

EMN

# THE ORGANISATION OF POLICIES ON ASYLUM AND MIGRATION

SPAIN

June 2009



GOBIERNO  
DE ESPAÑA

MINISTERIO  
DE ASUNTOS EXTERIORES  
Y DE COOPERACIÓN

MINISTERIO  
DE JUSTICIA

MINISTERIO  
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The European Migration Network (EMN) is an initiative of the European Commission. The EMN has been established via Council Decision 2008/381/EC and is financially supported by the European Union.

Its objective is to meet the information needs of Community institutions and of Member States' authorities and institutions by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the European Union in these areas. The EMN also serves to provide the general public with such information.

To that end, the EMN has a network of National Contact Points (NCPs).

In Spain, the NCP is composed of experts from four ministries (Ministry of Labour and Immigration, Ministry of Interior, Ministry for Foreign Affairs and Cooperation and Ministry of Justice) and is coordinated by the Permanent Observatory for Immigration, a collegial body attached to the Ministry of Labour and Immigration. The NCP also collaborates with independent experts for the elaboration of EMN studies and reports.

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# **The Organisation of Policies on Asylum and Migration**

**Spain**

This National Report describes the general structure of the political and institutional system as well as the distribution and organisation of competencies concerning migration and asylum in Spain.

Report produced by the European Migration Network, written  
by the Spanish EMN National Contact Point.

June 2009



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## 1. Introduction: objectives and methodology

The European Migration Network<sup>1</sup> (EMN) included in its Work Programme 2008 a study on the organisation of policies on migration and asylum in the EU Member States. The main purpose of this study is to provide the National Contact Points (NCPs) of the EMN, the European Commission and the main agents involved in decision-making on policies at national and Community levels with a reference document which presents, in a simple and clear manner, the general structure of the political and institutional system as well as the distribution and organisation of competencies concerning migration and asylum in the Member States.

For this purpose, each Member State, through its National Contact Point (NCP) of the EMN, must draw up a National Report describing its own political and institutional organisation as regards migration and asylum. A Synthesis Report shall then be drawn up, reflecting the key conclusions of each National Report, highlighting the most important aspects and placing these within a Community perspective.

In the case of Spain, the NCP is made up of experts from four ministries (Ministry of Labour and Immigration, Ministry of the Interior, Ministry of Foreign Affairs and Co-operation and Ministry of Justice), and is coordinated by the Permanent Observatory for Immigration<sup>2</sup>. Similarly, the NCP collaborates with independent experts in carrying out

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<sup>1</sup> The European Migration Network is an initiative of the European Commission created through Decision 2008/381/EC of the Council of the European Union of 14 May 2008. Its purpose is to provide updated, objective, reliable and comparable information on migration and asylum to Community institutions and authorities and bodies of the Member States, with the aim of supporting the formulation of the European Union's policies on these matters.

<sup>2</sup> The Permanent Observatory for Immigration is a collegiate body which is responsible for, among others things, data collection, analysis, study and dissemination of information relating to migratory movements

studies and reports for the EMN. This report has been drafted jointly by members of the EMN, which have developed and supervised its different sections in accordance with competencies attributed to each represented ministerial department, on the basis of a study drawn up by an external consultant. Each party's contributions were then submitted to evaluation meetings until a final draft was agreed on.

The reference period of the information contained in the study goes up to December 2008. It describes the most recent legislative, political and institutional developments, as well as their historical evolution up to the present time.

The report is structured around five chapters:

**1. Introduction:** objectives and methodology: This section sets forth the objectives of the study and the methodology used to achieve them.

**2. Organisation of the political, legislative and institutional framework in Spain:** It describes the distribution of competencies among the ministries responsible for managing international migration and asylum and the general structure of the applicable legal system on these issues. This section seeks to put into context the more detailed information in the subsequent chapters.

**3. Development of the asylum and immigration system:** This provides an historical overview of the development of the Spanish asylum and migration system, through an analysis of the evolution of legislative provisions.

**4. Organisation of policies:** This describes all phases of the migratory process, from entry and conditions for admission/exclusion, to the process for obtaining legal residency, access to the labour market and application for Spanish nationality on grounds of residence, up to return. The procedures are presented in detail, placing special emphasis on the institutions involved, the agencies responsible for each phase, etc. At the same time, it avoids listing the regulations or necessary requirements for admission, entry, residence, employment, return, etc.

A subsection of this chapter focuses on other public policies closely linked to migratory policies: Integration (employment, education, housing, social services, health, children and young people, equal treatment, etc.), Framework Agreements on immigration and Co-operation for development.

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in Spain, attached to the Ministry of Labour and Immigration through the State Secretariat for Immigration and Emigration.



**5. Analysis of the migration and asylum system:** This chapter analyses the lessons learned through the development of a migration and asylum system, with a special mention on future plans and the reform of the Law on Foreign Persons, which is under negotiation during the current government's term of office.

## 2. Organisation of the political, legislative and institutional framework in Spain

### 2.1. Political and institutional organisation

Government and Administration action on immigration matters approaches an integral policy based upon three lines of action: regulating migration flows and consolidating the link between immigration and the labour market, reinforcing the fight against illegal immigration, and promoting an integration strategy for immigrants in keeping with the country's reality.

- The regulation of migratory flows and their links with the labour market has been promoted through the renovation of public instruments for managing migrations which allow for channelling legal immigration through an improved adaptation between the needs of the labour market and the arrival of immigrants. Another key factor has been the promotion of hiring in and collaboration with countries of origin through Agreements to Regulate and Plan Migratory Flows, the new Migratory Co-operation Framework Agreements, as well as through development co-operation.
- The fight against illegal immigration has been reinforced through a significant stiffening of border controls (especially along the North African coast) and an increase in the deportation of illegal immigrants. The signing of agreements with third countries on alien affairs and immigration matters has constituted a significant advance in this field: These include agreements to regulate and plan migratory flows and readmission agreements (including Migratory Co-operation Framework Agreements). A significant advance in this area has been the signing of agreements with third countries on alien affairs and immigration matters: the Readmission Agreements and the new Migratory Co-operation Framework Agreements.
- As regards integration, the Government's actions have focused on:
  - The development of a Strategic Plan for Citizenship and Integration 2007-2010 (*Plan Estratégico de Ciudadanía e Integración*), as a co-operation framework for

joint action by all actors responsible for integration policies aimed at the immigrant population, including both Public Bodies and civil society. The plan has been allocated €2 billion of funding for its entire duration and is structured around twelve areas of action, with reception, education and employment being given the most funding.

- The distribution of an integration fund, allocated €200 million a year, as a mechanism for coordination between the State, regional governments and local authorities on policies aimed at the integration of immigrants.
- The granting of subsidies to local authorities for innovative programmes in the field of integration, in addition to social and employment subsidies for the integration of immigrants, asylum seekers and other persons under international protection.

As to the general structure of the political system in Spain, competence for migration and asylum is distributed primarily among three Ministries: The *Ministry of Labour and Immigration*, the *Ministry of the Interior* and the *Ministry of Foreign Affairs and Cooperation*, the former having more responsibilities in terms of immigration, as well as responsibility for policy-making and coordinating the policies to be developed in cooperation with other ministries. The bodies and institutions responsible for implementing and managing the Government's policies are set out below.

Firstly, the highest-ranking body responsible for managing immigration is the *State Secretariat for Immigration and Emigration* (*Secretaría de Estado de Inmigración y Emigración*), part of the *Ministry of Labour and Immigration*, headed up by Ms María Consuelo Rumí Ibáñez. The Secretariat has a support and assistance Office and three executive bodies: the General Directorate for Immigration (basically responsible for coordinating the State Secretariat's participation in the EU and in other international fora, domestic legislation, management and co-ordination of migration flows and modernising management), the General Directorate for the Integration of Immigrants (responsible for promoting policies on integration developed by autonomous and local authorities, supporting the work of immigrants' associations and NGOs active in this sector, as well as the direct management of specific programmes for the reception and integration of immigrants, asylum seekers and refugees) and the General Directorate for Spanish Citizenship Abroad (which oversees programme initiatives for Spanish emigrants).

There are five collegiate bodies that complete the organisation chart, and these carry out different support functions to guide and define policy-making. Four of these bodies are directly accountable to the State Secretariat for Immigration and Emigration and one is accountable to the General Directorate for Integration.

The four bodies accountable to the State Secretariat are: the Higher Council for Immigration Policy [*Consejo Superior de Política de Inmigración*] (responsible for ensuring adequate co-ordination as regards the initiatives of the Public Bodies with competence for the integration of immigrants and the development of overall migratory policy); the Permanent Observatory for Immigration [*Observatorio Permanente de la Inmigración*] (mainly responsible for gathering, analysing and disseminating information on migration in Spain); the Inter-Ministerial Commission for Alien Affairs [*Comisión Interministerial de Extranjería*] (responsible for analysing, debating and reporting on any proposals from ministerial departments that may have an impact on the approach to alien affairs, immigration and asylum); and lastly, the Tripartite Labour Commission [*Comisión Laboral Tripartita*], which was set up by an order issued by the Ministry of Employment and Social Affairs on 3 June 2005. This last Commission is a consultative body acting as a conduit for permanent dialogue between the General State Administration, trade union organisations and the largest national employers' associations on matters on the management of migration flows.

The collegiate body accountable to the General Directorate of Integration is the Forum for the Social Integration of Immigrants (*Foro para la Integración Social de los Inmigrantes*). The Forum is the Government's consultative, information and advisory body on matters related to the integration of immigrants and its aim is to serve as a channel for participation and dialogue in the search for solutions required by the immigrant population, jointly with other organisations and institutions. Its composition is tripartite and balanced, with representation from the Public Body, migrant and refugee associations and social support organisations, including the largest trade union and employers' associations. It is mandatory to consult this consultative body in relation to any draft law or the devising of any policies on the integration of immigrants.

The *Ministry of the Interior* has also been entrusted with specific functions for managing security, migration control and asylum policies, through three General Directorates: the General Directorate for International Relations and Alien Affairs (*Dirección General de Relaciones Internacionales y de Extranjería*), the General Directorate for the Police and the Guardia Civil (*Dirección General de la Policía y de la Guardia Civil*) and the General Directorate for Domestic Policy (*Dirección General de Política Interior*). The first of these carries out its functions through two General Sub-Directorates: The General Sub-Directorate for International Police Co-Operation [*Subdirección General de Cooperación Policial Internacional*] (responsible for defining the activities and programmes of the Ministry of the Interior's specialist bodies within Diplomatic Missions) and the General Sub-Directorate for International Relations, Immigration and Alien Affairs [*Subdirección General de Relaciones Internacionales, Inmigración y Extranjería*] (which coordinates the participation of the ministry's representatives in the groups and committees with European

Council commissions, organises the Ministry's affairs in such matters and relations with the Ministry of Foreign Affairs and Co-operation). The General Directorate of the Police and the Guardia Civil exercises its competence on alien affairs and immigration in co-ordination with the Ministry of Labour and Immigration through the State Secretariat for Immigration and Emigration. Within the sphere of the National Police Force's competence and under the management, supervision and co-ordination of its Ancillary Operational Directorate, the police's operational functions at central level are carried out by the General Commissariats. Specifically, the General Commissariat for Alien Affairs and Borders (*Comisaría General de Extranjería y Fronteras*) organises and manages the services connected with issuing national identity cards, passports and foreign national documents; monitors the entry and exit of Spanish and foreign nationals in Spain; prevents, pursues and investigates illegal immigration gangs and, in general, police procedure in relation to foreign nationals, refuge, asylum and immigration. As regards the functions entrusted to the Guardia Civil, the Tax and Border Department (*Jefatura Fiscal y de Fronteras*) is also accountable to its Ancillary Operational Director, under the command of a General of the Guardia Civil in active service, responsible for organising and managing the State's customs and excise service, protecting and monitoring coasts, borders, ports, airports and territorial waters and, within this scope, controlling illegal immigration.

The General Directorate for Domestic Policy is responsible for applying the International Protection system. More specifically, included within the sphere of its competence, are determining the right of asylum, the legal refugee status, displaced persons and stateless persons, as well as subsidiary international protection, which together constitute what is known as International Protection. Nevertheless, as mentioned previously, reception and integration policies are determined by the Ministry of Labour and Immigration. The Asylum and Refuge Office (*Oficina de Asilo y Refugio*) is the specialist body responsible for dealing with asylum matters. It is headed by the General Sub-Director of Asylum and is part of the Ministry of the Interior's General Directorate for Domestic Policy. The granting of the right to asylum, as well as the granting of other types of protection for humanitarian reasons (subsidiary protection), is carried out through an individualised procedure allowing the recognition of an applicant's condition as a refugee or his/her right to any other kind of subsidiary protection. The drafting of the relevant proposal for its resolution at the Ministry of the Interior lies within the competence of the Inter-Ministerial Commission for Asylum and Refuge, comprised of representatives of the Ministries of Justice, of Labour and Immigration, Foreign Affairs, Co-operation and the Interior. It is chaired by the General Directorate of Domestic Policy. The United Nations High Commission for Refugees (UNHCR) is invited to attend all its meetings, entitled to contribute its opinions but without the right to vote.

The *Ministry of Foreign Affairs and Co-Operation* has a General Directorate for Consular Affairs and Assistance (*Dirección General de Asuntos y Asistencia Consulares*) which

coordinates and supervises all the activities of Spanish consular offices in managing the General State Administration services abroad. It is also responsible for proposing, drafting and applying policies on the protection and assistance of Spanish citizens abroad, as well as on immigration and asylum matters within the Ministry of Foreign Affairs and Co-operation's sphere of action and without prejudice to the competences attributed to other ministries in such matters. It also has an Agency attached to the State Secretariat for International Co-Operation (*Secretaría de Estado de Cooperación Internacional*): the Spanish International Co-operation Agency for Development (*AECID - Agencia Española de Cooperación Internacional para el Desarrollo*). Despite not being a specific body, the AECID is taking an increasingly participative role as regards immigration issues, essentially through international co-operation programmes which foster development in the countries of origin/transit of immigration. The Agency is responsible for designing, implementing and managing co-operation projects and programmes for development either directly, using its own resources, or through collaboration with other Spanish and foreign bodies and non-governmental organisations.

A fourth ministerial department must be also considered: that of Justice, which intervenes specifically in the area of immigration, with competence, delegated to the General Directorate of Registries and Notaries, for granting Spanish nationality on grounds of residence to those immigrants who legally reside in Spain and apply for it.

Put in context, we could say that the institutions responsible for policy-making on immigration themselves reflect the Government's approach, especially within the framework of linking immigration to the labour market, with a explicit concern for social and welfare issues, matters related to security, particularly focused on borders, and with an increasing emphasis on linking border control with co-operation for development.

It should be highlighted that the organisation of the Spanish territory, administratively and politically divided into territorial units (Autonomous Communities) and local authorities, may have an incidence at different levels of Spain's migratory policies.

The participation of non-governmental organisations in relation to voluntary return programmes must also be mentioned.

### **Child protection**

The Autonomous Communities are the entities responsible for the guardianship and protection of unaccompanied foreign minors (MENAs) and have specialist resources as required by law for the care of minors. The protection of abandoned minors is entrusted to the protection bodies in each Autonomous Community.

The General State Administration, in accordance with the principle of the child's best interest, takes the steps necessary to reunite the minor with his/her family when conditions allow it. Similarly, it provides financial support to Autonomous Communities where the number of MENAs requires greater resources, and creates programmes that enable collaboration between Autonomous Communities in protecting MENAs transferred from communities in extreme situations.

### **Development of the integration policy in Spain**

As has been indicated previously, the integration policy of the Spanish Administration is developed by the General Directorate for the Integration of Immigrants, part of the State Secretariat for Immigration and Emigration (Ministry of Employment and Immigration). However, given the high degree of decentralisation of policies and administration in Spain, most sectoral responsibilities related to integration policy (education, active employment policies, housing, healthcare, social services) correspond to Autonomous Communities and local bodies.

### **Voluntary return**

As has been mentioned already, various NGOs are involved in the management of voluntary return programmes.

Currently, two different voluntary return programmes exist. The more established programme is aimed at foreign nationals with a variety of legal residency status in Spain who, due to various circumstances, express a desire to return to their country: refugees, displaced persons, asylum seekers, people under subsidiary protection and immigrants with residence and work permits or without authorised residency in Spain, who meet the following minimum requirements:

- Are in a situation of need and social vulnerability.
- Have resided in Spain for no less than six months.

This voluntary return programme is carried out through subsidies to NGOs and Agreement with the International Organisation for Migration.

Furthermore, the Spanish government has recently approved a new Voluntary Return Plan aimed at unemployed workers (Royal Decree-Law 4/2008 of 19 September, approved at

the Council of Ministers) whereby the national Public Employment Service is given the opportunity to pay, in advance and cumulatively, the contributory unemployment benefit to third country foreign workers who have lost their job in Spain and voluntarily decide to return to their country of origin. The Government, in addition to the paid-in-advance and cumulative contributory unemployment benefit, depending on the availability of funds, may set up direct aids to facilitate the voluntary return of non-EU foreign workers to their countries of origin, as well as other actions preparing said return, such as information, guidance and training in setting up a business.

## 2.2. Legislative framework

The general structure of the legal framework in the field of migration and asylum is established in Article 13.1 of the Spanish Constitution which sets forth that *"in Spain foreign nationals shall enjoy the public freedoms guaranteed by this Chapter (Chapter I on Fundamental Rights and Duties) under the terms laid down by Treaties and the Law"*. The basic legislation governing constitutional mandate is *Organic Law 4/2000 of 11 January on the rights and freedoms of foreign nationals in Spain and their social integration (Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social)*, amended by Organic Laws 8/2000 of 22 December, 11/2003 of 29 September and 14/2003 of 20 November. This law combines the constitutional mandate with the international commitments undertaken by Spain, especially as a member state of the European Union<sup>3</sup>. The Regulations implementing the aforementioned Organic Law were approved by Royal Decree 2393/2004 of 30 December, amended by Royal Decree 1019/2006 of 8 September. In addition, the Supreme Court (Tribunal Supremo) has issued a ruling on certain articles of the Royal Decree, thereby endorsing these Regulations' compliance with the Law.

Furthermore, *Royal Decree 240/2007 of 16 February 2007, on the entry, free movement and residence in Spain of citizens of the Member States of the EU and of the other States that are a party to the Agreement on the European Economic Area*, regulates the conditions applicable to the exercise of the rights of entry and exit, free movement, stay, residence and work in Spain by these citizens.

Spanish legislation governing the right of asylum in Spain, set forth in Article 13 of the Constitution of 1978 consists of "Law 5/1984 of 26 March governing the right of asylum and refugee status", amended by "Law 9/1994 of 19 May", "Organic Law 3/2007 of 22

<sup>3</sup> To access the case law in full, see the section on Legislation and Jurisprudence on the Ministry website (<http://extranjeros.mtin.es/>).



March 2007 on the effective equality of men and women”; “Regulations for Implementing Law 5/1984 of 26 March governing the right of asylum and refugee status, approved by Royal Decree 203/1995 of 10 February”, and “Regulations on the Temporary Protection System in the Event of a Massive Influx of Displaced Persons, approved by Royal Decree 1325/2003 of 24 October”.

The process of acquiring Spanish nationality in Spain is governed by the Civil Code (Articles 17 to 26). The Civil Code is a regulation with legal force approved by the State. Entities at sub-State level do not have competence in naturalisation matters. Naturalisation, unlike authorising residency, implies that the person who acquires it enjoys all the rights afforded by Spanish law to its citizens, such as the right to active and passive suffrage in electoral processes at all levels of government.

As regards the legal status of stateless citizens, the Convention Relating to the Status of Stateless Persons of 1954, to which Spain became party in 1997, is applicable. As a result of this convention, the Regulations recognising the status of stateless persons were approved by Royal Decree 865/2001 of 20 July.

Other specific regulations concern persons displaced as a result of domestic or international war. Regarding these, the European Council adopted Directive 2001/55/EC of 20 July as to the minimal regulations for granting temporary protection in the event of a massive influx of displaced persons, and Spain has transposed this Directive into Spanish law through Royal Decree 1325/2003 of 24 October, approving the Regulations on the temporary protection system in the event of a massive influx of displaced persons.

### **3. Development of the asylum and immigration systems**

Spain’s current system of asylum and immigration is the result of changes in the country’s social reality and immigration; in just a few decades Spain has been transformed from a country of emigration to one of immigration and has witnessed the development of legislation based on a complex framework of international, EU, national, autonomous and local regulations.

The Spanish Constitution is, necessarily, the starting point for understanding the framework of the basic rights and obligations of immigrants in Spain. Art. 13.1 of the Spanish Constitution sets forth that “in Spain foreign nationals shall enjoy the public freedoms guaranteed by this Chapter (Chapter I on Fundamental Rights and Duties) under the terms laid down by Treaties and the Law”.



The prevailing Organic Law 4/2000 of 11 January on the rights and freedoms of foreign nationals in Spain and their social integration, contains the main regulations on immigration. Amended on three occasions by the Organic Laws 8/2000 of 22 December, 11/2003 of 29 September and 14/2003 of 20 November, several of its articles have been rewritten.

### **3.1. Initial regulations and their evolution up to the year 2000**

In the case of regulations on foreign nationals in Spain, major sociological transformations over a very short time should firstly be highlighted, with Spain changing from being a country of emigration in the decades of the 60s and 70s to a country of immigration, which began to become significant from the 90s onwards.

The first law on foreign nationals was approved in the eighties. Following the Spanish Constitution of 1978, Organic Law 7/1985 of 1 July addressed Article 13 of the Spanish Constitution, which responded to needs completely different to contemporary ones, and adopted mainly for reasons of public order (which explains, for example, its emphasis on the system of removals) and without any consideration at all as to any subsequent changes in immigration statistics.

During the first half of the eighties, Spain was still dragging some of the effects of previous economic crises and had still not become a member of the European Community, which would take place in 1986 and spark major economic growth subsequently. For these reasons, that point in time was one of very low immigration figures for Spain. Nevertheless, this law granted the Administration ample powers for applying sanctions in response to illegal immigration. Some of these measures were later declared unconstitutional by a Judgment of the Constitutional Court of 7 July 1987.

After the first law on foreign nationals was approved, the Regulations for its implementation were approved initially by Royal Decree 1119/1986 of 26 May and later by Royal Decree 155/1996 of 2 February. With regards to Royal Decree 1119/1986, it is important to mention, in addition to its structure, which set out the broad terms of subsequent Regulations, its consideration of procedures with regards to foreign nationals as special procedures. This consideration of procedures on foreign national affairs and immigration as special procedures would be an initial relativisation of the full applicability of some of the provisions of the Law on Administrative Procedure on them, allowing exceptions as expressed in specific regulations, although said exceptions would also need to be provided for in legislation.

## **3.2. Organic Law 4/2000 and its reforms**

### **3.2.1. Organic Law 4/2000**

The second law would come into effect in the year 2000, and would be amended that same year.

In spring of 1996 a new parliamentary term begins, with a change in Government by simple majority. This new context explains the four year interval before the subsequent reforms, despite the fact that it is precisely from this moment that the number of foreign nationals in Spain begins to grow exponentially.

The prevailing Organic Law 4/2000 of 11 January on the rights and freedoms of foreign nationals in Spain and their social integration contains the main Regulations on immigration. Reformed on three occasions by Organic Laws 8/2000 of 22 December, 11/2003 of 29 September and 14/2003 of 20 November, several of its articles have been rewritten.

This Organic Law regulates the rights and freedoms of foreign citizens, including the right to family reunification and legal safeguards; requirements for entry and exit to and from Spanish territory; permission to stay, permissions of temporary residence including residence for reasons of family roots, humanitarian reasons or other exceptional circumstances and long-term residence; systems specific to students, stateless persons, foreign nationals without documents, refugees and unaccompanied minors; the annual foreign workers contingent and work permits; breaches of legislation on alien affairs and its related penalty scheme; and the coordination of public powers, through which the Aliens Offices, the Higher Council for Immigration Policy, the Forum for the Social Integration of Immigrants, and the Spanish Observatory on Racism and Xenophobia are regulated. It also established legal provisions on the permanent observation of immigration, the actions of the Employment Inspectorate in order to ensure that principles of equal treatment and non-discrimination of foreign workers are upheld, and the support of Public Authorities to migrant associations and organisations which support migrants.

### **3.2.2. 2000 amendments**

Consensus across political parties set the tone during the drawing up of Organic Law 4/2000 of 11 January, almost until the end of its drafting. In setting forth as main innovations to the Law “an extension of rights, a more realistic regulation of work and residence permits, and defining breaches and penalties against more democratic criteria”,

the amendments to the legal doctrine was considered an advance. However, its approval immediately prior to elections and the subsequent result of the elections—which gave an absolute majority to the People’s Party—provoked reforms to the Law shortly after it came into effect. Thus, before the end of the year 2000, Organic Law 8/2000 of 22 December, amending Organic Law 4/2000, was approved. If Law 4/2000 was considered a generous Regulation with regards to bringing the rights and liberties of foreign nationals closer to those of Spaniards, in the direction marked out by the Constitution, Law 8/2000 deliberately distances itself from this tendency, markedly differentiating legal from illegal foreign nationals in Spain.

The Preface to Law 8/2000 justifies its pronouncement by the existence of “aspects whereby the reality of migration exceeds the provisions of the law.” In addition, the conclusions of the Heads of State and of the governments of the Member States of the European Union as to the creation of an area of freedom, security and justice, adopted in October 1999 in Tampere, are set forth as arguments in its favour. Along these lines, what was intended at that moment was to integrate the Schengen *acquis* on the systems of entry, conditions for issuing visas, regulation of stays by foreign nationals, and the responsibility of and sanctions applicable to carriers.

Finally, it is important to note that these amendments of the year 2000 were accompanied by regularisation processes.

### 3.2.3. 2003 amendments

In the year 2003, two specific amendments to the Organic Law on the rights and freedoms of foreign nationals in Spain and their social integration were approved: Organic Law 11/2003 of 29 September and Organic Law 14/2003 of 20 November. The main purpose of these amendments was to facilitate the removal of foreign nationals who commit crimes in Spanish territory.

The first of these Organic Laws, that of 11/2003 of 29 September, sets forth specific measures on the public security of citizens, domestic violence and the social integration of foreign nationals. In this way, it aims to address several matters in one text without dedicating a monographic attention to alien affairs and immigration. Despite this, its Preface makes evident that the unifying thread across the three areas is the Plan for fighting crime. The largest part of the Organic Law consists of amendments to the Criminal Code which primarily affect the application of penalties and deportations; as well, amendments to the Civil Code to resolve problems encountered by certain foreign women who apply for separation and divorce, primarily those of Muslim origin.

In its Preface, the second Organic Law 14/2003 of 20 November refers to the exponential increase in immigration, greater knowledge about the phenomenon, the jurisprudence of the Supreme Court<sup>4</sup> and adaptation to the most recent decisions of the European Union on this matter. Furthermore, its objectives are explained as follow: 1. improve the management and simplification of administrative procedures; 2. increase of the efficiency of mechanisms for the penalisation and removal of foreign nationals; 3. incorporate European provisions on the payment of taxes and other Directives (carriers, removals...); 4. compliance with the aforementioned Judgment of the Supreme Court.

Examining some of the specific amendments in more detail, the following are introduced: the requirement to hold an Alien Identity Card; *measures to prevent chain migration, by requiring a residence permit independent to that of the sponsor before starting a new procedure of family reunification*; the abolition of visa procedures which would allow a foreign national to stay for the reason for which the visa had been issued; improvement to the grounds on which foreign nationals lacking documents may be granted documentation; adaptation to the European *acquis* on the payment of fees; increase in the severity of penalties over illegal immigration; establishing obligations applicable to transport companies; additional provisions on administrative procedures; introduction of the principle of inter-administrative collaboration to allow State Security Forces to access the databases of the General State Administration.

The law was agreed by the People's Party (Partido Popular - PP), and the party in opposition at the time, Spanish Socialist Workers' Party (Partido Socialista Obrero Español - PSOE). The Law obliges the drafting of new Regulations of a Law that the PP does not approve.

### 3.3. The contributions of the Regulations of Organic Law 4/2000

The prevailing Regulations of Organic Law 4/2000 of 11 January on the rights and freedoms of foreign nationals in Spain and their social integration, approved by Royal Decree 2393/2004 of 30 December, is one of the pillars of the current policy on immigration and the social integration of immigrants. Although administrative Regulations alone cannot directly impact on processes related to the integration of immigrants into our society, since this depends on many other factors, what should be expected of them is that they encourage these processes and introduce legal mechanisms which facilitate the work of all administrations and Public Bodies in fostering said integration. Both requirements have been considered when drafting the new Regulations to Organic Law 4/2000.

<sup>4</sup> Judgment of 20 March 2003 which annuls specific Articles of the Regulations on the Application of Organic Law 4/2000, amended by Organic Law 8/2000.

It is important to note the high degree of participation and socio-political consensus which has characterized the drafting of the Regulations, articulated through a dual process of consultation with political parties, social organizations and migrants' associations, and the agreement on the key elements of these Regulations reached at consultations on labour matters with trade unions (CCOO and UGT) and employers' associations (CEOE and CEPYME).

Achieving this very wide consensus is a *sine qua non* condition for the success of any policy on integration. If immigration and integration are social processes which have an impact on multiple spheres and dimensions, such as the economy, the labour market, the pensions system and Social Security systems, but also on schools and educational institutions, out-patient clinics and hospitals, social services centres and neighbourhoods—in sum, day-to-day living—then it would be a mistake to impose any particular model unilaterally.

Consequently, this commitment to said consensus on immigration policy must not wear out upon approval of the Regulations, but must continue over time. Therefore, the Fifteenth Additional Provision of the Regulations establishes the Tripartite Labour Commission on Immigration (*Comisión Laboral Tripartita de Inmigración*) as a permanent channel for reaching agreements with trade unions and employers' associations on immigration and integration policy measures.

The main contributions of the Regulations are, specifically:

### **Improving the channels for legal immigration**

Based on the premise that a considerable part of immigration is labour-related and responds to the existence of job vacancies in Spain, it is a question of linking unfilled vacancies in the labour market with the labour demands of foreign citizens in a quicker and more effective way. To this end, the new Regulations introduce a Catalogue of Hard-to-Fill Jobs (*Catálogo de Ocupaciones de Difícil Cobertura*), increase the flexibility of the annual contingent of foreign workers, promote the obtention of job search visas, and establish a database shared by the different Ministries involved in granting visas, residence and work permits. These measures have drastically decreased the time required for processing residence and work permits.

## **Streamlining application processes for renewals and family reunification**

In addition to the administrative support measures adopted, the Regulations also reduce processing times in general while simultaneously extending to two months the period before the expiry of the permits whereby foreign citizens may apply for renewal, so as to avoid transitional periods of uncertainty or illegality between the permits initially authorised and those renewed. The Regulations also regulate certification by positive administrative silence, which allows citizens to certify the renewal when the Administration has not responded within the stipulated time period. Finally, these Regulations increase legal certainty by clearly establishing requirements on employment and Social Security contributions that are compulsory for the renewal of work permits.

As regards family reunification, the process has also been speeded up considerably by allowing the simultaneous application for family reunification and the renewal of the initial work and residence permits, and by establishing a maximum of 15 days for the local authority in which the individual seeking reunification is registered to certify that said citizen has adequate housing for the reunification in question.

## **The fight against the illegal employment of workers in the hidden economy**

Another essential component of public policies on immigration is the fight against illegal employment and the exploitation of immigrant workers in the hidden economy. This pernicious practice places workers in precarious conditions, prevents their claim to legitimate rights as workers and marginalises them, while also excluding them from being able to contribute to sustaining the social security benefits system on an equal basis.

To date, the main obstacle to investigating this phenomenon was the immigrant worker's fear of being discovered, in that working illegally could lead to removal. Therefore, specifically conceived as a way to protect immigrant workers who collaborate with the Employment Inspectorate, the Regulations establish the possibility of granting residence permits in exchange for collaboration with an administrative authority. This new development also opens up channels for establishing protocols for collaboration between trade unions and the Employment Inspectorate in the fight against the illegal employment of immigrant workers.

The second mechanism established by these Regulations for this purpose is the so-called '*arraigo laboral*', whereby a worker who has been in Spain for at least two years, and during which time has been in work for at least one year, certified by a court ruling,

resolution or official record of the Employment Inspectorate, may also access a residence permit. Again, the objective of this measure is to protect workers who report situations of illegality or exploitation while simultaneously disincentivising the illegal employment of immigrant workers.

### **Development of the residence permit due to having established roots**

Though our immigration system is based on promoting legal channels for immigration and fighting illegal immigration, through both removals and the fight against mafias and the organised crime of human trafficking, inevitably cases exist of immigrants who remain amongst us illegally for an extended period of time and have not been removed. As time passes and they establish actual roots in Spain and use basic social services, it becomes increasingly unsustainable, for social and humanitarian reasons, for them to remain without authorised residency. Therefore, through the establishment of the so-called '*arraigo social*', the Regulations allow an immigrant citizen who has been in Spain for three years to be granted residence and work permits as long as they can present an employment contract, have no criminal record, and can provide certification of their roots in the country through links to direct family members or through a report issued by the Social Services of the local authority where said immigrant is registered.

### **Reinforcement of the role of Local Authorities in the integration of immigrants**

As in the case of family reunification, the role of Local Authorities —until now insufficiently valued and supported— has been reinforced in this area, since it is at local level that coexistence is managed, social services act and the impact of immigration is most intense. For that reason, it seemed appropriate to equip Local Authorities with legal mechanisms whereby they could have an impact on the administrative status of the immigrants with which they work, as well as reinforcing the availability of their material means through the Support Fund for the Integration of Immigrants, of which 50% is reserved for Local Authorities. This is the objective of the reports on the establishment of '*arraigo social*' and on housing for the purposes of family reunification.

### **Fight against gender-based violence**

Additionally, the general fight against gender-based violence which the Government has been developing in all spheres also has some specific, practical issues related to immigration. First and foremost, it is necessary to offer legal protection to immigrant



women who report their aggressors, both in the case of family reunification and in that of illegal immigrants.

In family reunification, the problem was the dependence, for the purposes of obtaining a residence permit, of the reunited person on the sponsor. To resolve this matter, the Regulations set out that victims of gender-related violence, once having obtained a judicial order for protection, may access a permit independently.

In the case of people without authorised residency, the problem is their fear of being removed in case they report an aggression to the police. Consequently, the Regulations expressly introduce domestic violence as grounds on which, once declared by court ruling, a residence permit may be granted for humanitarian reasons, and allow the application for said permit at the moment a judicial order for protection is granted.

### **Unaccompanied minors**

As to unaccompanied minors, it was also necessary to introduce some improvements to legal mechanisms which would facilitate work in favour of the child's best interest, the basic principle governing this area. Thus, the Regulations introduce the guarantee that the return of a minor will only be agreed to if there are conditions for effective reunification with the minor's family or for the minor's adequate guardianship through the child protection services in the child's country of origin.

A basic regulation inferred from Organic Law 4/2000 itself, which in practice had generated some confusion, is also clarified: that the residence of a minor under the guardianship of a public administration is considered, to all effects and purposes, regularized, irrespective of the timely processing of said residence permit.

Lastly, there remained the problem of becoming of legal age; in other words, the legal status applicable to minors under guardianship who reach legal age without having obtained a residence permit. For these cases, the Regulations empower child protection bodies with recommending the granting of a residence permit to those minors under guardianship who reach legal age as long as their participation in training programs planned by said entities has been adequate.



## Other exceptional cases

Finally, the Regulations set forth a series of additional grounds on which immigrants may access a residence permit under exceptional circumstances, such as for victims of crimes against the rights of workers or offences in which the aggravating circumstance was racism, anti-Semitism or any other kind of discrimination; the seriously ill whose health or life would be jeopardised in the absence of, or interruption to, medical treatment; or those who can prove that return to their country of origin would put their own security, or that of their family, at risk. Such cases are those in which removal is not an option due to humanitarian reasons or in the provisions of international laws; therefore, a seemingly appropriate alternative, in administrative terms, is to offer channels for accessing a residence permit as a way to stabilize their administrative situation.

In summary, it can be concluded that the Regulations on alien affairs, an instrument conceived as part of a set of public policies on immigration and integration, favours the integration of immigrants by facilitating immigration through legal channels, fighting against the illegal employment of workers, strengthening the role of local authorities in integration processes, and improving the legal treatment of some special cases or sensitive situations, as is the case of persons with social roots already established in Spain, victims of gender-related violence, racist crimes, or unaccompanied minors, amongst others.

## 3.4. Asylum and international protection

Even though applicants for asylum in Spain are, and have historically been, a small part of the migration reality, asylum and international protection merit specific attention since they are governed by specific regulations which are merely complemented by general legislation on alien affairs.

Just a few months after Spain adhered to the Convention on the Status of Refugees in July 1978, the Spanish Constitution established in Article 13.4 that “the law shall establish the terms under which the nationals of other countries or stateless people may be entitled to the right to asylum in Spain.” To make this constitutional mandate applicable, Law 5/1984 of 26 March governing the right of asylum and the refugee status was approved, some aspects of which were later amended by Law 9/1994 of 19 May. This Law is also developed by specific Regulations approved by Royal Decree 203/1995 of 10 February, some aspects of which were amended by Royal Decrees 864/2001 of 20 July and 2393/2004 of 30 December. A specific aspect of this Regulation is the guarantee of the coverage of basic needs of asylum seekers, prescribed by Council Directive 2003/9/EC of 27 January, laying down minimum standards for the reception of asylum seekers, and

which has been transposed into Spanish law through the aforementioned Royal Decree 2393/2004 of 30 December.

The primary modifications introduced by Law 9/1994 with regards to legislation in force previously are:

- The elimination of the asylum and refuge as dual conditions with distinct statutes. This duality in no way derives from requirements for the protection of foreign nationals who are victims of persecution, and was a source of confusion. As regards asylum for humanitarian reasons, which under certain circumstances could be granted to foreign nationals who were not victims of persecution, this is rerouted to the general legislation on alien affairs. Furthermore, in including the rights to residence and employment in Spain, the protection of refugees provided by Spanish law goes beyond the provisions of the Geneva Convention.
- A special procedure for denial of processing is established during the preliminary phase in the review of applications to allow for a rapid denial of clearly abusive or unfounded applications, as well as those whose review does not correspond to Spain, or when another State is in the position to offer protection.
- The effects generated by negative decisions are modified. The amendment is based on the general principle that an asylum seeker whose application is either not accepted for processing or has been rejected must abandon Spanish territory unless requirements are met for entry to or remaining in the country pursuant to the general alien affairs scheme. This avoids the situation of privilege for economic migrants who attempted to enter Spain via the asylum channel, in contrast with migrants who complied with normal procedures as set forth by the Spanish legal system.

Currently, the Government is drafting a new Law on Asylum which will transpose into Spanish law a further two European Directives adopted by the European Council on the status of refugees and subsidiary protection (Council Directive 2004/83/EC of 29 April) and on the asylum-seeking procedure (Council Directive 2005/85/EC of 1 December).

#### **4. Organisation of policies**

The purpose of this chapter is to describe the organisation of the Spanish migration policy system, using as a basis the legal grounds as well as the ministries and network of governmental agencies involved in the design and implementation of these policies.

Specifically, all of the legislation currently applicable to all phases of the immigration process is outlined in this chapter, from entry and conditions for admission/exclusion, to the process of obtaining legal residence, access to the labour market and application for Spanish nationality, through to return. Generally, throughout all of these phases, though there are specific conditioning factors that act as criteria for the application of policies, these are basically rules of law founded on objective reasons, without any subjectivity as regards an immigrant's language, nationality, culture, religion, and possibly race coming into play. Similarly, third country nationals who wish to reside in Spain do not need to certify prerequisites of integration as condition for their admittance to Spanish territory. In fact, Spain does not apply any test of knowledge as a condition for access to legal residency nor test on citizenship for those who apply for Spanish citizenship, though interviews are held in the framework of the process for acquiring nationality on grounds of residence for the purpose of confirming the applicant's degree of integration within Spanish society. Nevertheless, it is worth mentioning that the migration process also depends on links between Spain and the countries of origin. These links might not directly impact on the migration system, but do doubtlessly help to regulate and manage the system in accordance with any bilateral relations which may be in place.

What does constitute a basic principle for arguing in favour of organising policies on migration is the focus given to labour immigration within a framework of human rights. This framework is important for understanding the system established in Spain. Spain always intends to prioritise respect for human rights when confronted with the dilemmas inherent to the management of borders and application of its migration policies, and it is within this framework that it applies a strictly labour-related focus. This focus implies that the majority of criteria guiding migration policies and the migration system itself use the status of the Spanish labour market as a direct source of information. Changes in political strategies and generalised *paradigm shifts* in the discourse accompanying these policies have, in the final analysis, this labour aspect as their main explanatory factor. In this second term of office (begun in April 2008) of the Spanish Government, one of the first decisions made by the new executive body was precisely to increase the visibility of this focus defined during the first mandate of the Government of José Luis Rodríguez Zapatero and its consolidation at institutional level through the establishment of a Ministry of Labour and Immigration. In terms of political competence, the same minister that oversees the Spanish labour market also oversees policies on immigration and emigration. The link with employment therefore forms the primary government concern in addition to the consideration of migration as a positive factor and of social cohesion.

Lastly, it is important to note that even though asylum is an important matter in both social and political terms, in Spain it is an issue which is barely on the agenda. Public debate on the issue is non-existent. This is primarily due to the relatively reduced number

of asylum seekers and refugees in Spain: At the end of 2007, the number of refugees with a valid identity card was 2,008. Nevertheless, the administrative and legal regulations guiding Spanish policy on asylum and the asylum procedure are presented here.

We will close this introduction by highlighting two final matters. First, the basic legislation on alien affairs and immigration cited throughout this report is Organic Law 4/2000 of 11 January on the rights and freedoms of foreign nationals in Spain and their social integration, amended by Organic Laws 8/2000 of 22 December, 11/2003 of 29 September and 14/2003 of 20 November; additionally, the Regulations of Organic Law 4/2000 approved by Royal Decree 2393/2004 of 30 December. Second, the objectives of this report primarily focus on the network of governmental agencies which contribute to the organisation of policies on migration, rather than on the complex system of social agencies, basically NGOs and migrant associations, along with trade unions and other economic and cultural agencies which work much more intensely in the phases of integrating “new residents” and accommodating diversity.

#### **4.1. Asylum and Immigration**

As explained in detail in section 2, competence in matters of immigration and asylum is distributed, in general terms, between the Ministry of Labour and Immigration, the Ministry of the Interior and the Ministry of Foreign Affairs and Co-operation.

The Ministry of Labour and Immigration is responsible for Spanish policy on immigration. As regards migration flows, it is responsible for proposing, subject to the subsequent approval by the Council of Ministers, the annual contingent, managing access to the labour market by foreign workers, monitoring the processes of family reunification, and implementing the Plan for Voluntary Return, among other matters.

The Ministries of Interior, Labour and Immigration, and Public Administrations are responsible, together, for the Immigration Offices (which are functionally dependent on the Ministry of Interior and the Ministry of Labour and Immigration through the State Secretariat for Immigration and Emigration within the scope of their respective competencies, and organically dependent on the Ministry of the Public Administrations through the Delegates and Sub-delegates of the Government). The Immigration Offices are the bodies responsible for processing work and residence permits granted for the different reasons set forth in Spanish legislation on alien affairs. In addition, they process the renewal of temporary residence permits and grant long-term residence permits. Normally, the granting of permits corresponds, in accordance with the First Additional Provision of the Regulations on alien affairs, to the delegates and sub-delegates of the government.

Similarly, the Immigration Offices also process Foreign national Identity Cards, among other documents.

The Ministry of the Interior is also responsible for, amongst other matters, border control and removal of third country nationals who do not comply with obligatory documentation and procedures. The General Directorate of the Police and the Guardia Civil, through the Commissariats or the Immigration Offices, is the body responsible for processing Foreign national Identity Cards which authorise an individual to legally reside in Spain for a period exceeding three months. As regards asylum, the Ministry of the Interior is responsible for preparing the procedures and for deciding on the granting or denial of the status of refugee and other forms of international protection, at the proposal of the Inter-Ministerial Commission of Asylum and Refuge (CIAR).

The Ministry of Foreign Affairs and Co-operation maintains relations with third countries for the purpose of obtaining the collaboration of countries of origin in regulating and planning migration flows, as well as for working together for workers selection in the country of origin and in codevelopment programmes.

Finally, the Ministry of Justice processes, grants or refuses applications for Spanish nationality on grounds of residence.

#### **4.1.1. Entry procedures**

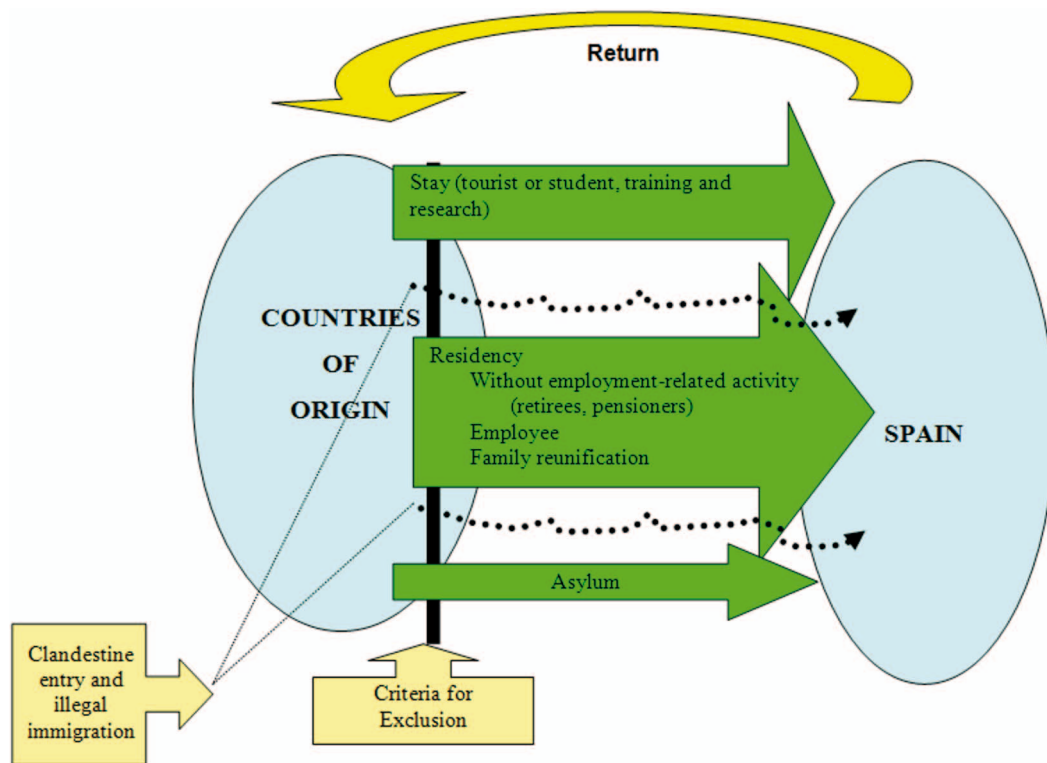
This section covers, basically, the administratively and legally defined channels for entry to Spain, irrespective of the personal or family-related motivations of the immigrants.

The legal entry of third country nationals to Spanish territory is to take place via border crossing points established for said purpose. A foreign national must hold a valid passport or travel document which accredits their identity or is considered valid for that purpose, a valid visa where required, and not be subject to any express prohibitions. Similarly, foreign nationals must present any documents which justify the purpose and conditions of their stay, and prove they have sufficient means to live—or are able to legally obtain said means— during the time they wish to remain in Spain.

In accordance with the Regulations, entry to Spanish territory may be effected through different channels which define the reasons for this in legal and administrative terms. A third country national may enter for three basic reasons: (i) to stay as a tourist or student; (ii) for residence (whether as a worker or as a reunited family member); (iii) for asylum.

Figure 1 depicts the system (to be explained in detail later) for entry to and return from Spain. It is also worth noting that an explicit system for exclusion exists, as well as the inevitable possibilities of clandestine entry and illegal immigration, despite economic, human and administrative efforts.

FIGURE 1. System of entry to and exit from Spain



#### 4.1.1.1. Entry procedures: Stay and residence

There are two permits for entry by third country nationals: entry for a stay, or entry as a resident.

##### 4.4.1.1.1. Stay

This heading includes both *short stay* (generally the case for tourists) and *stay for research or studies*, a specific category with distinct requirements and durations.

## SHORT STAY (TOURIST)

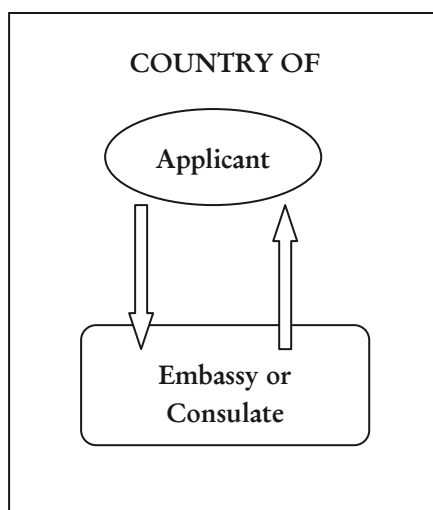
A foreign national has *short stay* status when authorised to remain in Spain for an uninterrupted period, or sum of consecutive periods, of which the total duration does not exceed ninety days per six-month period as of the date of the first entry. This status shall be authorised by the corresponding *short stay visa*, except in cases when this visa is not required.

For entry for the purposes of a stay, the only requirement is the presentation of an identity card or passport and, where necessary, a visa.

As regards the requirement for a visa, Spain complies with the directives of the EU, which has drawn up a shared list of third countries whose nationals are obligated to present a visa on entry to any Member State<sup>5</sup>.

Third country nationals who wish to travel to Spain for the purpose of a stay must present an application for a short stay visa at the Spanish embassy or consulate within their country of residence. This body shall process and decide upon the application and, if approved, issue the corresponding short stay visa.

Figure 2. *Process for a stay*



<sup>5</sup> Regulation (EC) 539/2001 whereby the list of third country nationals who require a visa for crossing foreign borders and the list of third country nationals who are exempt from this obligation are established. The most recent amendment to this is Regulation (EC) 1932/2006.

## STAY FOR RESEARCH AND STUDY

Alternatively, in the case of *stay for research and study*, foreign nationals who wish to carry out research work or training without remuneration, or to do courses or further studies at any Spanish public or private teaching or research centre that is officially recognized, must hold the corresponding *study visa*.

The study visa allows the foreign national to remain in Spain with stay status, the duration of which shall be equivalent to the length of the course for which he/she is registered or research work he/she is carrying out.

In addition to the general requirements for the issue of a short stay visa, the application for a study visa shall be accompanied by documents which certify admission (as a student, trainee, etc.) at the Spanish teaching or research centre.

4.1.1.1.2. *Residence*

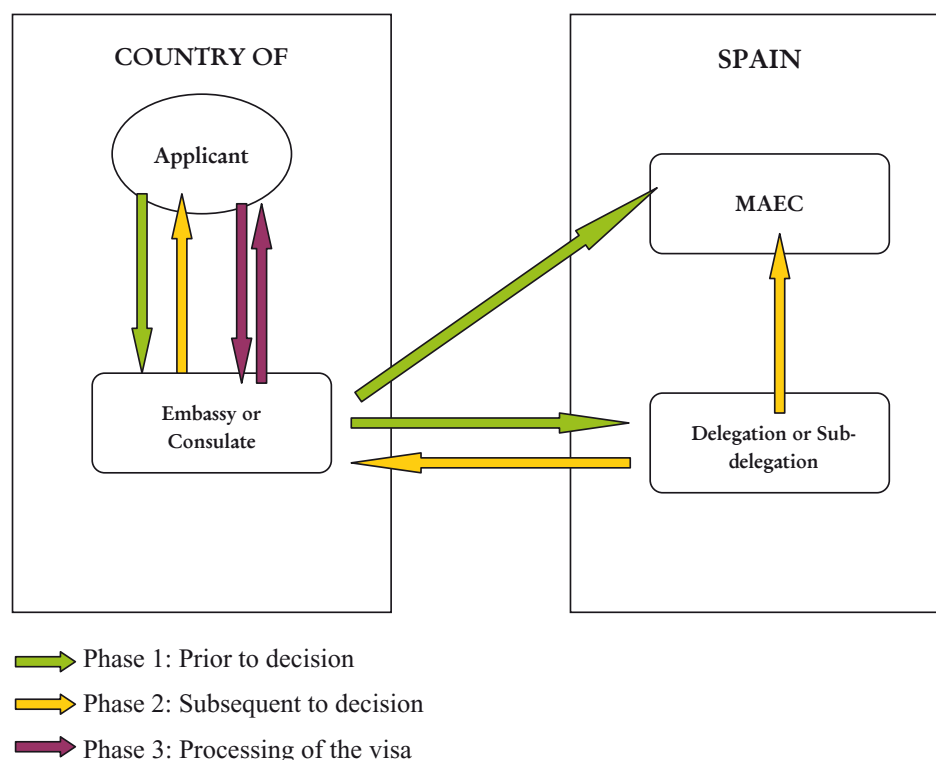
Entry as a *resident* is applied to persons who are nationals of third countries and wish to reside in Spain. It should be highlighted that three basic forms of entry exist within this category: entry without employment objective, entry for employment purposes, and entry for the purposes of family reunification. There is no other legal channel of entry for residing in Spain.

## RESIDENCE WITHOUT EMPLOYMENT ACTIVITY

Third country nationals who wish to reside in Spain without carrying out employment activities must apply for a visa for that purpose at the Spanish embassy or consulate within their country of residence. Subsequently, the embassy or consulate shall send the application for the corresponding residence permit simultaneously to the Ministry of Foreign Affairs and Co-operation (MAEC) and the Government Delegation or Sub-delegation of the Autonomous Community in which the applicant wishes to reside. Within one month, the Government Delegation or Sub-delegation shall grant or refuse the residence permit and will communicate its decision to the MAEC and the corresponding embassy or consulate. If the resolution is favourable, the embassy or consulate issues the residence visa. As of the new resident's entry to Spain and within one month, the resident must apply for the Foreign national Identity Card at the nearest Immigration Office.



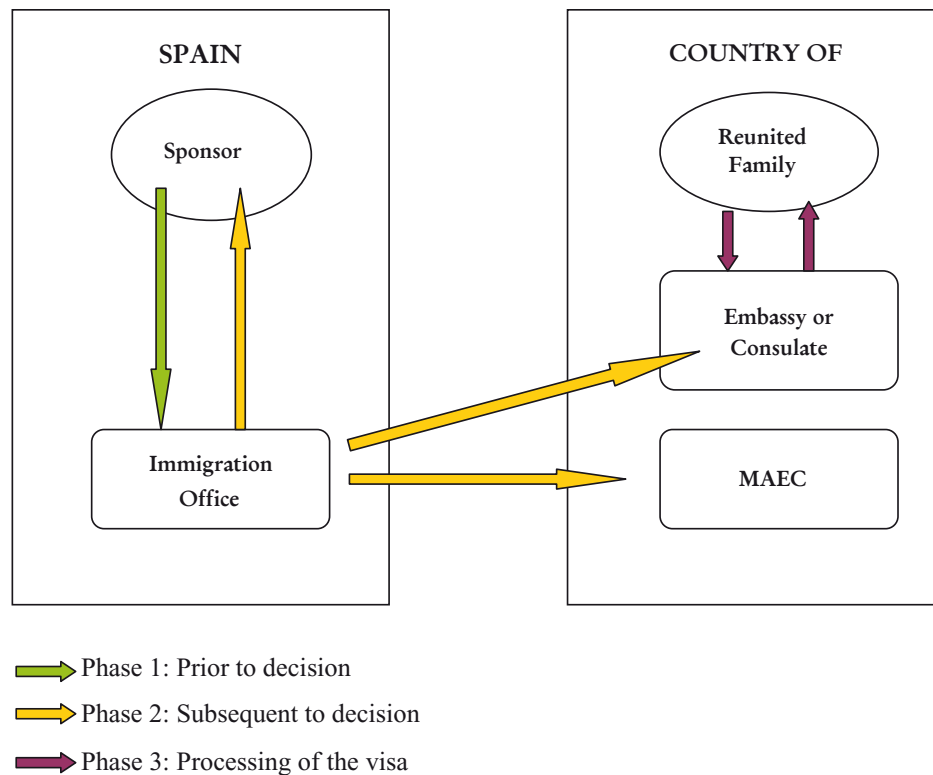
Figure 3. Process for residence without employment activity



## RESIDENCE FOR FAMILY REUNIFICATION

A residence permit for family reunification must be applied for by the sponsor resident in Spain. The sponsor must apply for authorisation for residence for the purposes of family reunification for his/her family members at the corresponding Immigration Office. The Immigration Office shall decide upon the application and, if approved, shall communicate the decision to the interested party, the MAEC and the Spanish embassy or consulate of the territory where the beneficiaries of the reunification reside. On receipt of notification by the sponsor and within two months, the reunited family members must apply for a *residence visa for the purposes of family reunification* at the Spanish embassy or consulate. This body must issue the visa within two months. Once in Spain and within one month, the reunited family members must apply for the Foreign national Identity Card at the nearest Immigration Office.

FIGURE 4. Process for residence for the purposes of family reunification



## ENTRY FOR EMPLOYMENT: GENERAL SCHEME AND CONTINGENT

As has already been pointed out, Spain promotes a focus on legal immigration based upon labour immigration and respect of human rights. Proof of this commitment are the amendments made to legislation in recent years for the purpose of speeding up the hiring of foreign manual labour and to regulate the legal entry of third country nationals who wish to work in Spain.

The procedures for legal entry to Spain for the purposes of employment are, firstly, the residence and work permit (whether employed by others or self-employed) and, secondly, the contingent procedure.

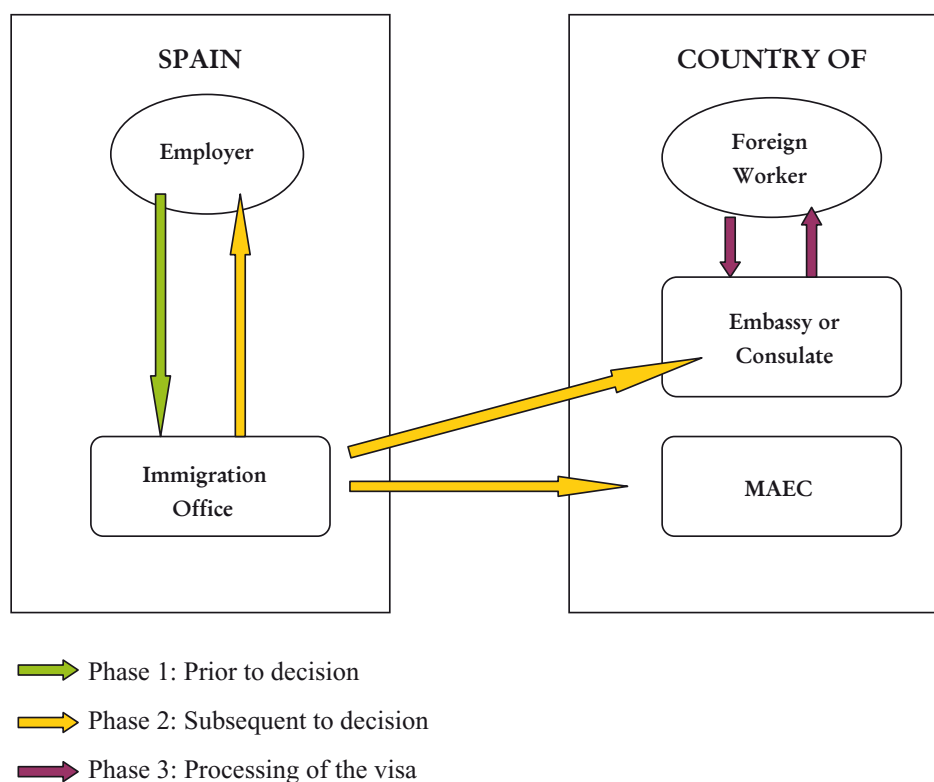
## Residence and work permit when employed by others

Unlike the aforementioned, the process for obtaining a residence and work permit when employed by others must be initiated by the employer in Spain. The employer must apply for a temporary residence and work permit at the Immigration Office, enclosing with the

application the documentation set forth by the regulations, especially that which confirms the identity of the employer and the job offer or employment contract.

The job offer must have been processed through the Public Employment Service and this body must have issued a negative statement as to the possibility of filling said offer, unless the offer in question is included in the Catalogue of Hard-to-Fill Jobs (*Catálogo de Ocupaciones de Difícil Cobertura - CODC*) drafted and published by province each trimester on behalf of the national Public Employment Service, having consulted the Tripartite Labour Commission on Immigration (*Comisión Laboral Tripartita de Inmigración*) and on the basis of the information supplied by the public employment services of the autonomous communities.

FIGURE 5. *Process for residence and work permit when employed by others*



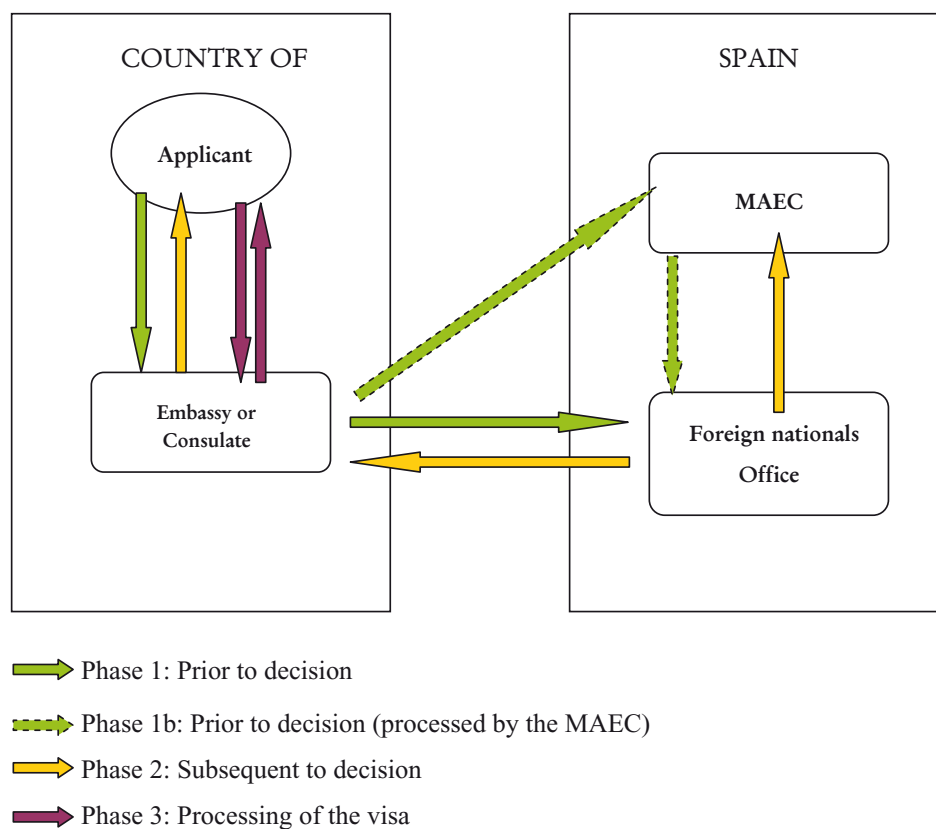
The Immigration Office shall request the reports corresponding to the different bodies involved (the Tax Administration Agency, the General Social Security Treasury, the competent services within the General Directorate of the Police and the Central Register of Convicts and Defaulters). Said reports must be issued within ten days. Once a decision is made, the employer shall be informed through the Immigration Office, and when is the decision positive, the MAEC and Spanish embassy or consulate in the territory where the immigrant worker to be employed resides shall also be informed. On notification of this

decision to the employer, and within one month, the worker must apply for a *residence and work visa* at the Spanish embassy or consulate in the country of his/her residence. After obtaining the visa and once in Spain, the foreign workers must apply for the Foreign national Identity Card at the nearest Immigration Office within one month of entry to Spain; similarly, the worker must be signed up to or registered on the Social Security system. If at the moment of applying for the card or after one month has elapsed since the worker's entry to Spain there is no proof that the worker has been signed up to or registered with Social Security, the permit issued may be annulled.

### Residence and work permit for self-employment

Third country nationals who wish to reside and work through self-employment in Spain must apply for the corresponding permit at the Spanish embassy or consulate within their country of residence. The embassy or consulate will send the application, either directly or through the MAEC, to the Immigration Office, the competent body which will request the necessary reports from the corresponding bodies (the General Directorate of the Police, Central Register of Convicts and Defaulters, and other entities with relevant competence). These reports must

FIGURE 6. *Process for residence and work permit when self-employed*



be issued within ten days. Once the application is decided upon, and, in case of a positive decision, the Immigration Office shall communicate the decision to the MAEC and the Spanish embassy or consulate of the country where the applicant resides. The Spanish embassy or consulate shall issue the applicant a *residence and self-employment visa*. The beneficiary must travel to Spain and apply for the Foreign national Identity Card at the nearest Immigration Office and register on the Social Security system within one month of his/her entry.

## Contingent

The contingent of non-EU foreign workers is annual and is approved by Agreement of the Council of Ministers. The contingent brings together stable job offers (whether generic or specific) and lays down the conditions for the employment of temporary workers. In any case, the job offers may be limited to quotas per territory or profession.

The proposals of the Autonomous Communities, the largest trade unions and employers' organizations, and the report on the employment situation and the social integration of immigrants drafted by the Higher Council for Immigration Policy (Consejo Superior de Política de Inmigración)<sup>6</sup> are taken into consideration. The national employment situation is a basic criterion for the determination of the annual quota.

The contingent also opens up the possibility of applying for a job search visa. This visa grants the beneficiary authorisation for a stay not exceeding three months for the purpose of looking for work.

The employment offers proposed by the contingent shall be directed preferentially to those countries with which Spain has signed agreements to regulate and plan migration flows (Law 4/2000, in accordance with Law 14/2003, Art. 39). To date, Spain has signed agreements of this type with Colombia (2001), Ecuador (2001), Morocco (2001), Dominican Republic (2002), Romania (2002), Bulgaria (2003) and Mauritania (2007). It is also worth highlighting the Co-operation Framework Agreements on Immigration which Spain has recently signed with Gambia, Guinea-Conakry, Cape Verde, Mali and Nigeria<sup>7</sup>.

<sup>6</sup> The Higher Council for Immigration Policy is the body in which representatives of the State, Autonomous Communities and municipalities participate in a tripartite and balanced manner. The purpose of this body is to assure an adequate coordination of the actions of the Public Bodies with competence for the integration of immigrants. With this objective, the Council for Immigration drafts an annual report on the employment situation and the social integration of immigrants.

<sup>7</sup> Framework Agreements for Cooperation on Immigration – <http://extranjeros.mtin.es/es/NormativaJurisprudencia/Internacional/ConveniosBilaterales/ConveniosCooperacionInmigracion/>

#### 4.1.1.2. Entry procedures: Asylum

The Ministry of the Interior is the authority in charge of processing and deciding on procedures related with asylum, at the proposal of the Inter-Ministerial Commission of Asylum and Refuge. The Ministry of Interior is also the body which grants the status of stateless person (Organic Law 4/2000, Art. 34.1).

The legal framework which regulates the right of asylum in Spain is mainly made up of Law 5/1984, which regulates the right of asylum and refugee status; Law 9/1994 amending the former; and the Regulations which develop Law 5/1984, approved by Royal Decree 203/1995.

Asylum seekers may present an application at the Asylum and Refuge Office, border posts at entry points to Spanish territory, Immigration Offices, Provincial Police Commissariats, or at Spanish Diplomatic Missions and Consular Offices in other countries. When applicants for asylum are subject to a removal order, these persons may not be removed until it is confirmed that the application for asylum has not been accepted for processing. Displaced persons may also apply for temporary protection.

Third country nationals who have applied for the right of asylum in Spanish territory shall be granted an authorisation for provisional stay in Spain not to exceed 60 days, and a provisional residence permit once the application has been accepted for processing valid for the duration of the asylum-related procedures and up to their completion.

This section only refers to those applications which are processed outside of Spanish territory and at border posts, since in the remaining cases the applicant has already entered Spain.

##### 4.1.1.2.1. *Application for asylum at Diplomatic Missions and Consular Offices*

An asylum seeker must present an application at the Spanish embassy or consulate in the country where said applicant is located. In accordance with legislation, applications presented in other countries shall be sent to the Asylum and Refuge Office through the MAEC, along with a report issued by the Spanish embassy or consulate that received the application. On receipt, the Asylum and Refuge Office shall immediately inform the representative of the UNHCR in Spain of the application. Once the application is decided upon, the Spanish embassy or consulate of the country in which the applicant is located shall notify them whether refugee status or subsidiary protection is granted or refused. In case of a positive decision, the embassy or consulate shall issue a visa or authorisation for entry so that the beneficiary may enter Spain.

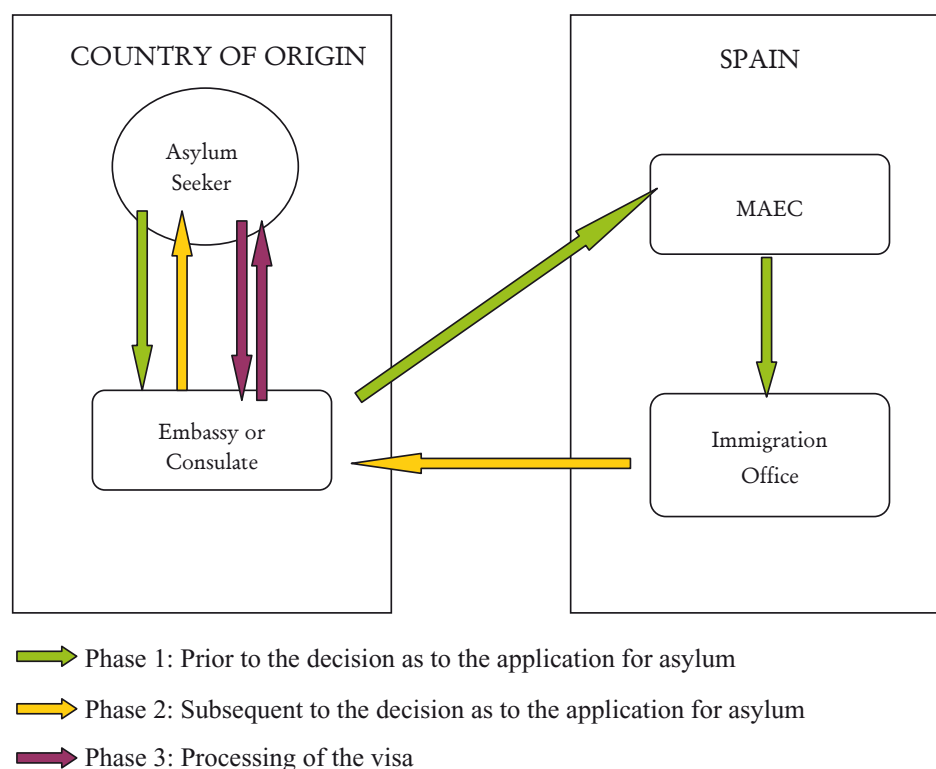
When the applicant is at risk, the Asylum and Refuge Office shall notify the Inter-Ministerial Commission for Asylum and Refuge of the situation, and the latter may authorise the transfer of the applicant to Spain during the processing of the application. To this effect, the granting of a visa or authorisation for entry shall be processed urgently. Under these circumstances, the Asylum and Refuge Office shall inform the MAEC and the General Directorate of the Police and the Guardia Civil about the situation.

#### 4.1.1.2.2. *Application for asylum at Border Crossing Points*

Another special procedure of seven days' duration is established as regards applications presented at the border. Once the application has been formalised, the UNHCR is informed and the applicant remains at the border post facilities until the Asylum and Refuge Office has made a decision as to his/her admission or non-admission. This decision must be communicated within seventy-two hours. When the decision is non-admission, the applicant may request, within twenty-four hours, re-examination of the application. This re-examination must be decided upon within two days.

If the application is admitted for processing, entry to Spain shall be authorised and the ordinary processes shall follow thereafter.

FIGURE 7. *Process for asylum*



#### 4.1.2. Conditions for admission

After introducing the channels for entry and its processing through the administrative network used for applying policies on migration, this section shall explain the criteria used as conditions for admission.

##### 4.1.2.1. Conditions for admission: Stay and residence

Following the focus of current policy on migration, the main source of criteria on admission is related to the labour market and is therefore determined by the needs and system of restrictions established by the labour market itself. Similarly, these criteria are always result of a tripartite consensus between the government, the largest trade unions and employers' associations, in addition to considering the contributions of the Autonomous Communities to determining the needs of their own labour markets.

Third country nationals shall be admitted to Spain if they enter through a legal channel and present the documentation required for each specific situation. If entering Spain for a stay, they must possess a passport and, where necessary, a visa. If entering Spain for temporary residence, they must possess a passport, visa (where necessary), residence permit or residence and work permit, prove that they have sufficient economic resources to cover the costs of their stay and of any family members accompanying them, and also prove that they have no criminal record. The different types of permits for stay and residence are detailed below.

Given that the procedures are very closely connected, the authorities responsible for evaluating and deciding on the applications are detailed in section 4.1.1. *Procedures for entry*.

##### 4.1.2.1.1. Stay

###### STAY (TOURIST)

The applicant shall be permitted to remain in Spain for an uninterrupted period, or sum of consecutive periods, of which the total duration does not exceed 90 days per semester.

Two types of visa for a stay are available: a short-term visa, allowing for a stay of up to three months, and the multiple-term visa, allowing the foreign national multiple stays, the sum of which may not exceed ninety days per six-month period within one year.



Other types of information, such as the purpose of the trip, availability of housing, proof of return, amongst others, must be certified along with the application for the visa.

#### STAY FOR RESEARCH AND STUDY

Foreign nationals who wish to carry out research projects or training without remuneration, to do courses or further studies, at any Spanish public or private teaching or research centre that is officially recognized may apply for a *permit for stay for research and study*.

The study visa, necessary for entry to Spain, allows the foreign national to remain in Spain with stay status for a duration equivalent to the length of the course for which he/she is registered or the research work he/she is carrying out. The stay permit for study may be renewed annually. In addition, there is the possibility of working as an employee with remuneration as long as the relevant requirements are met.

To be granted a study visa and therefore a stay permit, a foreign national must have been admitted to an officially recognized public or private teaching or research centre, along with an indication of the timetable involved in attending such approved courses and/or a course syllabus, research plan or training plan. Similarly, the foreign national must guarantee sufficient economic means needed to cover costs related to studies, accommodation and return to the country of origin.

#### 4.1.2.1.2. *Residence*

Entry through the residence route is dependent on three habitual channels, detailed below.

Nevertheless, for situations which do not comply with any of the circumstances detailed below, a temporary residence permit may be granted by reason of duly justified exceptional circumstances (such as employment and social roots, international protection, humanitarian reasons, collaboration with the powers of Justice, or other exceptional circumstances within the terms laid down in the regulations). Third country nationals which can prove they have resided in Spain —continuously and for a minimum of two or three years, depending on the circumstances— may be entitled to claim employment and social roots. Likewise, the applicants must meet the following requirements: a) not have any criminal record, whether in Spain, the country of origin, or other country of residence; b) not be prohibited entry to Spain; c) demonstrate the existence of laboural relations during at least one year or hold an employment contract for no less than one year; d) prove family ties to other foreign residents or present a report issued by the local authority of the

municipality where they reside which certifies their social insertion (Organic Law 4/2000, Arts. 31.1, 3 and 4; and Art. 45.2.b of its Regulations).

Third country nationals who wish to reside in Spain do not need to certify integration prerequisites as a condition for their admittance to Spanish territory.

#### RESIDENCE WITHOUT EMPLOYMENT ACTIVITIES

“Non-employment activities” are those defined as non-economic activities, and activities which are neither occupational or income-generating. Applicants must certify that they have sufficient economic resources to cover the costs of their stay. This category includes, for example, retirees, pensioners, etc.

#### RESIDENCE AND WORK PERMIT

A residence and work permit allows the beneficiary to reside and work in Spain. There are a variety of types of work permit.

##### Work permits for salaried employment

These permits are subject to the following conditions:

- that the national employment situation allows the employment of foreign workers (“Catalogue of Hard-to-Fill Jobs”);
- that the worker is guaranteed continuous work during the time the residence and work permit is in effect;
- that the companies which apply for said permits have formalised their registration and are up to date in their payments due to the Social Security Authorities;
- that the conditions set forth in the work contract comply with legislation;
- that the worker possesses the qualifications or proves he/she has the skills necessary for the exercise of the profession;
- that the foreign workers they aim to employ do not have any criminal record;
- that the foreign workers are not in Spain without authorised residency.

## Work permits for self-employment

These permits are subject to the following conditions:

- compliance with the requisites set forth by law as to the setting up and operation of the planned activity;
- possession of any professional qualifications or proof of the necessary experience for carrying out a specific activity;
- proof of the investment necessary for the start of the activity;
- membership of a professional association, where required;
- forecast stating that exercising the activity will produce sufficient economic resources for the interested parties' board and accommodation during the first year;
- not having any criminal record;
- not be in Spain without authorised residency.

## FAMILY REUNIFICATION

Applicants for family reunification (sponsor) must have resided in Spain for at least one year and be authorised to reside for another year. This authorisation benefits the applicants' direct family members (spouse, ascendants dependent on the sponsor, and children under 18 years of age) and they are entitled to apply for a work permit (for the applicant's spouse and children over 16 years of age). Spouses who obtains a work permit may request a residence permit independent of that of the sponsor. This permit may also be applied for after five years of residence in Spain or under exceptional circumstances (Regulations of Law 4/2000, Art. 41.2).

Table 1 summarizes the conditions for admission for each type of channel of entry.

TABLE 1. *Conditions for admission*

Channel of entry	Required documentation	Duration of the permit	Requirements
<b>Stay (tourist)</b>	<ul style="list-style-type: none"> <li>• Passport</li> <li>• Purpose of the trip</li> <li>• Certification of sufficient means of subsistence</li> <li>• Health insurance</li> <li>• Availability of accommodation in Spain</li> <li>• Proof of return (return ticket)</li> </ul>	Not to exceed three months	Any third country national with a valid passport and with sufficient economic resources for the duration of the stay
<b>Stay (studies)</b>	<ul style="list-style-type: none"> <li>• Passport</li> <li>• Admission to a teaching centre</li> <li>• Content of the course syllabus</li> <li>• Health insurance</li> <li>• Availability of means of subsistence and accommodation</li> </ul> <p><i>When the stay for study exceeds six months:</i></p> <p>Health certificate</p> <p>Criminal records certificate</p>	Equivalent to the length of the course for which he/she is registered or of the research work he/she is performing. May be renewed annually.	Third country nationals who have been admitted to a teaching or research centre for the purpose of doing studies or research projects. The applicants must prove that they have sufficient economic resources to cover the costs of their stay.
<b>Residence without employment activities</b>	<ul style="list-style-type: none"> <li>• Passport</li> <li>• Criminal records certificate</li> <li>• Health certificate</li> <li>• Certification of sufficient means of subsistence</li> </ul>	The permit granted initially shall be valid for one year. The first and second renewals shall be for two years each.	Third country nationals with sufficient economic resources for the duration of their residence in Spain without carrying out employment activities. The applicants must prove that they do not have any criminal record.
<b>Residence for family reunification</b>	<ul style="list-style-type: none"> <li>• Passport</li> <li>• Criminal records certificate</li> <li>• Copy of the residence permit of the sponsor</li> <li>• Documentation which proves family ties</li> <li>• Health certificate</li> </ul>	The permit granted to the reunited family members shall be renewed for the same period of time as that of the sponsor.	The applicant must have resided in Spain for at least one year and be authorised to reside another year.

Channel of entry	Required documentation	Duration of the permit	Requirements
Residence and Work	<b>As salaried employees</b> <ul style="list-style-type: none"> <li>• Passport</li> <li>• Criminal records certificate</li> <li>• Health certificate</li> <li>• Copy of the conditional work and residence permit</li> </ul>	<p>The permit granted initially shall be valid for one year. It may be renewed (up to two times) for a period of 2 years each time, as long as the beneficiary certifies the existence of a employment relationship or has a new employment contract or job offer (in the case of salaried employees).</p> <p>The permit granted to self-employed workers may be renewed up to two times for a period of 2 years each time, upon certification of the continuation of the activity that was the purpose of the initial permit, in addition to the remaining relevant requirements.</p>	<b>As salaried employees</b> Foreign workers who obtain employment in Spain through any of the intended channels (general scheme, contingent or job search visa).  <b>As self-employed workers</b> Third country nationals who certify that they hold the professional qualifications or have the resources necessary for job creation.
	<b>As self-employed workers</b> <ul style="list-style-type: none"> <li>• Passport</li> <li>• Criminal records certificate</li> <li>• Health certificate</li> <li>• Professional qualifications or proof of experience</li> <li>• Proof of economic resources for the initial investment</li> <li>• Business plan</li> <li>• Permits or licences required for carrying out the activity</li> </ul>		

#### 4.1.2.1.3. *Explicit exclusion*

Although there may be situations where immigrants meet all of the requirements set forth by law, under the following circumstances prohibition of entry shall be applied to third country nationals in accordance with the provisions of the Schengen Borders Code and the national legislation in force:

- when they have been previously removed from Spain or have been the subject of a return measure and are within the period of prohibition of entry;
- when they are sought by the police or legal authorities of another country for serious offences, as long as the facts for which they are sought constitute offences in Spain;
- when they have been the subject of express prohibition of entry;

- when they are prohibited entry by virtue of international agreements to which Spain is party<sup>8</sup>.

The Foreign national Detention Facilities are used when a third country national must return to the country of origin or transit by reason of being in national territory illegally, or non-compliance with the entry requirements, and when this process cannot take place immediately. These facilities are of a non-penitentiary nature and the Ministry of the Interior is responsible for their management and administration. The decision as to the foreign national's internment in the Centre corresponds to the examining magistrate by virtue of territorial jurisdiction.

#### 4.1.2.2. Conditions for admission: Asylum

The Asylum and Refuge Office (OAR) is the body which processes applications for asylum. The OAR was established in 1992 and legally recognized in 1995 by the Regulations applicable to the current Law regulating the right of asylum<sup>9</sup>. This entity brings together all the civil servants and services involved in processing applications and granting asylum. Within its lines of action are processes regarding the filing of applications, processing of decisions, informing and guiding the interested parties, and matters related to documentation.

Asylum seekers who enter Spain and are granted the condition of refugee shall be entitled to a residence permit. Protection for humanitarian reasons is, by virtue of Article 17.2 of Law 5/84, amended by Law 9/94, redirected to ordinary legislation concerning alien affairs.

A provisional residence or stay permit —valid for up to 6 months— is granted to asylum seekers whose application is admitted for processing, renewable if upon the end of this period no decision has been made as to the application for asylum. Likewise, once the six months elapse and no decision is emitted, asylum seekers may obtain a work permit whose period of validity shall be extended until the resolution of the application.

Similarly, asylum seekers and refugees are entitled to access social programs. Some of these are summarised in the table below.

<sup>8</sup> Ministry of the Interior

[http://www.mir.es/SGACAVT/extranjer/regimen\\_general/entrada/pro\\_entrada.html](http://www.mir.es/SGACAVT/extranjer/regimen_general/entrada/pro_entrada.html)

<sup>9</sup> Royal Decree 203/1995 of 10 February, which approved the application of Law 5/1984 of 26 March, regulating the right of asylum and refugee status, amended by Law 9/1994 of 19 May.

Asylum seekers	Refugees
Accommodation in reception centres	Social and occupational integration
Economic aid for accommodation and board	Aid for access to housing
Medical attention	Educational and professional training
Legal advice	Interpretation and translation services
Interpretation and translation services	Emergency assistance
Return or resettlement	Aid for the elderly and disabled
Emergency assistance	Family reunification
Other aid	Return and resettlement

Social programmes may be offered through non-governmental organisations which work with this collective. In Spain, the most important organisations specialised in asylum seekers and refugees, counting with a network of reception centres, are the Spanish Red Cross (Cruz Roja), the Spanish Refugee Aid Committee (CEAR - Comisión Española de Ayuda al Refugiado) and the Spanish Catholic Association of Migrations (ACCEM - Asociación Católica Española de Migraciones).

Other entities which support and offer social services to refugees and asylum seekers are, amongst others, the Committee for the Defense of Refugees, Political Refugees and Immigrants (COMRADE - Comisión de Defensa de los Refugiados, Asilados e Inmigrantes), KARIBU, and the International Rescue Committee (CIR - Comité Internacional de Rescate).

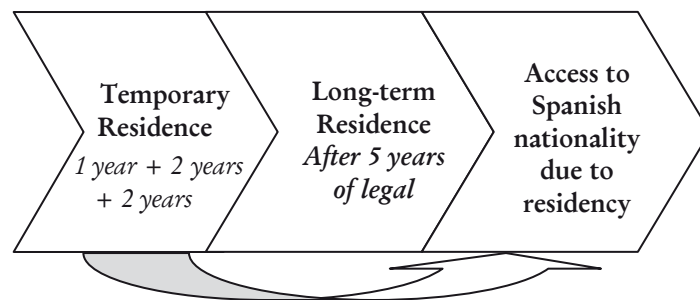
Similarly, the Refugee Reception Centres (CAR - Centros de Acogida a Refugiados) offer accommodation, board and psychosocial support to applicants for asylum and refuge with the objective of facilitating their integration into Spanish society. These public centres exclusively serve applicants for asylum and refuge who do not have sufficient economic resources and whose application for asylum has been accepted for processing. Beneficiaries offered accommodation through the CAR may remain only for a maximum of six months, renewable for another six months if the conditions so require.

#### 4.1.3. Legal residence

Residents are defined as aliens in Spain who are holders of a residence permit. These residents may have either temporary or permanent residence.

As long as the established requirements are met, third country nationals who enter Spain with a residence permit must renew it to access long-term residence and, if desired, Spanish citizenship. During each of these phases, specific procedures are to be complied with. The different phases through which an immigrant must pass in order to consolidate his/her residence in Spain before applying for Spanish nationality, if desired, are detailed below. Figure 8, below, summarises these phases.

FIGURE 8. *Phases of legal residence (in general terms).*



### First phase: Temporary residence

The beneficiary legally enters Spain upon obtaining the residence permit described in the previous section. However, the residence permit granted is temporary (the initial permit is granted for 1 year) and is only a first step towards definitive residence in Spain. After the first year, the renewal of said initial permit must be processed.

A foreigner who wishes to renew his/her temporary residence permit shall apply for renewal, through the official formulary established to this effect, during the period of 60 calendar days prior to the expiry of his/her permit.

As long as the application is filed within the specified time period, the validity of the previous permit shall be extended until there has been a decision on the procedure. When the application is filed within three months of the date of expiry of the previous permit, without prejudice to the institution of penalty procedures by virtue of the breaches of legislation incurred, the permit shall also be extended until there has been decision on the procedure. The Government Delegation or Sub-delegation shall make a decision on whether to grant or refuse the permit.

When the decision is favourable, the interested party shall be notified within three months, along with an indication of any amounts due as fees for granting the renewal requested and for the issue of a new Foreign national Identity Card. When the Public Body does



not expressly pronounce a decision within three months of the filing of the application, the decision shall be considered favourable.

The renewed temporary residence permit shall be valid for two years unless a permanent residence permit corresponds.

### **Second phase: Long-term residence**

To access permanent residence, third country nationals must effectuate two renovations (for a duration of two years each) of their initial temporary residence, always complying with the conditions which allowed for the granting of the first permit.

In general terms, any foreign national who can prove they have resided legally and in a continuous fashion in Spanish territory for five years is entitled to obtain a long-term residence permit.

The competent Administration shall emit the corresponding decision within three months as of the date of application. When the Administration does not emit an express resolution within three months of the filing of the application, the resolution shall be considered favourable.

### **Third phase: Access to Spanish nationality for residence**

If an immigrant so wishes, legal residence may lead to the acquisition of Spanish nationality. For some, this would be the culmination of a successful process of integration.

The specific regulatory framework for accessing nationality through residence is found in the Civil Code, precisely in Articles 17 to 28 in the Law on the Civil Registry (Arts. 63 to 68) and in the Regulations which develop it (Arts. 220 to 237)<sup>10</sup>. Integrated within

<sup>10</sup> The texts referred to may be found through the following links:

*Civil Code – Royal Decree of 24 July 1889 (Arts. 17 to 28) - <http://www.mjusticia.es/cs/Satellite?blobcol=urlpdf&blobheader=application%2Fpdf&blobkey=id&blobnocache=true&blobtable=ley&blobwhere=1077019255840&ssbinary=true>*

*Law on the Civil Registry – Law 8 June 1957, which regulates the Civil Registry (Arts. 63 to 68) - <http://www.mjusticia.es/cs/Satellite?blobcol=urlpdf&blobheader=application%2Fpdf&blobkey=id&blobnocache=true&blobtable=ley&blobwhere=1076948767127&ssbinary=true>*

*Regulations on the Civil Registry – Royal Decree of 14 November 1958, which publishes the Regulations of the Civil Registry (Arts. 220 to 237) - <http://www.mjusticia.es/cs/Satellite?blobcol=urlpdf&blobheader=application%2Fpdf&blobkey=id&blobnocache=true&blobtable=ley&blobwhere=1076948767133&ssbinary=true>*

the Ministry of Justice, the General Directorate of Registries and Notaries is the authority which processes and grants applications for Spanish nationality.

Legal residence in Spain during the period set forth in the Civil Code is grounds for applying for Spanish nationality. It is the most common, non-automatic way of acquiring Spanish nationality and has been used by thousands of immigrants over the past few years. Residence has to be legal, continuous and immediately prior to the application.

Generally speaking, the residence period is 10 years; however, shorter periods are set forth:

- Five years: for anyone with refugee status.
- Two years: for nationals of Latin American countries historically linked to Spain and Portugal, Andorra, the Philippines, Equatorial Guinea, Portugal or Sephardic Jews (descendants of the Jews expelled from Spain in the 15th century).
- One year: when the applicant was born in Spanish territory, when the applicant did not exercise the option to apply at the appropriate time, when the applicant has been under the guardianship of a Spanish person, when the applicant has been married or been the widow(er) of a Spaniard, when the applicant was born outside Spain to a mother, father, grandfather or grandmother that was originally Spanish.

TABLE 2. *Time of residence required per nationality*

	Time of residence
General norms	10 years
Refugees	5 years
Latin American countries, Andorra, the Philippines, Equatorial Guinea, Portugal and those of Sephardic Jew origin	2 years
Persons born in Spanish territory	1 year
Persons who did not exercise the option to apply at the appropriate time	1 year
Persons who have been subject to the guardianship of Spanish individuals	1 year
Persons who have been married or been the widow(er) of a Spaniard	1 year
Persons born outside Spain to a mother, father, grandfather or grandmother that was originally Spanish	1 year

In addition to legal residence, other requirements must be met:

First, those applying for Spanish nationality through residence must certify good civic conduct and sufficient integration into Spanish society. Generally, good civic conduct is proven by the absence of criminal and police records in both Spain and the country of origin. Verification of sufficient level of integration is done through an interview that is not subject to particular specifications, unlike other countries where official tests must be passed on the language and culture of the country of the applicant's desired citizenship.

Subsequently, and except in the cases of Latin American countries historically linked to Spain and Portugal, Andorra, the Philippines, Equatorial Guinea or Portugal, the acquisition of nationality through residence requires relinquishing the previous nationality. The scheme of dual citizenship in Spain has been established through the formalisation of bilateral agreements with specific Latin American countries<sup>11</sup>.

Lastly, once nationality through residence has been granted, the applicant's birth certificate shall be officially registered with the Civil Registry, including a marginal note referring to the data on the granting of Spanish nationality.

In short, the procedures for acquiring nationality through residence require the involvement of several bodies:

1. The Civil Registries which open the file and carry out the procedural steps and formalities following the decision to grant nationality (swearing in, relinquishing the previous nationality, registry of birth).
2. The General Directorate of Registries and Notaries of the Ministry of Justice which, through a resolution, grants or refuses Spanish nationality.

Both instances have been affected by an increase in applications for nationality, which has led to the adoption of the following measures:

- At Civil Registries: computerization, development of computer systems for the management of applications, creation of appointment or diary-based systems, and optimization of the human resources within said Registries.
- At the General Directorate of Registries and Notaries: employment of additional personnel, approval of extraordinary programmes to reduce the accumulation of job

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<sup>11</sup> Current conventional Spanish bilateral agreements on dual nationality include agreements signed with Chile, 22 May 1958; Peru, 16 May 1959; Paraguay, 25 June 1959; Nicaragua, 25 July 1961; Guatemala, 28 July 1961; Bolivia, 12 October 1961; Ecuador, 4 March 1964; Costa Rica, 8 June 1964; Honduras, 15 June 1966; Dominican Republic, 15 March 1968; Argentina, 14 April 1969; and Colombia, 27 June 1979.

banks, development of computer software on nationality, use of automated processes for communication between entities (Ministry of the Interior and National Intelligence Agency) and modifications concerning procedures to reduce and avoid duplications in the presentation of documentation.

#### **4.1.4. Conditions for access to the labour market: the general scheme and the contingent**

Conditions for accessing the labour market are determined by two mechanisms set forth in Spanish immigration legislation. First, third country nationals may access the Spanish labour market through the general scheme. Second, foreign workers may be contracted through the annual contingent. Although greater emphasis is placed on the second mechanism due to it being one of the defining characteristics of Spanish immigration policy as regards foreign workers, both mechanisms are explained below.

Before continuing, Spanish policy on immigration must also be put into context as regards the labour market. Since the first law on immigration, the Law of 1985, until the present, Spanish policy on immigration has had to face the challenge of the lack of planning as to the entry of immigrant workers. To date, a clearly structured legislation on the entry of migration flows for employment purposes has been adopted. This entry, whether through the general scheme or the contingent, is always dependant on the labour market situation.

##### **4.1.4.1. The General scheme**

The general scheme is the oldest mechanism provided for by Spanish immigration legislation. Through this channel for the legal employment of foreign workers, both the employer in Spain and the foreign worker establish contact without the prior mediation of the Spanish Administration. The Administration only intervenes in granting or refusing work and residence permits applied for by the employer who has reached an agreement with the foreign worker residing outside Spain.

Point 4.1.1 *Procedures for entry* details the competent authorities for evaluating and deciding on applications for residence and work permits.

#### 4.1.4.2. The contingent

Another channel used by different Spanish governments since the nineties the contingency. However, new Regulations which appear in the year 2000 (Organic Law 4/2000 and its subsequent modifications) reformulate the quota for the purpose of using said channel as the principal mechanism by which to regulate the entry for employment of immigrant workers.

Since 2001, Spain's has become one of the most attractive labour markets for immigrants. Since the socialist government assumed power, it has recognized that the most appropriate approach is not so much the link between migration flows and more restrictive policies, but rather the regulation of migration flows to promote legal immigration and eliminate illegal employment. For this reason, and given the real impossibility of the Spanish population filling the almost 690,000 annual job vacancies created between 2001 and 2005, the flow of foreign workers entering Spain has intensified. The contingent has helped to regulate the increased number of foreign workers entering Spain.

The contingent is a list published annually by the Government, with the input of Autonomous Communities, business organisations and trade unions. This list includes hard-to-fill jobs which, depending on the circumstances of the national labour market, remain unfilled by Spanish resident population and are consequently offered to potential foreign workers residing outside Spain. This list gathers hard-to-fill jobs which, depending on the circumstances of the labour market nationally, fail to be filled by Spanish resident population and are, therefore, offered to potential foreign workers residing outside Spain.

The contingent has three distinct sections. First, the main type of the contingent has a list of **offers of permanent job positions**. Second, a quota of **job search visas**. Lastly, the employment mechanisms for **seasonal workers**. The selection of foreign workers for permanent positions job opportunities is carried out in the country of origin in collaboration with Spanish authorities and those of the candidates' country; businesspersons intending to hire through this channel may also participate directly or indirectly.

The Spanish Administration is responsible for managing the contingent both in Spanish territory and the country of origin, compiling the job offers from employers, through the applicant selection process in close collaboration with local authorities in that country. The third countries presented with the list of employment offers in the Spanish labour market are preferentially those with which Spain has signed Agreements to Regulate and Plan Migration Flows, as previously mentioned.

It should be highlighted that the figures approved annually are provisional in nature and subject to modification in order to adapt them to the changing circumstances of the labour

market. For 2008, the quota was consisted of 15,731 hard-to-fill jobs offered to those countries with which Spain has signed Agreements to Regulate and Plan Migration Flows. In accordance with legislation concerning the definition of the contingent, employment posts are defined by territory and sector. Table 3 depicts the territorial distribution of the contingent by Autonomous Communities. The sectors of activity requested can be consulted in the Agreement approved by the Council of Ministers.<sup>12</sup>

TABLE 3. *Demand for labour by Autonomous Community. 2008 contingent*

Autonomous Community	Quota
Total	15,731
Catalonia	6,171
Madrid	4,282
Galicia	1,345
Navarra	725
Aragon	692
Valencia	471
Basque Country	445
Castille y Leon	316
Andalusia	286
Castille La Mancha	272
Murcia	260
Cantabria	135
Canary Islands	130
Extremadura	100
Balearic Islands	67
Asturias	34

According to the data, Catalonia and Madrid lead the list by a long way in the demand for labour contracted in the country of origin.

The Agreement which regulates the annual Contingent also establishes the possibility of granting job search visas. This option results from the complexity of managing the quota. Problems regarding the management of job offers by both Spain and the countries

<sup>12</sup> Quota of permanent foreign workers 2008.

[http://extranjeros.mtin.es/es/ModelosSolicitudes/archivos/ACUERDO\\_CONTINGENTE\\_2008.pdf](http://extranjeros.mtin.es/es/ModelosSolicitudes/archivos/ACUERDO_CONTINGENTE_2008.pdf)

of origin has caused, on more than one occasion, a failure to fill all the posts offered annually through each contingent.

The number of job search visas is set out in the annual contingent. Through this mechanism, an employer may directly recruit the person who fits best with the profile of the position offered, thus avoiding problems of lack of clarity or of processing through the traditional contingent. This type of visa is primarily aimed at children and grandchildren of Spaniards residing outside Spain. However, it may also be granted to foreign workers outside Spain that wish to work in sectors of activity where on-site contact between the employer and the applicant is important, as is the case of domestic workers and hotel businesses.

Finally, the contingent also establishes the procedures to be followed in contracting seasonal workers. Unlike job offers for permanent positions, the quota does not plan or define any volumes for contracting seasonal workers. In accordance with current legislation, norms included in the contingent for seasonal workers establish that the work and residence permit for seasonal workers may not exceed nine months, and for temporary workers in works and services it may not exceed 12 months in any case (Regulations of Law 4/2000, Art. 55). On expiry of this period, the temporary worker must return to his/her country of origin.

Companies wishing to hire seasonal workers must prove that they have adequate lodging for these workers, organise the initial trip to Spain as well as the return trip to the country of origin, and obtain the commitment of the worker —through the completion of a form— that the worker will return to his/her country of origin upon the termination of the employment relationship. Foreign workers who do not return to their country of origin upon the finalization of a contract may not access any other employment offers in Spain for three years.

#### **4.1.5. Return**

The return of third country nationals may be forced or voluntary.

##### **4.1.5.1. Forced return**

Forced return is applied to third country nationals who do not meet the requirements for entry, do not hold a valid authorisation, are in Spanish territory illegally, or have not complied with a removal order issued by Spanish authorities. Similarly, third country nationals who commit serious or very serious offences during their residence period in

Spain may be removed, after the corresponding administrative file has been processed. When a third country national fails to respect prohibition of entry to Spain issued by Spanish authorities, or enters Spanish territory illegally, the processing of a removal file is unnecessary. Persons removed from Spain will be prohibited from re-entering Spain for between three and ten years. Seasonal workers and beneficiaries of a job search visa who after three months have not found employment must also return to their country of origin.

The Government may adopt precautionary measures concerning persons subject to removal. Included in these precautionary measures are periodic reporting to the competent authorities; obligatory residence at a determined place; withdrawal of passport; preventive custody for a maximum of 72 hours; or precautionary confinement.

A third country national that does not meet the necessary requirements for entry to Spain shall consequently be returned to his/her country of origin. In any case, during the processing of the return decision, the interested party shall be entitled to legal aid free of charge. Once the decision has been made, the return must take place within the following 72 hours. In case of non-compliance with this period, the competent authorities shall decide on whether to admit the affected party to a Detention Facility until the moment of return (Organic Law 8/2000, Art. 60). The detention of the person to be returned shall be notified to the embassy or consulate of his/her country of origin, and if this is not possible, to the Ministry of Foreign Affairs and Co-operation. Detention at a Foreign national Detention Facility may not exceed forty days. When removal cannot be effected within this time period, the court authorities shall request the release of the foreign national. Foreign nationals detained at Detention Facility shall be entitled to information regarding their situation; the safeguard of their life and physical wellbeing; medical assistance; and translation services, among others.

The process of removal of third country nationals without authorised residency is faster for immigrants whose country of origin has signed Readmission Agreements with Spain. To date, Spain has signed Readmission Agreements with Algeria, Bulgaria, Slovakia, Estonia, France, Guinea Bissau, Italy, Latvia, Lithuania, Macedonia, Morocco, Mauritania, Poland, Portugal, Romania and Switzerland<sup>13</sup>.

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<sup>13</sup> Readmission Agreements signed by Spain – <http://extranjeros.mtin.es/es/NormativaJurisprudencia/Internacional/ConveniosBilaterales/ConveniosReadmision/>



#### 4.1.5.2. Voluntary return

The voluntary return of third country nationals living in Spain has been the subject of Agreements to Regulate and Plan Migration Flows. All of these defend as a goal the reintegration in the country of origin of the workers who wish to return.

Third country nationals who wish to be entitled to the Return Plan must meet a series of requirements: a) not have economic resources and be in a socially vulnerable situation, as determined by specific circumstances, b) have resided in Spain for at least six months, c) present a report issued by the Social Services of the local authority where they reside or by a specialist NGO, d) present a declaration as to the voluntary nature of the desire to return.

Beneficiaries of the Voluntary Return Plan are entitled to access information and advisory services, an international return ticket to their country of origin with any transit expenses included, expenses for medicine or travelling companions on presentation of justification, economic aid of 50 euros per member of the family unit, and economic aid for reintegration in the country of origin of around €400 per person to a limit of €1,600 per family unit<sup>14</sup>.

The Ministry of Labour and Immigration, in collaboration with the International Organisation for Migration and other NGOs specialising in migration issues, is responsible for the Voluntary Return Plan. Among those NGOs which collaborate with the Voluntary Return Plan are the America-Spain Solidarity and Cooperation Association (AESCO - Asociación América España Solidaridad y Cooperación), the Spanish Catholic Association for Migration (ACCEM - Asociación Católica Española de Migraciones), Spanish Cáritas (Cáritas Española), CEPAIM, the Spanish Red Cross (Cruz Roja Española), the Movement for Peace, Disarmament and Liberty (MPDL - Movimiento para la Paz, el Desarme y la Libertad) and RESCATE.

The Voluntary Return Plan is not aimed exclusively at immigrants. Asylum seekers, refugees and stateless persons may also be entitled to this Plan. Persons interested in this measure should contact the NGOs mentioned, the social services of the local authority where they reside, or the State Secretariat for Immigration and Emigration.

Even though this issue has been a subject of interest for the Spanish Government, as proven by Agreements to Regulate and Plan Migration Flows signed with different countries, in which the possibility of voluntary return is one of several issues approved,

<sup>14</sup> Voluntary Return Plan – [www.mtin.es/es/Guia/texto/guia\\_14\\_45\\_5.htm](http://www.mtin.es/es/Guia/texto/guia_14_45_5.htm) and [www.mtin.es/es/migraciones/Integracion/Integralnmigrantes/docs/Info\\_General\\_Programa\\_Retorno.pdf](http://www.mtin.es/es/migraciones/Integracion/Integralnmigrantes/docs/Info_General_Programa_Retorno.pdf)

and was also the subject of Law 4/2000, it is increasingly present in the current context of economic crisis. An example of this heightened interest in the matter is Royal Decree-Law 4/2008 of 19 September, on the possibility of cashing in unemployment benefits to which third country nationals are entitled in exchange for voluntarily return to their country of origin<sup>15</sup>.

Through this measure, the Government aims to help foreign workers who have contributed to the economic growth of Spain and have decided to return to their countries of origin so that this return will take place in the best possible conditions, providing them with capital which will undoubtedly favour the possibility for labour reintegration in their countries.

The intention is for this initiative to become permanent in order to facilitate so-called "circular migration", which allows migrants to decide whether to stay in Spain depending on both the employment opportunities in their country of origin as well as those in Spain. In addition, it aims to favour the development of the countries of origin of Spain's migration flows, through the arrival of qualified professionals with experience and economic resources to continue working there.

Logically, the cumulative and advance payment of unemployment benefits to which the foreign worker is entitled requires that the worker actually returns to his/her country of origin within thirty days and undertakes not to return to Spain for three years.

Similarly, the text also considers, on one hand, the possibility for the beneficiaries of this measure to occasionally receive direct aid for their return (for the displacement of foreign workers). Conversely, it contemplates the possibility of the applicants benefitting from preparatory actions for return, such as information, guidance and training in setting up a business (Royal Decree-Law 4/2008, Additional Exclusive Provision).

## **4.2. Links with other policies**

### **4.2.1. Integration**

As regards public policies on the integration of immigrants, it is important to note its close connection to other public policies of a more general nature, such as education, employment, housing, social services, health, women, infancy and youth, and equal

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<sup>15</sup> Royal Decree-Law 4/2008 of 19 September, whereby the national Public Employment Service is given the possibility of paying, in advance and cumulatively, the contributory unemployment benefit to non-EU foreign workers who have lost their employment in Spain and voluntarily decide to return to their country of origin.

treatment. Therefore, the Strategic Plan for Citizenship and Integration (2007-2010) is structured into 12 areas of intervention containing the objectives, strategies to be adopted and measures to be developed in each of these areas. Furthermore, this Plan must also consider how it links with public policies developed by regional and local governments who have majority competence in these areas. The Support Fund for the Admission and Integration of Immigrants, allocated €200 million a year, is the main instrument for coordinating these policies. This Fund is distributed among the Autonomous Communities and Local Authorities based on objective criteria regarding the presence of immigrants within their territories, and is materialised through specific Action Plans agreed annually with the national Government through the State Secretariat for Immigration and Emigration. Subsequently, a monitoring committee analyses the implementation of these Action Plans and prepares new priorities for the following year.

The objectives for each of the areas of intervention covered by the Strategic Plan for Citizenship and Integration (2007-2010) are detailed below. In order to reach these objectives, specific programs linked to each of them have been designed.

#### **4.2.1.1. Reception**

*Objective 1:* Provide immigrants with the tools necessary to reach a level of autonomy sufficient for accessing goods and services, exercising rights and fulfilling duties under the same conditions as the native population.

The third sector and local authorities play a key role in reception, and therein lies the importance of strengthening their participation in the planning, implementation and monitoring of different programmes. Based on an integral reception concept, these programmes must be capable of adapting themselves to each migration project's implicit needs.

*Objective 2:* Setting up a National Network of Mechanisms for Integral Reception throughout Spain, capable of responding to needs for an integral reception, the reception of those persons in situations of social vulnerability and specialist receptions.

It is foreseen that different Public Bodies and specialist NGOs will participate in this Network. The Network must be able to offer a quality service, provide information on resources available at each moment throughout Spain, and provide a rapid, flexible and balanced response to emergency situations which may arise.

#### 4.2.1.2. Education

*Objective 1:* Guarantee immigrant students' access to compulsory education under the same conditions as natives.

*Objective 2:* Guarantee the quality of compulsory education, independent of the status or origin of the student.

*Objective 3:* Adapt the education system to the diversity of the student population through the adequate management of said diversity and promoting the acquisition of intercultural knowledge and competence.

Similarly, it is important to promote actions aimed at maintaining the language and culture of origin of immigrant students.

*Objective 4:* Transform schools into spaces for communication, coexistence and integration into their surroundings.

*Objective 5:* Facilitate immigrant students' access to non-compulsory schooling (children's education and post-compulsory phases).

The attainment of equal opportunities for immigrant students requires the adoption of measures which allow for access to non-compulsory education based on equality.

*Objective 6:* Improve immigrants' access to adult training.

*Objective 7:* Improve procedures for the certification of academic qualifications.

#### 4.2.1.3. Employment

*Objective 1:* Adapt regulations on employment and Social Security in order to guarantee equality of rights and duties.

Given the significant presence of immigrants in the labour market, some regulations on labour and Social Security require adaptation, the ratification of international mechanisms to guarantee equal treatment, and the promotion of signing bilateral agreements related to Social Security.

*Objective 2:* Continuously improve the management of migration flows.

To this end, the Catalogue of Hard-to-Fill Jobs, the Annual Contingent and mechanisms for legal access to the labour market in Spain are continually monitored to improve the adaptation of the flows to the needs of the market; in addition, means of expediting the administrative processes abroad and in the management of work and residence permits renewals within Spain are sought.

*Objective 3:* Promote the continuation of employment, professional promotion and training, as well as the adaptation of the immigrant working populations' competencies to the opportunities of the labour market.

Furthermore, to promote the professionalisation of activities in which immigrants are present in high numbers and the creation of businesses amongst the immigrant population, as well as the dissemination of regulations regarding occupational safety.

*Objective 4:* Improvement of the mechanisms of arbitration in the labour market.

With this objective in mind, the intention is to review the protocols for arbitration in order to adapt these to new necessities, train employment management professionals in matters on immigration, and improve civil servants' knowledge of the functioning of the labour market and occupational structures in both Spain and the countries of origin.

*Objective 5:* Fight against the illegal employment of immigrant workers in the hidden economy.

*Objective 6:* Fight against discrimination and in favour of equal opportunities of immigrants in the labour market and within companies.

*Objective 7:* Promote the management of diversity within companies.

#### **4.2.1.4. Housing**

*Objective 1:* Extend the availability of subsidized housing within the whole of the real estate market and promote a greater balance in the ownership of housing by groups with low incomes.

*Objective 2:* Prevent the occurrence of residential situations of substandard housing and overcrowding in the initial phases of settlement.

*Objective 3:* Fight discrimination against immigrants in the real estate market.

*Objective 4:* Improve coexistence and prevent residential segregation.

#### **4.2.1.5. Social Services**

*Objective 1:* Adapt the Social Services system to the needs of a more diverse society in order to guarantee access, in equal conditions, to services for all citizens.

*Objective 2:* Strengthen Social Services in order to guarantee access, in equal conditions, to services on behalf of all citizens.

The Social Services system needs to be strengthened in order to eliminate barriers to accessing these resources and to avoid situations of competition between the immigrant and native populations in situations of special vulnerability.

*Objective 3:* Develop means for coordination between institutions, and the management of information available by different Authorities and Entities working in social services.

#### **4.2.1.6. Health**

*Objective 1:* Guarantee immigrants' right to health protection.

*Objective 2:* Improve the identification of the social and sanitary needs of the immigrant population.

*Objective 3:* Improve the training of health personnel in techniques for managing the health of immigrant populations.

#### **4.2.1.7. Infancy and Youth**

*Objective 1:* Encourage the normalized access of minors and youths of immigrant origin to infancy and youth programmes.

*Objective 2:* Promote social intervention and care for girls, boys and young immigrants in situations of special vulnerability.

*Objective 3:* Support the social participation of girls, boys and young immigrants.

#### **4.2.1.8. Equal Treatment**

*Objective 1:* Fight against discrimination due to racial or ethnic origin within the framework of the fight against all forms of discrimination to guarantee equal opportunities.

*Objective 2:* Include equal treatment in all public policies.

*Objective 3:* Activate mechanisms for the promotion of equal treatment and non-discrimination due to racial or ethnic origin.

#### **4.2.1.9. Women**

*Objective 1:* Integrate the gender perspective in all phases of migration policies.

*Objective 2:* Favour a normalized access by immigrant women to specific programmes aimed at women in general.

*Objective 3:* Facilitate the social integration of immigrant women in situations of special vulnerability.

#### **4.2.1.10. Participation**

*Objective 1:* Consolidate the work of immigrants' associations and their interaction with the general associative fabric.

It is necessary to strengthen the still fledgling immigrants' associations. Simultaneously, the intention is to ensure that immigrants' associations do not evolve in an isolated way or retreat into themselves, but on the contrary that they become a way of increasing interactions with the native population and improving mutual knowledge, learning and adaptation.

*Objective 2:* Increase the participation of immigrants in associations of a general nature.

*Objective 3:* Expand and improve the channels for political participation for both male and female immigrant citizens.

A core component of participation in public matters is the opportunity to take part in elections, particularly those at local level, either by voting or presenting oneself as a

applicant. Therefore, full advantage should be taken of the options offered by the Spanish Constitution, which grants immigrants the right to participate in politics and promotes bilateral Agreements with the main countries of origin so as to reciprocate this right.

#### **4.2.1.11. Raising awareness**

*Objective 1:* Improve the public image of immigration and promote the positive aspects of a society characterised by diversity.

*Objective 2:* Generate a change of attitude on immigration.

The goal is to act on those areas and specific persons who influence the population's attitudes with regards to immigration; transmitting and promoting positive factors inherent to immigration in such a way that awareness raising actions will generate changes in the population's attitudes.

#### **4.2.1.12. Codevelopment**

*Objective 1:* Identify and promote opportunities for development of the countries of origin of immigration to Spain.

*Objective 2:* Integrate the codevelopment perspective in the processes of immigrant integration.

*Objective 3:* Promote actions to prevent the human undercapitalization of the countries of origin.

The importance of preventing risks of destructuralisation which may be inherent to migration processes lies in the fact that these negatively affect the society receiving the migrants as well as the country of origin. Similarly, it is necessary to mitigate the negative impact of emigration in its social aspects as well as the undercapitalization of human and productive resources.

### **4.2.2. Framework Agreements related to Immigration**

In exercising a global approach of migration, it is important to note the major effort being made by Spain to facilitate the planned entry of foreign workers required by our



labour market. It is necessary to bear in mind that legal immigration may represent a very important indirect aspect of the fight against illegal immigration. This effort requires sometimes facing numerous difficulties, such as those resulting from the inability of the Authorities of some countries of origin to manage employment and emigration, the deficiency in the training of some applicants for labour emigration, and costs regarding the travel of foreign workers and the travel of employers for their participation in the selection of workers, among others.

The communication and coordination with third countries is materialised through agreements on migratory flows as previously mentioned in section 4.1, though the innovative Framework Agreements concerning immigration, alluded to in this section, also foresee the articulation of measures for fighting against illegal migration.

In fact, these Framework Agreements reflect a change of perspective with regards to the traditional bilateral Readmission Agreements, whose objective is circumscribed to the facilitation of procedures for identifying and readmitting illegal foreigners. In current Framework Agreements, the signatories agree, as far as their possibilities and resources allow, to assist the other in the areas promoting the hiring of workers citizens of the contracting party's country, promoting programmes for voluntary and assisted return, promoting measures which facilitate integration within the receiving society, contributing towards the development of and cooperation in the fight against irregular immigration and the smuggling of migrants, and the readmission of illegal nationals. This is the way by which the advance towards the implementation of principles of co-responsibility and co-operation with those countries with which these agreements are signed is envisaged, in the fight against poverty, the contribution towards the African development agenda, and the expansion of Spain's political projection and institutional presence within the same.

Migratory Co-operation Framework Agreements have been signed, since the year 2006, with Gambia, Guinea-Conakry, Cape Verde, Mali and Nigeria.

### **4.2.3 Cooperation for development**

During the 20th century, a lack of prospects forced millions of Spaniards to abandon the country, leaving behind their family and surroundings to travel to America, Europe, and even Asia in the search for new employment and livelihood opportunities which were not possible in Spain. This recent experience as a country of origin, along with its current standing as a country of destination, makes Spain especially aware of the hardship personally experienced by emigrants, as well as to what degree migration may contribute to the development of countries of origin, transit and destination. This dual experience

as a country of origin and of destination has also contributed to Spain's adoption of a perspective based on solidarity and commitment to the phenomenon, approaching it with a closer and more intimate understanding of the concerns and needs of the parties involved.

Poverty and lack of resources have led, and will lead, persons to emigrate in the search for livelihood opportunities and prospects which are denied them in their countries of origin. Nevertheless, it is important to note that the fight against poverty and the reality of migration are two phenomena which do not have a direct, causal link. In other words, the fight against poverty is an end in itself that is not subordinate to any other objective and is an essential part of Spain's foreign policy. Development policies do not have as their objective to directly influence migration flows, but rather to generate livelihood opportunities and prospects in the countries of origin as ends in themselves.

This does not prevent development policies, indirectly and in the long term, together with other actions and policies, from helping to create a context in which migration may be the product of the free will of the emigrant and not based on necessity.

The policies of cooperation for development must generate results over the long term. Meanwhile, it is also necessary to establish effective responses to the challenge posed by migration, so as to tackle the drama of illegal emigration, with its costs in loss of human lives, while also involving the countries of origin of the migration flows in the drafting of public policies on migration which may contribute to their own development.

Within the framework of these considerations, the State Secretariat for International Co-Operation (Ministry of Foreign Affairs and Co-operation) has promoted actions for coordination and coherence with other areas of the administration linked with managing migration (basically the Ministries of Interior and Labour and Immigration) for the purpose of reaching a shared position concerning migrations and development. This perspective fuels international debates and is the foundation for any action concerning cooperation in this area on behalf of Spain.

I. First, Spain defends the need to tackle wide-ranging development strategies which will have an impact on the root causes of migration flows, generating opportunities and prospects for a dignified life in the countries of origin. Policies aimed at reducing poverty, improving levels of education and health, promoting productive resources, economic growth and job creation as well as good governance, democracy and human rights, should contribute towards impacting on the deep, structural causes of migration. Similarly, coherence is fundamental among policies likely to have an impact on development.

II. In the short and medium terms, and from a more specific and concrete perspective, countries of origin and transit of migration must be helped to create and put into practice public policies on migration, agreed upon by consensus, for an adequate management of migration flows by all of the countries involved (origin, transit and destination), in order to maximize the positive effects and diminish the negative consequences inherent to any migration, for the countries as well as for the emigrants and their families. In this sense, the first responsibility lies in the countries of destination themselves. However, it is also necessary to involve the countries of origin and transit. Spain has worked intensely on the design of these public policies on migration, which should be an integral part of national development plans, as well as policies for international cooperation, considering, furthermore, that these must be based upon an integral approach to migration flows which, necessarily, must tackle different areas:

- Establishment of mechanisms of information, management and support for migration to improve the sources of statistics and promote legal channels for migration through public migration services; these mechanisms must also promote schemes for circular migration and temporary mobility as well as support for emigrants abroad and the search for measures which support voluntary return.
- Mechanisms for training and employment, aimed at the creation and improvement of people's professional qualifications and their insertion into the labour market. Additionally, the promotion of the official recognition of qualifications between countries of origin and destination, and the stimulation of alternatives to the loss of skills and professionals experienced by many countries of origin.
- The creation of social support networks for migrant persons and their families who remain in the countries of origin; special care for minors; research on systems for the portability of social rights to which workers are entitled.
- Mechanisms for boosting the economic effects of migration on development. Therefore, within the framework of the Initiative against Hunger and Poverty, Spain has been searching for channels or mechanisms which would increase the impact of emigrants' remittances on the development of their countries of origin. These mechanisms may also include promoting emigrants and their family members' capacity for business creation, facilitating their access to financial institutions, offering training programmes, and lending financial support, if necessary.
- Stimulating the links and contributions of the diasporas and immigrants' associations in the reception country to the development of their countries of origin through codevelopment programmes.

From the perspective of Spain, it is crucial to point out the integral approach which must be inherent to public policies on migration. Each of these areas for action complement one another, and it is necessary to maintain coherence across the migration policies covering these areas. These policies are interlinked, always based upon the principles of ownership of the countries of origin and transit, partnership or association, and co-responsibility between the countries of origin, transit and destination of emigration. Furthermore, all of these policies should be lasting and for the long term.

### III. Spain's position in multilateral forums and in the EU.

During the United Nations' High-level Dialogue on International Migration and Development (held in September 2006), Spain presented its proposals on migration and development, resulting from a long process of reflection involving different Ministries (Foreign Affairs and Co-operation, Interior and Labour and Immigration). Since then, Spain has decisively adopted a position in favour of multilateral channels and an active participation in a diversity of international forums on the issue, such as the Global Forum on International Migration and Development, organised for the first time by Belgium and held in Brussels (July 2007), and for the second time in Manila in 2008 under the presidency of the Philippines. Within this context, Spain has already expressed its intention to chair the forum in 2011. Spain is also part of the OECD's Working Group on Migration and offers its experience to any multilateral Forums it is invited to as a member, such as the OSCE (Organisation for Security and Co-operation in Europe), the Council of Europe (European Committee on Migration), the GDISC (General Directors' Immigration Services Conference) or the IGC (Intergovernmental Consultations on Migration and Asylum).

Within the European Union, Spain's perspective is based on an integral focus of migration in line with the "Global Focus on Migrations" of the Conclusions of the European Council of December 2005, which from a global and balanced vision encompasses measures aimed at fighting against illegal immigration and taking advantage of the benefits of legal migration in cooperation with third countries. From this viewpoint, the contribution of Spain to the Ministerial Conference on Migration and Development celebrated in Rabat in June 2006, as well as the development of its Action Plan, should be highlighted. Within the follow-up of the Euro-Africa Conference on Migration and Development of Rabat, Spain co-presided with Senegal the Meeting of Experts on Migration and Development which took place in Dakar between the 9th and 11th of July 2008, assuming a very active role in the meeting on laboural Migration celebrated in Rabat in January of this year and in the meeting on the fight against illegal Immigration celebrated in June 2008 in Ouagadougou, three meetings which fed the debates of the Second Euro-Africa Conference held in November 2008 in Paris.

Spanish participation has also been prominent in the drafting, along with France and Germany, of the European Pact on Immigration and Asylum, approved by the JHA Council in October 2008 and by the Council of Europe in December of that year, the basis for the common European policies on migration.

International Migration cannot be managed unilaterally, but rather, requires dialogue and agreement among all of the affected countries, in addition to an intensification of cooperation and the assumption of shared commitments and responsibilities which benefit all, whether countries of origin, transit and destination. Spain shall keep working towards making migration a positive factor for both the receiving countries and the originating countries, and assumes its first responsibility for achieving this objective.

## **5. Analysis of the migration and asylum system**

**T**his chapter describes the basic characteristics of the current Spanish migration and asylum system, through an analysis of the social, political and economic context in which the Government creates its migration policy—in addition to its ties with the European Union—which is the starting point for future political and legislative developments. Based on the accumulated experience of recent years, it describes the improvements being considered for the future.

In keeping with the Global Approach to Migration, Spain has promoted, both within its borders and within the institutions of the European Union, a comprehensive migration policy committed to the planned management of legal migration flows, based on co-responsibility and solidarity of the countries involved and coordination of the administrations involved. The next steps to be taken as regards policies on migration and asylum in Spain are aimed at consolidating this process.

As regards the main priorities of the migration policy, something which is shared across the European Union, Spain has followed its own immigration policy model since 2004:

Within the **planned management of migration flows**, the arrival of immigrant workers is conditioned by the demands of the labour market. The national employment situation creates the circumstances in which more workers are granted entry, based upon evaluations which have proved to be effective during times of significant need for manual labour and as a reaction to a shortage of job offers.

The **fight against illegal immigration** is a shared concern and, without a doubt, the core theme most developed by the common rules of the European Union. The fundamental

premise is that illegal immigration is detrimental both to Member States and immigrants. The objective is to minimize the amount of illegal immigrants, whilst of course retaining a scrupulous respect for the Rule of Law and fundamental rights. The dual approach of this policy is prevention and responding to existing situations.

The **integration of immigrants** is an objective that is also shared as a reference point for all societies and —given the existing social, legal and economic differences of immigrants throughout the host societies in each Member State and, particularly, in the most developed ones— it is possibly the area most open to debate in the European Union. In the case of Spain, given the absence of a formal regulatory definition as such, there should be room for a framework within a model for intercultural integration, where equality of rights and obligations, a non-discriminatory coexistence of identities and cultures without the superiority of one over the others, and a respect for the Constitution and the law are the fundamental characteristics of the policy.

In the near future, the reform of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration will commence. This act regulates the rights and freedoms of foreign persons in Spain and their social integration. It contains the main regulations concerning immigration and, as has been highlighted in the preceding chapters, it has already been reformed on three occasions. It is expected that the new reform will be made law in the course of 2009. This reform will incorporate into Spanish law European Directives that have been adopted in recent years, and whose incorporation is still pending. They comprise the following:

- Council Directive 2003/110/EC of 25 November 2003, on assistance in cases of transit for the purposes of removal by air (OJ of 6 December 2003).
- Council Directive 2003/109/EC of 25 November 2003, concerning the status of third-country nationals who are long-term residents (OJ of 23 January 2004).
- Council Directive 2004/81/EC of 29 April 2004, on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (OJ of 6 August 2004).
- Council Directive 2004/82/EC of 29 April 2004, on the obligation of carriers to communicate passenger data (OJ of 6 August 2004).
- Council Directive 2004/114/EC of 13 December 2004, on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (OJ of 23 December 2004).

- Council Directive 2005/71/EC of 12 October 2005, on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ of 3 November 2005).
- Directive 2008/115/EC of the European Parliament and of the Council of 16 December, on standards and procedures in Member States for returning illegally staying third-country nationals.

## 5.1. Immigration tied to employment

The most recognizable priority of immigration policies since 2004 has been the planned channelling of migration flows on the basis of employment opportunities, and its primary characteristic has been the consensus of social agents.

Spain's sustained economic growth since the second half of the nineties and during the first years of 2000, was accompanied, especially since 1999, by a hitherto unknown increase in the arrival of immigrant workers. The labour market inaugurated a dual phenomenon of relatively high —when compared with nearby countries— unemployment rates coexisting with employment opportunities in sectors and occupations which, in general terms, native workers did not want to or were not able to fill. Given that neither the legal nor the administrative structures were prepared for this phenomenon, foreigners began to arrive in a disordered manner. Immigrants occupied jobs within the informal economy; in other words, jobs in legal activities backed by a legal employer or company but without the workers holding residence and work permits. Despite different regularisation procedures during 2000 and 2001, in 2004 information was made available that pointed to the existence of hundreds of thousands of foreign workers without authorised residence.

In 2004, with a change in government, and faced with the task of approving a Regulation to implement the Organic Law on Foreign Persons, the Government initiated negotiations with trade unions and employers' organisations with one purpose: to develop a policy for regulating flows which from then on would legally satisfy the needs of the market. The resulting model was as follows: the Public Employment Services diagnose the situation through a statistical analysis of the labour market. Using this analysis, a Catalogue of Hard-to-Fill Jobs (*Catálogo de Ocupaciones de Difícil Cobertura*) is created for each province, listing the positions to be filled. From this starting point, employers who need workers may apply for the relevant permit and the worker, newly arrived from his/her country of origin, may legally start work.

An obstacle to the system's viability was the existence of an illegal workforce, and, although it was of an unknown dimension, it was sufficiently large to impede the system's



proper functioning. For this reason, and in agreement with social agents, a process was set up for the regularisation of foreign workers – something which could also be considered as a regularisation of labour relations, since employers were acting just as illegally as the workers. As a result, over 575,000 labour relations were regularised. This was considered a success in terms of integration, legalisation and regulated revenue through tax and social security contributions from jobs that became completely legal, in addition to fulfilling the essential condition for instigating another management method as of that moment.

The efficiency of the system has been proven by statistics on work and residence permits granted between those years and now, given that efficiency must be valid both for times of economic growth and periods of economic downturn when the demand for employment diminishes. That way, the Government has continued to develop the processes of dialogue and consultation needed for contemplating the necessity of integrating this system into the highest level of legislation by including it in the text of the preliminary draft of the Foreign Persons' Law, which will reform the law in this area in the forthcoming months. In this respect, it will reinforce this priority which until now has had the following essential characteristics:

- The system for channelling the arrival of new foreign workers will continue to take account of the needs not covered by workers in the Spanish market – whether they are Spanish nationals, residents of the EU or from third countries.
- The Public Employment Service is responsible for diagnosing the employment situation nationwide, but this analysis relies on the necessary participation of the Autonomous Communities through their respective Employment Services and social agents.
- The legal authorisation which certifies an immigrant worker's situation is a residence and work permit. Some Autonomous Communities whose statutes have made provision for this, (until now, Catalonia and Andalusia), will grant the initial permission to work. They will grant residence permits issued by the General Administration of the State through a single procedure under coordination as necessary.
- Along with the general system for the arrival of foreign workers, others, derived from Directives pending approval, which intend to establish more favourable and specific channels for the arrival of highly qualified researchers or workers, will also be incorporated.

Recent years have shown the positive effects for both Spain and the countries of origin of **circular and temporary migration**, aimed, from the start, at the return to the country of origin and the investment there of the income earned in Spain. The Spanish Government intends to promote these experiences as a fundamental means of co-development by:



- Increasing the incentives for foreign workers who participate in these projects and who fulfil their obligation to return, granting them priority for subsequent new contracts and access to quotas for stable entries.
- Guaranteeing the rights of those who participate in these projects, in particular as to the employment conditions and those relating to accommodation.
- Promoting the coordination of different temporary work available nationwide.

## **5.2. Family reunification**

Family reunification is a right of residents that is not tied to employment, but rather to the situation which strengthens the residence of persons already in Spain. Along with the positive process of integration and consolidation of the migration project for immigrant workers, logically, family reunification will increase in number; therefore, when it refers to family members outside of the nuclear family, its scope must be adapted to our country's ability to receive, and it must also take account of the repercussions on the labour market.

Reforms concerning this scope pursue a dual purpose: to improve the future integration of reunited family members and to give priority to the nuclear family.

As regards the beneficiaries of reunification, the Community Directive and the majority of our nearby countries limit reunification to the most common family unit: that of parent, his/her spouse and children under 18 years of age. Until now, the ascendent relatives were entitled to reunification, but the absence of other requirements led to the arrival of reunited ascending relatives, that is dependent on the sponsor residing in Spain, and in reality they are of an age and are in a position to work. Therefore, as they are able to apply for a work permit upon their arrival in Spain, they are having an unforeseen and complex influence on the labour market.

In this sense, the preliminary draft of the Organic Law intends to give priority to the nuclear family and expand the possibility for reunification not only to the spouse, but also to the partner of an analogous emotional relationship. Correlatively, it is understood that ascending relatives are not part of this specially protected nucleus. To achieve a balanced solution that does not go to the extreme of refusing all reunifications with parents, but which needs to adapt to our country's capacity to receive, as well as to the circumstances of the labour market, the possibility for reunification is allowed when the sponsor resident holds permanent residency and the reunited family members are sixty-five years old or

over. Under these circumstances, their arrival does not affect the labour market and, objectively, these people may be in a situation of greater vulnerability. Nevertheless, even when this age requirement is unfulfilled, the possibility exists for reunification for humanitarian reasons.

From the standpoint of supporting the conditions for integration, it is proposed that the conditions the foreign resident relies upon for reunification be checked more rigorously, with the specifications for this being dealt with by the regulations. Also under consideration is the automatic granting of work permits for reunited family members of working age as well as facilitating coordination between those responsible for processing the reunification of schoolchildren and educational authorities which must foster their integration within Spain's education system when they arrive.

Although maintaining both legal conditions for reunification, which have already been consolidated, i.e. ensuring adequate housing and sufficient economic resources, however, any social assistance is excluded when calculating the income of the resident applying for reunification. The objective of this is for family reunification to be achieved through guarantees of sufficient stability and autonomy, and avoid a situation whereby family members lack economic resources or endure precarious living conditions, because starting off in these circumstances has proven to be an objective impediment to subsequent integration. Similarly, but for the purpose of eliminating formal obstacles when the entire family is economically solvent, the income of the family unit must be considered for the purposes of reunification because, to this end, the cumulative income of both spouses may be considered sufficient even when it may be insufficient when calculated on an individual basis.

Conversely, in its adaptation to legislation promoting equality between men and women, there is also the possibility of a family member, who is a victim of gender-based violence, being granted a residence permit independently from the resident sponsor.

As a result of Directives which regulate long-term residency and the treatment of researchers, these are offered the possibility of being granted family reunification when the application for reunification is simultaneous with that of the sponsor.

### **5.3. Integration**

Though the transversality of the migration policy is a fundamental characteristic present throughout its implementation, the integration of immigrants is even more so. Integration affects all spheres of politics and all relations between the foreign person, authorities and society.

The establishment in 2004 of the General Directorate for the Integration of Immigrants within the State Secretariat for Immigration and Emigration marked the start attention being paid by the political establishment, and this must be analysed as the nucleus of that attention going through all aspects of its development facets.

From a legal point of view, the integration of immigrants is founded upon the recognition of immigrants as legal subjects. The regularisation of the administrative situation is essential to allowing an integration itinerary. However, using the case law of the Constitutional Court, it has been possible, finally, to close the debate on the scope of their fundamental rights, as it has been established that all persons, irrespective of their situation, and despite the fact that the State is empowered to return immigrants without authorised residence, are entitled to these rights.

Once legal residence in Spain is obtained, the equality of both rights and duties, a non-discriminatory coexistence of identities and cultures without superiority of one over another, and a respect for the Constitution and the law are fundamental characteristics of the Spanish legal system. In this sense, a legal itinerary for integration is revealed, created as a system which progressively widens the rights based upon those fundamental to all, passing through the recognition of employment rights, access of legal residents to social protection services and benefits, access to the possibility of family reunification after renewal of residence permit, and culminating in the acquisition of permanent residence—soon to be called long-term residence—after five years of residence or access to Spanish nationality on grounds of residence.

It is obvious that, as a complement to the legislative system on the equality of legal status, integration from the perspective of diversity demands intense activity and effort on the part of Governments, and this is to accompany the immigrant throughout the entire process. The objective of the Strategic Plan for Citizenship and Integration 2007-2010, based upon the principles of equality, citizenship and interculturality, is to advance the effective recognition of the equal rights and obligations of immigrants, reinforce public services and adapt public policies to the needs of a diverse society, foster the access of immigrants' to public services, establish a reception system that ensures a speedy social and occupational integration, promote awareness of the values upon which the European Union is based, the rights and duties recognized by the Spanish Constitution and our languages and social customs, prevent and fight against discrimination, racism and xenophobia, and encourage society's understanding of the phenomenon of migration.

Not merely a Government project, this Plan has been designed as a framework for cooperation within which there is space for initiatives from all Public Administrations, as well as civil society. For this reason, its preparation generated the intense and essential

participation of all these actors; this is why the Plan, beyond being a guide imposed top-down, is a set of proposals, actions and approaches shared by state authorities, whose activity is coordinated and complemented for the purpose of reaching a shared objective: integration.

A new article, 2ter, within the general provisions which make up the text as a whole, deals with the integration of immigrants and aims to bring this political priority to the foreground.

*Article 2ter. Integration of immigrants.*

1. *State Authorities shall promote the full integration of foreign people in Spanish society within a framework of coexisting diverse identities and cultures, without limitation, beyond respect for the Constitution and the law.*
2. *The State Authorities shall incorporate the objective of integration between immigrants and the host society transversally throughout all its public policies and services, and foster the economic, social, cultural and political participation of immigrants in conditions of equal treatment in the terms set out by the Constitution and Legislation.*
3. *Similarly, these State Authorities will attempt to achieve, through training programmes, an awareness of and respect for the constitutional values of Spain and the European Union, human rights, public freedoms, democracy, tolerance and equality between men and women, and will develop specific measures to favour the learning of Spanish and other co-official languages, the schooling of children and accessing employment as factors that are essential to integration.*
4. *The Government will cooperate with the Autonomous Communities, the Cities of Ceuta and Melilla and Local Authorities to achieve the objectives described in the preceding paragraphs within a multiannual strategic plan to be funded annually by the State budget.*

In addition to its guiding principles which address integration from the perspective of the values already described in the preceding paragraphs, and given that both the Strategic Plan and the annual Fund for integration approved by the Government represent a shared and consolidated advance in recent years toward integration, the project for reforming the Organic Law on Foreign Persons incorporates the need to continue approving multiannual integration Plans, which must be given the adequate funds as needed to ensure their implementation.

## 5.4. The fight against illegality

The fight against illegal immigration, whether considered as an aspect of the planned channelling of migration flows or as something independent from this, but which forms part of the same overall, political strategy, is a matter of constant concern for the Member States of the EU, where considerable Community *acquis* on the matter has already been developed, and, of course, for the Spanish authorities, given that it is impossible to conceive a planned policy in favour of channelling immigration legally without attending to the need to avoid illegal flows.

Regulating and controlling migration flows is a delicate and complex matter in which coincide both Spain and the European Union's management of interests and policies, relations with third countries as well as neighbouring countries, and it is geographically of strategic importance for Spain and the rest of the EU members.

Within the Spanish Government's overall policy for managing and regulating immigration, the specific policy is aimed at:

- Improving the efficiency of controls at both land and maritime borders.
- Promoting and improving the procedures for the return of immigrants without authorised residence.
- Equipping the Detention Facilities and Accommodation Centres with adequate resources and conditions.
- Increasing the activity and efficiency of the Police and the Guardia Civil against illegal immigration gangs.
- Promoting operational cooperation with other countries and institutions of the European Union and countries of origin and transit of the illegal migration flows.
- Establishing strategies which address the root causes of the continued illegality of immigrants —the principal reason for which is tied to the existence of jobs within the informal or hidden economies— through lines of action pursuing illegal employment by the Employment Inspectorate.

The future will bring a continued reinforcement of measures for **border control** aimed at firm monitoring and inspection to ensure efficient and strict compliance with legal provisions on immigration and stays in Spain, a necessary condition for basing our coexistence and public security on real values of integration, constitutional citizenship and social cohesion. The plan for the forthcoming years includes:

- The continued application of measures and economic sanctions against leaders and members of migrant smuggling networks and gangs.
- The start-up of an effective policy for controlling unauthorised entry or stay of foreigners in Spain. To this end, the following actions will be carried out:
  - Establishment of new mechanisms—in addition to reinforcing and improving existing mechanisms—for guarding and controlling external borders, integrating modern techniques for border post inspection and control, expanding detection systems used on land and at sea and for controlling vehicles, and including new, powerful vessels to achieve this. In order to increase the control of authorised stays in our country, the planned reform to the Law includes the establishment of a Registry of entries and exits of foreigners.
  - Speeding up of criminal and return procedures for foreign persons without authorised residence, especially those who are involved in crime, who behave antisocially and who disturb public order or security. The proposed reform to the Law continues to include a criminal system for unauthorised stays whereby, in accordance with the principle of proportionality, expulsion is an alternative to a fine. Conversely, a change in the enforcement of removal orders is planned based on the foreign persons personal situation, whereby it will be possible to set a period of between 7 and 30 days on receipt of notification of the decision to allow for voluntary compliance with the return. Other areas of law already tested have shown that allowing for voluntary compliance with the penalty scheme brings the benefit of greater efficiency in complying with legislation, which leads to a triple benefit: first, a significant reduction in the cost of return for the State, as this would be borne by the foreigner; second, voluntary compliance would suppose a twofold motivation for the foreigner as the return would be free from the stigma of being forced, and the foreigner would be allowed to re-enter Spain legally because the period of prohibition of entry would be lifted; and third, it is expected that a selective application of the procedures depending on the individual's situation would result in an increase in the number of orders enforced and, therefore, in the system's efficiency.
  - The plan for legal reform intends to extend the current maximum period of 40 days for detaining immigrants without authorised residence in Detention Facilities to 60 days to allow for finalizing the processes—which at the moment remain unexecuted due to lack of time—of identification and removal of immigrants without authorised residency. To ensure that the legislation concerning foreign persons is not flouted, the reform will also introduce the following change: in circumstances where a foreign person without authorised residence, who is detained in a Detention Facility, makes an

application for asylum, the calculation of the period of detention shall be suspended, as of that moment, until the administrative procedures are completed.

- Strengthening regulations and sanctions against employers hiring foreign persons without authorised residence in Spain. The proposed reform to the Law will ensure that the employer who infringes the law will bear the costs of returning an illegally employed worker.
- Reinforcing and motivating the police force's human and material resources with the aim of developing the operating mechanisms for border control and the efficient fight against migrant smuggling gangs.
- Continued support for cooperation between the police forces of the European Union as well as those from third countries, promoting operational skills and efficiency and the exchange of information already provided by FRONTEX.

The fight against the so-called overstay shall be a priority of the policies on control. A plan will be implemented to guarantee the removal of those persons who enter Spain as tourists, who then break the law and prolong their stay illegally. The draft law will also contemplate new penalties to clamp down on the promotion of unauthorised stays through the fraudulent use of legal means of entry or residence.

## **5.5. Foreign policy**

From the viewpoint of foreign policy on immigration, bilateral and multilateral migration public policies, as well as an efficient institutional structure which will make these possible, will continue to be promoted.

Important bilateral successes have been achieved in recent years, such as the Migration Co-operation Framework Agreements aimed at supporting and coordinating initiatives for cooperation and the effective planning of migration flows signed with Cape Verde, Gambia, Guinea, Mali and Niger, in addition to negotiations currently underway with other countries and the agreements on migration flows with Morocco and Mauritania.

The Spanish government has led the development of the European Union's Common Policy on Immigration with the aim of agreeing on solutions; deepening regional dialogue to create an association of countries of origin, transit and destination; opening wider channels for legal migration, and promoting the fight against organised gangs that benefit from illegal emigration.



## **5.6. Participation of the Autonomous Communities in the granting of initial residence and work permits**

As a result of the assumption of statutory powers for granting work permits to foreigners approved by the new Statutes of Catalonia and Andalusia, the involvement of those regions in matters concerning immigration is going to increase.

The moment that these Autonomous Communities assume these powers (Catalonia has an expected start date of 1 October 2009 while Andalusia has no date at present) the Autonomous and General Administration of the State will participate together in granting initial residence and work permits through a single procedure.

This participation is due to the powers granted to the Communities on employment matters and not those concerning immigration. Therefore the grounds for this participation must be tied to the model for channelling migration flows linked to the labour market. Although an overall analysis is carried out on the national employment situation, a list of hard-to-fill jobs is also established by each province in Spain. When national or foreign resident workers fail to fill these positions, employing a foreigner is then permitted, and the foreign worker is granted limited residence and work permits valid for the time of the initial permit, for a specific occupation and for a province to which he/she must go to. As of the first renewal, when the limitations on geography and sector of activity are lifted, the State is again competent to decide on the renewal of the permits.

This system, by which two authorities, the General Administration of the State and the Autonomous Community, participate together in granting or refusing residence and work permits, was designed so that the General Administration had constitutional powers concerning immigration and the Autonomous Community intervened more intensely in the creation of employment policies affected by migration policies, and in any event, in such a way that would not imply additional bureaucratic procedures which would cause difficulties in relations between citizens and the authorities. In this way, a single procedure for granting permits is coordinated by which the citizen deals with the nearest Autonomous Administration and the authorities communicate and are coordinated internally through the necessary telematic means when exercising of their own powers.

Though still being put into practice, the system for granting initial permits, where the Autonomous Communities with these powers are involved is clearly designed as a step forward in the coordinated actions of the state authorities within their spheres of control, and, as happens on many occasions, these spheres intersect, and through them, the development of new, more refined models for interinstitutional relations may be planned.



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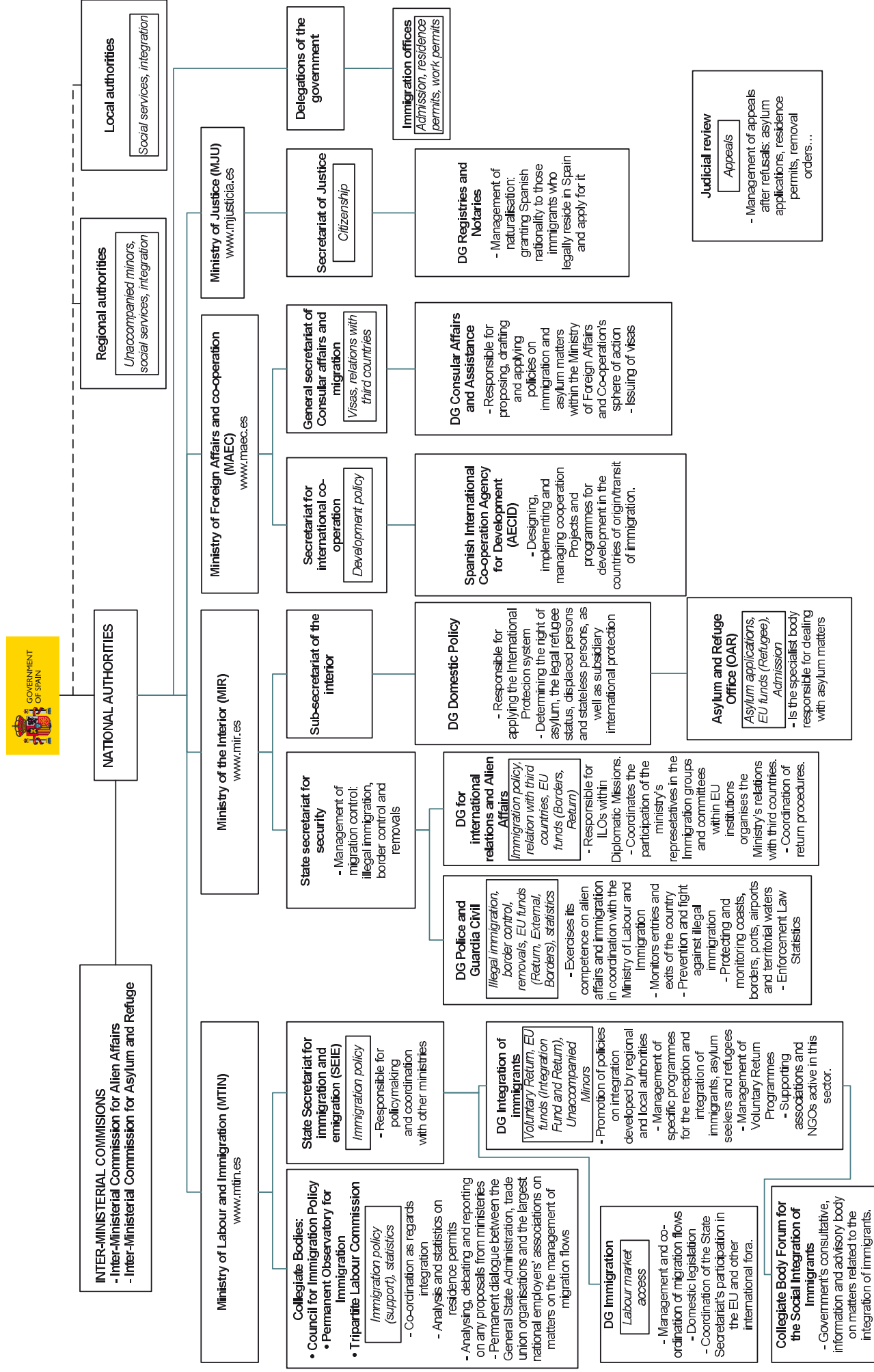
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# Institutional Framework for Immigration and Asylum Policies\*



\* Please note that this institutional chart provides an indicative overview of the asylum and migration system in the Member State concerned. As such, it does not represent its complete structure.

