purchase rights referred, the company's management body shall notify owners of general shares or holdings and, as appropriate, all other employees who do not have open-ended employment contracts, of the proposed transfer; the recipients of such notices may opt to purchase the shares or holdings, in the order mentioned, within successive fortnights following service of the respective notifications.
5. When several people exercise the preferred purchase rights referred in the preceding paragraphs, corporate shares or holdings shall be distributed equally among them.
6. Should no shareholder or worker exercise preferred purchase rights, the shares or holdings may be purchased by the company within one month of the deadline referred in paragraph 4 above, subject to the limits and requisites laid down in articles 75 et sequentes of the Spanish Companies Act.
7. In any case, if within six months of the shareholder's notification of his/her intention to transfer shares or holdings no one exercises their preferred purchase rights, the former shall be free to transfer the shares or holdings in question. Should the shareholder fail to proceed to such transfer within four months, the procedures set out in the present Act must be reinitiated.
8. Owners of general shares or corporate holdings intending to transfer all or part of their shares or holdings to anyone besides a worker-owner shall be subject to the provisions of the preceding paragraphs of this article, except that the management body shall begin by notifying employee-owners of such intended sale.

Article 8. True Value

Shareholders transferring their shares or holdings shall notify the management body of the price, the payment method and other terms covenanted for the transactions. Should the intended transfer be under any terms other than a sale contract or free of charge, the price shall be established by agreement between the parties concerned or, failing this, it shall be the true value of the shares or holdings on the day of the company management body's notification



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regarding the intended transfer. The true value shall be understood to be the value as determined by the Company's Auditor of Accounts or, where the Company is not obliged to audit its financial statements, by an auditor designated for this purpose by the Company's directors.

Auditing expenses shall be defrayed by the company. The true value established shall be valid for any such transactions taking place during the financial year. Should the seller or buyer in transfers effected during the same financial year find the above true value unacceptable, they may proceed to have the company's shares or holdings re-appraised at their own expense.

Article 9. Nullity of clauses in the articles of association

1. Clauses in the articles of association prohibiting voluntary inter vivos transfers of shares or corporate holdings shall only be valid if shareholders are entitled to withdraw from the company at any time. The consent of all shareholders shall be requisite for the inclusion of such clauses in the Company's articles of association.

2. Notwithstanding the provisions of the preceding paragraph, the articles of association may prohibit voluntary inter vivos transfer of shares or holdings or the exercise of the right of withdrawal for a period of time of not over five years from the day the company is formed or, for shares or holdings ensuing from a capital increase, from the date of delivery of the respective public document.

Article 10. Discharge of the employment relationship.

1. In the event of discharge of the employment relationship with a worker-owner, the latter shall be obliged to offer his/her shares or holdings for purchase pursuant to article 7 and, should no one exercise their purchase rights, such former employee shall become a general shareholder, as defined in article 6.

If someone wishes to acquire such shares or corporate holdings, and the shareholder in question, within one month of notice duly served by a notary public in this regard, fails to formalise the sales transaction, the management body may take it upon itself to sell the shares or holdings at their true value, computed as specified in article 8, and such sum shall be consigned to the former employee either through the operation of court proceedings or by deposit thereof in the General Bureau of Deposits or the Bank of Spain.

2. The corporation's articles of association may establish special rules for the retirement and permanent disability of worker-owners, as well as for employee-owners on leave of absence.

Article 11. Mortis causa transfer of shares or holdings.

1. Inheritance of shares or corporate holdings endows the party or parties so acquiring them, be they the deceased's heirs or legatees, with shareholder status.

2. Notwithstanding the above, the corporate articles of association may, in the event of death of a worker owner, established preferred purchase rights on employee-owned shares or holdings, subject to the procedures laid down in article 7, which shall be implemented on the basis of the true value of such shares or holdings on the date of the shareholder's death, with payment being made in cash. Such right must be exercised within the maximum term of four months, to be counted from the date of notification to the company regarding the inheritance of the shares or holdings.



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3. Statutory preferred purchase rights may not be exercised if the heir or legatee is a permanent company employee.

Article 12. Management body.

If the company is managed by a Board of Directors, the members of such Board shall necessarily be appointed on a proportional basis as laid down in article 137 of the Companies Act and regulations enlarging thereon. If all company shares or holdings are employee-owned, the members of the Board of Directors may be appointed by majority vote.

Article 13. Contesting corporate decisions.

1. Decisions reached by the General Shareholder's Meetings that are contrary to law or the corporate articles of association or are detrimental to the company's interest, to the benefit of one or several shareholders or third parties, may be challenged.
2. If the decision contested affects ownership of capital stock or a removal of the registered office outside the municipal district, the Judge hearing the case shall give notice to the Registry of Employee-owned Companies of the existence of the suit, the reasons for contesting the decision, and the sentence allowing or dismissing the case.

Article 14. Special reserve.

1. In addition to any other requisite legal or statutory reserves, employee-owned companies are obliged to constitute a Special Reserve Fund to be endowed with ten per cent of each year's net profit.
2. The Special Reserve Fund may only be used to offset losses in the absence of sufficient assets in other reserve funds that may be used for this purpose.

Article 15. Preferred purchase rights.

1. The existing proportion between the different categories of shares or corporate holdings must be respected in any capital increases involving the issue of new shares or the creation of new corporate holdings.
2. Owners of each category of shares or holdings have preferred subscription or acquisition rights over shares or corporate holdings of the respective category.
3. Barring a decision to the contrary by the General Shareholder's Meeting approving the increase in capital stock, shares or holdings not subscribed or acquired by shareholders of the respective category shall be offered to workers, owners or otherwise, as specified in article 7.
4. Exclusion of preferred subscription rights shall be governed by the respective Companies Act, depending on whether the company has public limited or limited liability status. When such exclusion affects employee-owned shares or holdings, the premium shall be freely established by the General Shareholders' Meeting, provided it also approves a company employees' Stock Ownership Plan and the new shares or holdings are both earmarked to comply with the Plan and subject to a prohibition on their transfer for a period of five years.

Article 16. Disqualification

1. The following shall be causes of disqualification for "Employee-owned Company" status:
 1. Exceeding the limits established in articles 1 and 5, paragraph 3.



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2. Failure to endow the Special Reserve Fund, its endowment with insufficient assets or the improper implementation of the Fund.
2. Once the existence of the lawful cause for disqualification is substantiated and the deadlines for rectifying the situation as established in this Act have lapsed, the Ministry of Labour and Social Affairs or the respective Regional Government body shall require the company to correct the situation within a period of six months.
3. If the company fails to rectify the lawful cause for disqualification within the above deadline, the Ministry of Labour and Social Affairs or the respective Regional Government body shall issue a resolution disqualifying the company from employee-owned status and ordering it be removed from the Registry of Employee-owned Companies. Once the respective entry is made, certification of the resolution and removal from the Registry shall be forwarded to the respective Mercantile Registry, where a marginal note shall be entered on the page of the Company.
4. Disqualification within five years of constitution or conversion shall entail the loss of all tax benefits for the Company. The procedures to be followed in this regard shall be laid down in the regulations referred in the First Final Provision of this Act.

17 Article 17. Dissolution of the company

1. Employee-owned companies shall be dissolved for the causes established in the regulations on public limited or limited liability companies, as appropriate.
2. The corporate Articles of Association may establish company disqualification for “employee-owned” status as a reason for dissolution.

Article 18. Relocation of registered offices

Employee-owned companies that relocate their registered offices to an address under the jurisdiction of another administrative Registry, shall come under the aegis of the Registry competent in the new area. Nonetheless, the original Registry shall retain competence to hear and rule on disqualification proceedings in progress when such relocation takes place.

CHAPTER II

Tax arrangements

Article 19. Tax benefits

Employee-owned companies meeting requirements laid down in article 20 shall enjoy the following benefits with respect to Spanish Transfer Tax and Stamp Duty:

- A) Exemption from fees for corporate transactions involved in the creation of the company and capital increases as well as those incurred for conversion of existing employee-owned public limited companies to employee-owned limited liability companies, and for adaptation of existing employee-owned public limited companies to the provisions of this Act.
- B) Rebate of ninety nine per cent of the fees levied on the onerous transfer of equity for the acquisition, by any lawful means, of goods and rights pertaining to the company with which a majority of the worker-owners was affiliated.
- C) Rebate of ninety nine per cent of the fees levied under the graduated stamp tax schedule on the notarised deed documenting the conversion either of any company into an Employee-



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owned Public Limited Company or an Employee-owned Limited Liability Company, or of either of such companies into the other.

D) Rebate of ninety nine per cent of the fees levied under the graduated stamp tax schedule on notarised deeds documenting the constitution of loans, including loans backed by debentures or bonds, providing the corresponding sum is earmarked for investment in fixed assets needed to accomplish the corporate purpose.

Article 20. Requirements

In order to be eligible for such tax benefits, employee-owned companies must meet the following requirements:

- A) Have “Employee-owned Company” status.
- B) Earmark, in the year when the taxable event takes place, twenty-five per cent of their net profits for the Special Reserve Fund.

Article 21. Inclusion within the Social Security System.

1. Regardless of their stake in the Company’s share capital within the limit set out in Section 5 of the present Act, and even when they form part of the Company’s organ of governance, the worker-owners of employee-owned companies shall be considered to be employed persons for the purposes of their inclusion in the General or Special Social Security Regime corresponding to their activity, and they shall be included under the unemployment protection scheme and in the protection provided by the Wage Guarantee Fund, when such contingencies are foreseen in the said Regime.

2. The aforesaid employee-partners are assimilated to employed persons for the purposes of their inclusion in the corresponding Social Security Regime, with exclusion of unemployment protection and the cover granted by the Wage Guarantee Fund, in the following cases:

- a) When, through their condition as Company directors, they carry out management functions in the Company and are remunerated for carrying out the said position, regardless of whether or not they are simultaneously linked to the Company by means of an ordinary or special employment contract.
 - b) When, through their condition as Company directors, they carry out management functions in the Company and are simultaneously linked to the Company by means of a special employment relationship as senior management personnel.
3. Notwithstanding the foregoing provisions, employees who are partners shall be included in the Special Regime of Self-Employed Workers when their share in the company’s capital stock, together with the shares held by their spouse or other relatives by blood, adoption or marriage to the second degree and living in the same household, amounts to at least fifty per cent, unless it can be shown that the effective control of the company requires the involvement of other persons outwith the family.

First additional provision

Those Autonomous Regions with transferred powers for the management of the Administrative Register of Limited Liability Employee-owned Companies shall continue to exercise such powers with respect to the Register of Limited Liability Employee-owned Companies referred to in Section 4 of the present Act.



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The provisions of Chapter II of the Present Act shall be understood to be without prejudice to the Special Regional Tax Regimes in force in the historical territories of the Basque Country and in Navarre.

Second additional provision.

For the purposes of representation before the Public Administrations and in defence of their interests, as well as to organise their counselling, training, legal or technical assistance services or any others in keeping with their owners' interests, employee-owned companies, be they public limited or limited liability companies, may organise into specific Associations or Groupings pursuant to Act 19/1977 of 1 April, regulating trade union law.

Third additional provision.

For the intents and purposes of legislation on leases, there is no conveyance involved when a public limited or limited liability company is granted employee-owned status or is disqualified therefrom.

Fourth additional provision.

The references contained in the revised text of the Labour Proceedings Act enacted by Royal Legislative Decree 2/1995 of 7 April, as well as in the different regulations on promotion of employee-owned public limited companies, shall henceforth be considered to refer to all Employee-owned Companies.

First transitional provision

Any applications for Employee-owned Company status under review when this Act enters into force shall be resolved on the basis of the regulations in force when they were filed.

Second transitional provision

The provisions of the Memorandum of Incorporation and Articles of Association of Employee-owned Public Limited Companies whose status as such was granted and registered under the regulations hereby repealed, may not be executed if they infringe the provisions of the present Act. Nonetheless, their formal adaptation to the stipulations of this Act shall not be requisite.

Third transitional provision

Employee-owned Public Limited Companies currently benefiting from freedom of amortisation as referred in Article 20, point 2 of Act 15/1986 of 25 April shall continue to enjoy that benefit until the conclusion of the specified term under the terms authorised.

Sole repeal provision

When the present Act comes into effect, Act 15/1986 of 25 April on Employee-owned Public Limited Companies and Royal Decree 2696/1986 shall be repealed and the provisions of Royal Decree 2229/1986 shall be repealed in all respects that are not contrary to the present Act and until such time as the action envisaged in the Second Final Provision is taken.



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First final provision.

For all matters not addressed in this Act, the regulations for public limited or limited liability companies, as appropriate, shall be applicable to employee-owned companies.

Second final provision.

The Government, at the behest of the Ministers of Justice and Labour and Social Affairs, after hearing the Autonomous Regions, shall, within three months of the date of publication of the present Act, proceed to approve the operation, scope of competence and co-ordination of the Ministry of Labour and Social Affairs' Administrative Registry of Employee-owned Companies.

Third final provision.

The Government, at the behest, in the scope of their respective competence, of the Ministers of Justice, Economy and Finance and Labour and Social Affairs, may adopt any provisions necessary to enlarge upon the present Act.

Fourth final provision.

The present Act shall come into force thirty days after its publication in the "Official State Gazette".

Therefore,

I hereby order all Spanish citizens and authorities to respect and enforce this Act. Signed in Madrid on 24 March 1997.

JUAN CARLOS R:

The President of the Government.
José María Aznar López