



# The Organisation of Asylum and Migration Policies

## Factsheet: Spain

### 1. Introduction

This factsheet provides an overview of how asylum and migration policies are organised in *Spain*, including the organisation of the institutional and regulatory context and framework for dealing with third-country nationals coming for the purpose of legal immigration or for international protection. It is based on information provided by the Spanish NCP updating the Spain National Report of the EMN Study *The Organisation of Asylum and Migration Policies in EU Member States*<sup>1</sup>, as at **June 2009**, currently under revision. The updated Report will be based on desk research: key sources will be the respective ministerial departments of the EMN NCP experts in: the Ministry of Employment and Social Security, Ministry of the Interior, Ministry of Foreign Affairs and Cooperation, Ministry of Justice and the General Prosecutor's Office.

### 2. Overview of organisation of political, legislative and institutional framework

#### 2.1 The political system and institutional context

Competence for migration and asylum is distributed mainly among three ministries: the [Ministry of Employment and Social Security](#), the [Ministry of the Interior](#) and the [Ministry of Foreign Affairs and Cooperation](#), with 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. Security, migration control and asylum policies belong to the Ministry of the Interior. Visa policy, external dimension of Spanish migration and asylum policies and cooperation with developing countries are competences of the Ministry of Foreign Affairs and Cooperation. The scheme is complemented by the citizenship granting which is under the remit of the [Ministry of Justice](#). The main body responsible for managing immigration is the [General Secretariat for Immigration and Emigration, depending on the Ministry of Employment and Social Security](#). There are several [collegiate bodies](#) carrying out support functions to guide and define policy-making. The Sectoral Conference for Immigration, depending on the Ministry of Employment and Social Security has a coordination role between different administrations in charge of these areas. The two bodies directly accountable to the General Secretariat are the Tripartite Labour Commission and the Inter-Ministerial Commission for Alien Affairs. Accountable to the General Directorate of Migrations are the Forum for the Social Integration of Immigrants and the Permanent Observatory for Immigration. The organisation of the Spanish Territory into [territorial units \(Autonomous Communities\)](#) and [local authorities](#) at different levels influence migration policies. [NGOs](#) additionally play a role, participating in the Forum for the Social Integration of Immigrants and collaborating in programs, for example, in voluntary return programmes.

#### 2.2 The legal framework

The general structure of the legal framework is established in article 13.1 of the Spanish Constitution. The basic legislation is [Organic Law 4/2000 of 11 January 2000 on the rights and freedoms of foreign nationals in Spain and their social integration](#), and its Regulation, approved by [Royal Decree 557/2011 of 20 April 2011](#), and [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](#). Asylum is governed by [Law 12/2009 of 30 October 2009 governing the right of asylum and subsidiary protection](#). Rules on citizenship are set out in the [Civil Code](#).

<sup>1</sup> Available on the EMN website

### 3. Development of migration and international protection systems

The aims of the legal texts concerning the immigration system, Organic Law 4/2000 and Implementing Regulation, are mainly: 1) consolidating a model based on legal immigration and linked to the current national labour market; 2) reinforcing the tools for the fight against irregular migration, amongst others, illegal employment of workers in the hidden economy; 3) supporting and guaranteeing circular mobility and voluntary return; 4) promoting the integration of the immigrants already living in Spain; 5) protecting victims of gender-based violence and other vulnerable groups (victims of human trafficking); 6) improving the treatment of unaccompanied minors; and 7) clarifying and simplifying the procedures, making a better use of the resources available.

### 4. Organisation of policy

#### 4.1 Overview of migration and international protection policy

The entry of third-country nationals takes place via border crossing points established for that purpose. It is a requirement to hold a valid passport or travel document, a valid visa where required, and other documentation justifying purpose and conditions for stay. There are two basic situations by which aliens can be present in Spain: short-term stay or residence, according to article 29 of the Organic Law 4/2000. Short-term stay shall be construed as remaining in Spanish territory for a period of time not exceeding 90 days, and those admitted for study purposes, student exchange, non-working practices or voluntary service. In the residence situations are, amongst others, those who are legally present in Spain for working reasons, family reunification or non-work residence, and all of the foregoing is without prejudice to the situations established on the aforementioned Law 12/2009 of 30 October 2009, regarding those granted international protection.

Admission criteria for migration are primarily related to the labour market. Work permits for employees require that employment is obtained via a general scheme, a Collective Management of Recruitment in the Country of Origin (annual prevision of a hard-to-fill jobs list) or job search visa. Work permits for self-employed workers require certification that the third-country national holds the relevant professional qualifications or has the resources necessary for job creation. Refugees are entitled to a long-term residence and work permit. A provisional residence or stay permit - valid for up to six months, but renewable - is granted to asylum seekers during the application process. A work permit may be granted after that. Asylum applicants and refugees are entitled to access social programmes.

Legal residence includes the following phases: a) temporary residence, whose duration in general is one year for the initial permit and 2 years in case of renewal, with different validity periods for other situations of temporary residence (specially concerning family reunification residence), and b) long-term residence, after 5 years residence in Spain or fulfilling certain legal conditions, whose holders shall have an aliens' identity card with a validity period of 5 years, renewable.

Return of third-country nationals may be forced or voluntary. Forced return is applied to third-country nationals who do not meet the requirements for entry, stay or residence or who commit serious offences. Precautionary measures for persons subject to removal may be applied, including periodic presentation before the competent authorities, compulsory residence in a given place, withdrawal of passports, precautionary arrest and preventive detention, following judicial permit, at a detention centre. For third-country nationals meeting certain requirements, voluntary return is offered. The Ministry of Employment and Social Security, in collaboration with IOM and other NGOs, is responsible for the Voluntary Return Plans.

#### 4.2 Links with other policies

The asylum and migration system is linked with other policy areas, in particular with integration policy as a nexus connected with the policy areas of education, employment, housing, social services, health, development cooperation, women, children and youth, and equal treatment.

Current governmental policy on migrations targets as main objectives:

- The option of a legal, orderly and responsible immigration, linked to employment, as well as the improvement of the assistance of the Spanish citizenship abroad

- The achievement of a greater efficiency and effectiveness in public management and making more and better labour and employment, social and migratory politics, with budgets which need to be more austere.

Regarding foreign affairs policy, and in exercising a global approach to migration, effort has been made to facilitate planned entry of foreign workers through Framework Agreements related to Immigration, together with policies of cooperation for development in third countries.

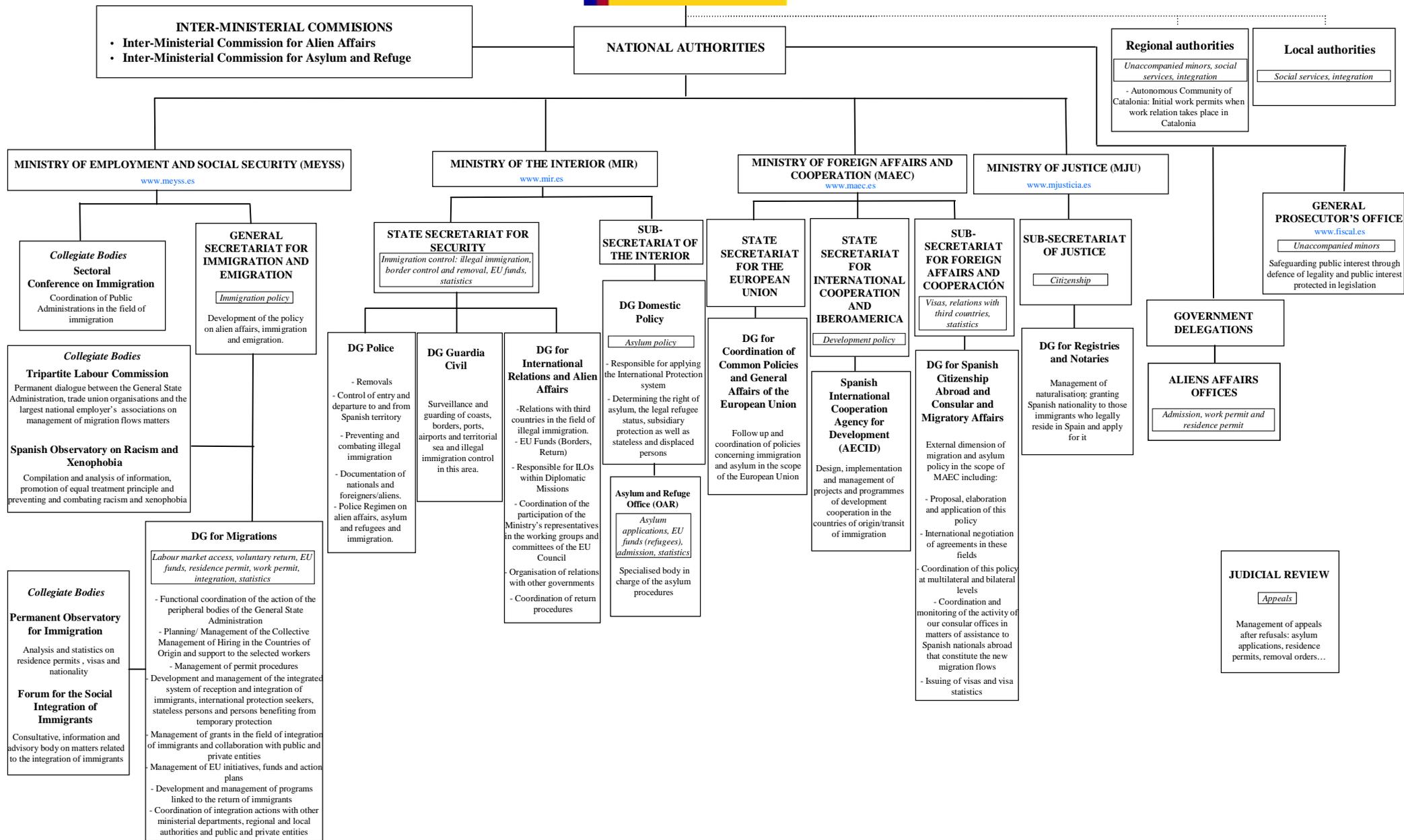
## **5. Analysis of asylum and migration systems**

The migration and asylum policies have been developed based on the consensus of, and collaboration with, social partners. Reforms include the incorporation of European Directives.

Policies have focused on: 1) planned management of migration flows (based on the needs of the labour market and circular and temporary migration), 2) the fight against illegal immigration (with a dual approach of prevention and reaction to existing situations), and 3) the integration of immigrants. Following the above, reforms concerning family reunification have given priority to the nuclear family and have expanded the possibility also for partners in an emotional relationship, analogous to spouses.

For the next years, immigration policy will be based on the following acting lines: legal immigration linked to employment and bidirectional integration (meaning same rights, same obligations). Special attention will be paid to programs and reception centres for refugees, with the cooperation of Regional and Local Authorities together with other institutions involved.

## **ANNEX: Institutional Chart for Spain.**



\* 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.