



Legal Migration Fitness Check

Evidence base for practical
implementation

Member State summary

Spain

Annex 2 ES

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LEGAL NOTICE

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More information on the European Union is available on the Internet (<http://www.europa.eu>).

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Introduction

This document provides an overview of the legal and practical implementation of EU legal migration acquis in **Spain**. The legal and practical implementation study is structured according to the eight steps – ‘phases’ of the migration process from the perspective of the migrant¹ for the following Directives:

Directive	FRD (Family Reunification Directive 2003/86/EC)	LTR (Long Term Residency Directive 2003/109/EC)	SD (Students Directive 2004/114/EC)	RD (Researchers Directive 2005/71/EC)	BCD (Blue Card Directive 2009/50/EC)	SPD (Single Permit Directive 2011/98/EU)
National parallel scheme		LTR National Status different options to access: a) 5 years of continuous residence. b) being a resident with the benefit of a contributory pension, within the Spanish Social security system, c) being the beneficiary of a pension for absolute permanent disability or severe disability d) or			Entrepreneur support bill. The new national scheme for: Investors Entrepreneurs Highly qualified workers Researchers Intra-corporate transfers	

¹ See ref document (EU summary) Under each phase, the following aspects are examined: **Legal transposition of the EU legal migration acquis**: including whether the MS has overall complied with the transposition of the relevant EU acquis in the respective phase and whether these non-compliance issues affect the practical application of the Directive; **Practical application of the EU legal migration acquis**: overview of the main application issues/problems arising in the MS per each of the migration phases; **Differences between national statuses and the EU legal migration acquis**: substantial differences at the level of legislation and practical implementation between the EU legal migration Directives and their national equivalents (where these exist).

	benefits obtained in Spain analogous to the previous ones, meaning a life income (not a capital income) sufficient for its subsistence
Options implemented?	Pupil Trainee Volunteer

1 Pre-application phase

1.1 Legal transposition of the EU legal migration acquis

Spain has overall complied with the legal transposition of the EU legal migration acquis at the pre-application phase, but there are certain conformity issues.

Spain has not adopted the option set up by the Article 15(1) second subparagraph of the Family Reunification Directive (hereinafter FRD) (2003/86/EC) allowing Member States to limit the granting of the residence permit under the first subparagraph to the spouse or unmarried partner in case of a breakdown in the family relationship. In relation with the need for processing the visa application as a general requirement contained within the FRD, certain Spanish practitioners and researchers have declared that the legal provision in Spain may not be fully in line with the FRD. According to Art.5.3 of the FRD, a Member State may in appropriate circumstances, accept an application and examine it even when the family members are already in the country in which the sponsor lives. Nevertheless this seems to be hindered by the Spanish law (Art.57.1 Royal Decree 557/2011 of 20 April) as it does state that in case the family member was in Spain in an irregular situation shall constitute a reason for not accepting and, where appropriate, refusal the visa application required to obtain the family reunification permit without considering any exception to it.

When it comes to the pre-application phase of the EU Blue Card Directive (hereinafter BCD), a relevant improvement could be observed after the changes introduced in 2015 with the law 14/2013 on international mobility (hereinafter Law 14/2013). This brought about an important update of the content of information sites for the specific program and the brochures prepared in relation to the authorization of residence for entrepreneurs, professionals highly qualified, researchers, teachers, investors and professionals highly qualified. It also facilitated the centralisation of permit procedures in a specific unit that is specialised in this field, namely the Large Companies Unit (hereinafter UGE-CE), with the aim of ensuring that the requirements and processing times are applied in a balanced and coordinated manner throughout Spain.

1.2 Practical application of the EU legal migration acquis

At the pre-application phase, access to relevant information for applicants via websites or other information channels, including those provided by diplomatic representations,

have been significantly improved since 2012, in both official as well private websites. Many online administrative procedures have being introduced as well as a new dedicated phone number and/or information service which includes the sending of text messages. However, in the main, information still appears only in Spanish language, with the exception of the new national schemes for the BCD and the ones related to inter-corporate transferees Directive (hereinafter ICT). Access to information in other languages such as English and/or French is still very scarce and when it comes to information on rights upon admission, detailed information is even more difficult to access and/or is too vague. It should be also noted that all information accessible online is qualified as only Data for information purposes ("Datos de carácter informativos"). This suggests to applicants that the information on e.g. the documents required or other specific requirements may not be legally binding and thus subject to change and could result in a reduction in confidence about its quality.

At the individual level, contact with the competent authorities tends to result in generalized responses or redirection to published information sheets. This approach is often seen by applicants from third countries as not particularly user-friendly especially where a more personalized response is required.

There are inconsistencies in the pre-application services available across the different public providers, mainly at the level of issuing visa by the consulates and diplomatic embassies that play a key role on the proceedings. There is a general concern caused by the great level of disparity on the provision of similar services (e.g. diplomatic missions, consulates), very different information published on their website, the disparities among the personalised guidance (contact person, dedicated phone number) at disposal, as well as the time to give response to the applications and overall the consequences on the final resolutions and the guarantees on the protection of rights.

Directive	FRD (Family Reunification Directive 2003/86/EC)	LTR (Long Term Residency Directive 2003/109/EC)	SD (Students Directive 2004/114/EC)	RD (Research Directive 2005/71/EC)	BCD (Blue Card Directive 2009/50/EC)	SPD (Single Permit Directive 2011/98/EU)
Languages	National language (s) English Russian Other					
The information is easy to find*	3	4	4	4	2	NI

* 1: Strongly agree; 2: Agree; 3: Neither agree/nor disagree; 4. Disagree; 5. Strongly disagree

Information can be found on the following aspects of the application procedure:

Applicati on procedu re	Conditio ns for admissi on	Entry requir ements (e.g. visa etc.)	Cost of applica tion	Applica ble deadlin es	Rights upon admiss ion	Any differences between the Directives
Yes	Yes	Yes	Yes	Yes	Yes	

Information upon request

An example could be when addressing questions to the email address: estafeta@mir.es and equally raising the same question by filling in the questionnaire:

https://servicio.mir.es/nfrontal/solicitud_informacion/index.html?numTicket=253463&email=info@reyescastillo.eu. The only response we got after several months and tries was an standard response: "It acknowledges receipt to your message and we inform you that is the transfer of the same to the General Commissioner of immigration and borders of the General Directorate of the police, so that they have knowledge of the matter exposed to the effects that come".

In any case, it would be worth to mention that an improvement or general awareness by the public authorities could be appreciated. That could be the particular case of Madrid region where from 2 January 2018, the several and earlier e-mails of information stop working, leaving as the only email information the following: informacionextranjeria.madrid@correo.gob.es. The aim seems to be to work for the unification of the responses and the celerity on the online and upon request information.

1.3 Differences between national statuses and the EU legal migration acquis

No differences have been identified between national statuses and the EU legal migration acquis at this phase of the procedure.

2 Preparation phase

2.1 Legal transposition of the EU legal migration acquis

Spain has complied mostly with the legal transposition at the preparation phase, only certain cases that may rise concerns as in the case of not transposing the obligation contained in the Art.11 (2) of the FRD, when Member States should take into account other evidence with which the existence of a family relationship can be proven where a refugee cannot provide official documentary evidence of the family relationship, in Spain, medical examinations are used as proof for the establishment of family ties. As regards other family members, such as adopted children, no information with respect to the provision of evidence other than documentary evidence is made. Moreover, the obligation contained in the last sentence of Article 11(2) of the FRD has not been transposed by Spain whereby a Member State shall not issue a decision rejecting an application based solely on the fact that documentary evidence is lacking.

Issues on conformity arise too, regarding the remaining family members status covered by the Art.15 (3) of the FRD, as Spain only grants the independent residence permit to the spouse or partner. Children that are minor only obtain the right to be dependent on the spouse or the partner for future renewals of the permit, but not the right to obtain an independent residence permit. Furthermore, as regards the obligation to grant an autonomous residence permit in the event of particularly difficult circumstances only spouses or partners are covered but not children of the sponsor or the spouse. The transposition by Spain of the Article 5(5) of the FRD requesting to have a due regard to the best interests of minor children may rise

practical concerns as it considers it only with respect to the evaluation of resources (it should be taken into account in the application as a whole).

Regarding the condition about "sufficient resources", as established by Spanish legislation, is used as a minimum threshold that needs to be satisfied and verified by the competent authorities. This modality is not compatible with the requirements made by the European Court of Justice in C-578/08 (paragraph 48 of the sentence) where the Court stated that it is not possible to fix a minimum threshold in the legislation, but only indicate a certain sum as a reference amount. Consequently Article 7 of FRD related to the proof of economic means for the purposes of family reunification and the Article 5 of the LTR covering the conditions for acquiring long-term resident status may raise implementation concerns.

The request of the criminal records issued by the authorities of the country of origin or the country or countries in which the alien has resided for the past five years, also affects conformity as this document is required to check if the conditions set out in Articles 4 (on the duration) and 5 (Conditions for acquiring long-term resident status) of the LTR are met.

As far as the Students Directive (hereinafter **SD**), Spain did not opt to include national provisions *regarding proof of knowledge of language and payment of fees*. (Optional Art. 7(1) (c) and 7(1) (d)). Spain partially conforms to the integration conditions provisions of the family members stated under the Art. 15 of the EU Blue Card Directive (2009/50/EC) (hereinafter **BCD**), as it shall only be applied after the third-country national has been granted family reunification. In Spain, although integration cannot be applied in Spain prior to be granted the family reunification, the integration "effort" made by the family member will be assessed when requesting the renewal of the permit. Additionally the legislations refers to the integration measures in a general way but not specifically for children over twelve years old or refugees (Article 61(7) of Regulation of Law 4/2000).

2.2 Practical application of the EU legal migration acquis

Spain requires the applicant to submit several applications / steps with different authorities (e.g. for the visa, the permit to work / reside. It's not done in a single step. The administrative steps that need to be followed in order to receive the document that **grants the right to residence and work, the Identity Card for Foreigners** are: the alien must first **register with the Social Security Scheme** before he can apply for the issuance of the Identity Card for Foreigners. These administrative steps **can only be taken after the authorisation has been granted** and after the alien entered **Spain on the basis of a visa** that have been applied for previously too. *The visa application should be considered as one administrative process according to Spanish legislation as it does have accordingly its particular appeal procedure too.*

On the practical application of the EU legal migration acquis for the preparatory phase, when it comes to the Researchers Directive (2005/71/EC) (hereinafter RD) and SD and the future implementation of the new Students and Research Directive (2016/801) (hereinafter S&RD) as a result of the cooperation between authorities dealing with migration and education, an agreement entered in to force January 2016 to encourage the entry of foreign students, teaching staff and researchers into Spanish universities. Because of it, the counselling offices of the universities for the mobility of international students may act as an organ of record of applications, it streamlines the procedure of issuing visas and creates an accelerated procedure for the admission of students as well as the promotion of a simplified procedures.

From an experiential perspective it should be noted that the application form can't be described as user-friendly. All applications are published only in Spanish and many of the requirements are not as well explained. Furthermore all applications should be printed and after filling in. It is not possible to do it online. In those cases when the recognition of diplomas and qualifications is a condition for obtaining a permit, the

application form does not include a clear guidance on the procedures for obtaining such recognition. Other issue to consider will be the estimate time required with regard to the documents that may be requested as supporting evidence where an average of 1 month and up to 3 to 6 months may occur when official translations may be required, criminal records and/or acceptance letters among others.

Ease of the application procedure:

Step	FRD	LTR	SD	RD	BCD	SPD
The information that applicants need to complete is not extensive	3	3	3	3	3	3
The application form is user-friendly	4	4	4	4	4	4

At this stage, it is of particular relevance to mention the actual malfunctions in the electronic Office of the Secretary of State for the Public Administration (ADAE) and other online official platforms (Mercurio...). *Those platforms are the compulsory channel requested to be used by lawyers or legal entities when entering all type of residence applications.* Those issues did provoke in 2017 a formal complaint "queja" before the Spanish national Ombudsman (Nº 17012156).

Examples of those issues could be: There were applications files archived (denied, closed) based on the lack of fulfilment of a particular requirement, when the required documentation was in fact properly submitted, but the platform suppose not to registered them; or most of the days the online platform is accessible only from 9.00 to 11.00 hours; or there are many difficulties to submit dossiers, as on many occasions, after filling out the form and attach the appropriate documentation, it is not possible to send it or uploaded because of technical reasons.

Later on in August 2017, the Secretary of State for the Public Function (Secretaría de Estado de Función Pública) published a formal response with a report "[Informe de la Secretaría General de Administración Digital SGAD Sobre Actuación Nº 17012156, de la Defensora Del Pueblo](#)", providing a detailed explanation of the situation and possible solutions. Nevertheless practitioners still express their concern for the daily difficulties encountered.

Key information/ documents required:

Type of information	FRD	LTR	SD	RD	BCD
Family ties	Yes, T, C				
Continuous legal residence	No	Yes, T, C			
Sufficient resources	Yes, T, C	Yes, T, C	Yes, T, C (students) Yes, T, C (trainees)	No	
Accommodation/Address in territory	Yes, T, C				Yes, T, C
Sickness insurance	Yes, T, C	Yes, T, C	Yes, T, C	NI	Yes, T, C

Work contract (for RD host agreement)			Yes, T, C	No, R	
Minimum salary threshold					
Professional qualifications	Yes, T, C				
(Pre-) Integration measures	No	No			
Pre-departure conditions	No				
Proof no threat to public	Yes, T, C	Yes, T, C	Yes, T, C	Yes, T, C	NI, T, C
Medical examination certificate	Yes, T, C			Yes, T, C	Yes, T, C
Valid travel document			Yes, T, C	Yes, T, C	Yes, T, C
Entry visa					Yes, T not applicable , C
Other	Yes				

Note: T = Translation; C = Certified, R = Requirement, i.e. without this proof the application cannot be lodged.

2.3 Differences between national statuses and the EU legal migration acquis

One important difference between national statuses and the EU legal migration acquis is in relation to the Long Residence Permit. The national status for the Long Residence Permit contains other possible conditions to be met different and not linked to the compliance or not of the 5 years of continuous residence. Those conditions operate not as additional requirements but as different options that may allow the foreign person to access this type of national status and permit. This is the case of complying with certain conditions such as: a) being a resident with the benefit of a contributory pension, within the Spanish Social security system, b) being the beneficiary of a pension for absolute permanent disability or severe disability c) or benefits obtained in Spain analogous to the previous ones, meaning a life income (not a capital income) sufficient for its subsistence. In relation also with the LTR will be the case of the request of stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, this condition is not contained within the national status, but yes on the status as per the Directive.

3 Application phase

3.1 Legal transposition of the EU legal migration acquis

Spain has overall complied with the legal transposition of the EU legal migration acquis at the application phase, but there are certain conformity issues. This is the case with the procedure to obtain a visa in compliance with Article 13(1) of the FRD which requires the authorisation for the entry of the family member or members. Unlike the FRD, Spain does not facilitate obtaining a visa for the family member, as he/she needs to provide documentation, in order to prove the family links or relationship that will be

re-evaluated by the diplomatic office. This additional documentation is not initially required for the granting of the family reunification residence permit.

Partial conformity was also concluded in relation to *the Article 7(2), fourth subparagraph of the LTR* as regards the silence of the administration when issuing a decision. Although in practice, the positive administrative silence is equivalent to a granting of the permit, the relevant provisions do not expressly admit such a consequence (Art.32.3 of the Law 4/2000 and Art.149.4 of the RD 557/2011). The positive administrative silence is only explained in the informative sheets published by the official website but where always the statement of "only for informative purposes" appears. Thus the law is silent about it. This is only valid for the LTR.

An issue of defencelessness could arise from the non-compliance with the Art. 15 (3) of the RD that states that any decision rejecting an application for a residence permit shall be notified to the third-country national concerned. In Spain, the applications for residence permits are made by the research organisations, not by the third-country national. In this case the decision shall only be communicated to the applicant, not to the third-country national. And the RD states that any decision rejecting an application for a residence permit shall be notified to the third-country national.

Article 5(1) (e) of the BCD concerning the request that the third-country national must provide evidence of having a sickness insurance has not been transposed into the Spanish legislation. Article 7(1) of the BCD, stating that the Member State concerned shall grant the third-country national every facility to obtain the required visas, has been partially transposed into the Spanish legislation. It cannot be checked or stated whether the format, the content or all the data requested for the EU Blue Card and the Foreigner Identity Card issued in Spain are in line with what is laid down by Council Regulation (EC) No 1030/2002 of 13 June 2002. The Spanish legislation, circulars, instructions, informative sheets are silent in relation to the uniform format that the EU Blue Card must have. It is also silent about the data that must be mentioned in that card, including indications relating to any permission to work, in concrete, the conditions for access to the labour market as set out in Article 12(1) of the BCD.

3.2 Practical application of the EU legal migration acquis

Regarding the practical application of the EU legal migration acquis at the application phase, some issues have been identified in the procedures in place in Spain for the payment of the corresponding fees. All official application forms required for the payment of those fees must be accessed online and then printed for payment, and in many cases, applicants do not have online access and/or the internet skills and knowledge necessary to manage it.

In relation to the FRD and the right of family reunification for beneficiaries of international protection there may be a lack of clarity at the experiential level. It is unclear which the procedure is and which provisions are to be applied. On the one hand, Article 40 and 41 of Law 12/2009 specifically state that the requirements under the Immigrations law are not to be applied to beneficiaries of international protection for the purposes of family reunification. On the other hand, the Royal Decree 557/2011 states the supplementary applicability of Law 4/2004 and RD 557/2009 in matters not referred to in Law 12/2009 but this RD 557/2011 does not contain any reference to the necessary steps and authorities required to be applied to beneficiaries of international protection for the purposes of family reunification.

The applicant must prove to have sufficient financial means or to be in situation to legally obtain them, for the time he/she intends to stay in Spain. This mainly affects the authorizations requested under the SD ((Art. 38(1.2) of the RD 557/2011) (Article 25 of Law 12/2009), the EU – LRD (the art. 152. b of the RD 557/2011), as well as the FRD (RD 557/2011, Art. 54 (1) (3)).

In Spain, when an applicant should be informed of a decision more than one option is allowed, whether in writing via post, in writing via email or in person and or through

the online services. The exception are the legal entities and certain groups because of their ability (specifically: administrative managers, lawyers, graduates of technical and social tax), who are required to be notified exclusively online.

The notification of the decision to the applicant *requires always multiple administrative acts or decisions* to be issued by different Spanish authorities.

When the applicant is the employer, the third-country national is also involved in the application process, as the third-country national should personally request the corresponding visa, and get registered under the national Social Security system and request the Foreigner Identity Card. But in these cases, the third-country national won't be notified of the decision, as the law established that the employer will be notified and the third-country national will be communicated.

In case of a rejection of the application, the reasons for it will be provided in writing and in Spanish and additionally in Catalan, Basque and/or Galego when issued in each one of those Spanish Autonomous Communities and depending of their particular competences.

The concept of administrative silence does exist in Spain (Art. 24-25 of the Law 39/2015, of October 1, on Common Administrative Procedure of Public Administration, hereinafter Law 39/2015)². It should be understood as a positive resolution or a tacit rejection of the application depending on the cases. In the cases of a tacit rejection, the third-country national does have the right to enter the corresponding "Alzada", "Reposicion" or Contentious Administrative type of administrative and/or judicial appeals. In any case, the third-country national may request a certificate to the competent authority stating the administrative silence that have taken place.

Against a negative decision the applicants will have available the 3 types of appeal procedures previously mentioned. If the third-country national and/or his/her family are (still) based in the third country they do supposed to have the same rights and may accessed the same appeal procedures although in practice It can be said that it will be almost impossible.

Directive	General FRD	LTR	SD	RD	BCD	SPD	
Application from third country	Yes / No	Yes	No	Both are possible : Applicati on from third country and within Spain	Both are possible : Applicati on from third country and within Spain	Yes / No	Both are possible : Applicati on from third country and within Spain
Permit received in third country	No						
Number of authorities	Several, depends on the directive						

² Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas, available at: <https://boe.es/buscar/act.php?id=BOE-A-2015-10565&p=20151002&tn=2>. Last Access 20th January 2018.

Number of authorities involved in the issuance of the residence permit	3 or 4						
Application modalities	In person						ONLY Through the electronic office of the Ministry of employment and Social Security (Law 14/2013)
Existence of a standard application form for all statuses	Standardised (but every type of authorization will have a particular standardised application form)						.
Language of the application form	National language(s)						
Fees charged	Initial Authorization for a temporary residence : 10,50 euros The fee for obtaining a visa is 60€ when applying for the visa Application for the Identity	€ 21.02	391, 79 € if the salary shall be twice the minimum wages or more; or 195, 88€ if the salary shall be less than twice the minimum wages. - Processing of the foreigner	Initial Authorization for a temporary residence : to be paid by the foreign worker, 10, 50€ In the case of a stay longer than 6 months. Application for the	Initial Authorization for a temporary residence : 10, 50 € For the authorization to work: The employer must pay: 391, 79€ if the salary shall be twice the	Not indicated	

	Card for Foreigners 15, 45€ Work permit for employment: 117,52 euros		card - 15, 45€ § Processing of identity documents for foreigners without their travel documents § Processing of visa applications - 60€	Identity Card for Foreigners 15, 45€ For the authorization to work: The employer must pay: 391, 79 € if the salary shall be twice the minimum wages or more; or 195, 88€ if the salary shall be less than twice the minimum wages.	minimum wages or more; or 195, 88€ if the salary shall be less than twice the minimum wages.	
Other fees charged?	Yes	Yes	Yes	Yes	Yes	NI
Fees charged for permit issuance	Yes	Yes	Yes	Yes	Yes	Yes
Fees charged for renewal / replacement of the permit	If applicable obtaining temporary residence : "renewal of temporary residence authorization"- 15,76 euros If it is to obtain long lasting: "long-term residence authorization" 21,02	€ 21.02	Initial permit: 16,81 euros Extension of the permit of stay for studies, mobility of students, not practicum, or voluntary work (main holder and their family members) -16,81 €	Initial authorization of temporary residence , payable by the foreign worker 10,50 euros If the validity of the authorization is equal to or greater than six months: pay less than 2 times the SMI, item 1.2 on behalf of	Renewal of temporary residence authorization- payable by the worker: 15,76 euros Renewal or modification of a work permit processed in a temporary residence and work authorization procedure,	NA

euros	others payable for research, payable by the employer 195,88 euros compensation equal to or greater than 2 times the SMI employed for research 391,79 euros	payable by the employer :78,36 euros
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The processing times are as follows:

Directive	FRD	LTR	SD	RD	BCD	SPD
Processing time /deadlines (according to law)	106	136.5	45.5	75.5	60	91.5
Processing time (in practice)	NI	NI	NI	NI	NI	NI

3.3 Differences between national statuses and the EU legal migration acquis

As far as long-term residence is concerned, the national equivalent status foresees additional grounds for acquiring the permit, compared to the EU Long term residence permit. When it comes to the **LTR**, the equivalent national status for the long residence permit offers more favourable conditions at the moment of entering the application, than the **LTR**, as it does not ask for a medical insurance nor a proof of holding resources.

4 Entry and travel phase

4.1 Legal transposition of the EU legal migration acquis

Spain has overall complied with the legal transposition of the EU legal migration acquis in relation to the entry and travel phase, but there are certain conformity issues. In particular, Spanish law does not contain a provision which would explicitly transpose Article 1(a) and Article 4 of the SPD that entails that "an application to issue, amend or renew a single permit shall be submitted by way of a single application procedure..." In principle, the application for authorisation for residence and work is covered by one single procedure, since all third-country nationals carrying out employment activities in accordance with these provisions will receive a combined work and residence permit.

4.2 Practical application of the EU legal migration acquis

Any holder of a valid residence or stay permit in another Member State may enter the Spanish territory *without any authorisation requirement unless in the case of staying within the Spanish territory more than 3 months*. If the trip responds to a situation of necessity, the return authorization will have a preferential treatment. When the foreigner may prove that the trip responds to a case of need and to exceptional reasons, the aforementioned return authorization may be issued if it has been favorably resolved the initial application for the residence permit and/or the stay authorization and the issuance of an identity card will be pending.

Third-country nationals who receive **unemployment benefit allowances** need to report their plans to travel outside the Spanish territory to the authorities. If they do not, a financial sanction will be imposed where the third-country national is required to return the total amount of allowances received as well as losing all right to continue receiving the benefits.

4.3 Differences between national statuses and the EU legal migration acquis

In Spain the application of *the Article 14 of the RD* and its applications for admission facilitate a procedure that is more favourable than the one provided in the more general system of visas and permits (residence, work, familial reunification ...). Compilation of reports by the administrative body rather than by the applicant, 45 days to issue a decision, instead of two months and real time to know the resolution or, as much, 24 hours if appropriated means do not exist (*Art. 77 of the RD 557/2011*).

A difference between the EU legal migration Directives and the national equivalent statuses relates to Article 13 (1) of the **FRD** in relation to the entry and stay of family members entails that "...As soon as the application for family reunification has been accepted, the Member State concerned shall authorize the entry of the family member or members. In that regard, the Member State concerned shall grant such persons every facility for obtaining the requisite visas..." Spain does not 'grant every facility' (as stated by **Art. 57** of the RD 557/2011 for the issuance of the visa in the procedure for family reunification) to the family member to obtain the visa, who must provide further documentation, not initially required for the granting of the family reunification residence permit, and must submit once again the documentation proving the family links or relationship with the sponsor which will be re-evaluated by the diplomatic office. The Article 57(2) lists the minimum documents that the family member needs to submit, without prejudice that the person submits other documents that he/she may think of relevance. And the Article 57(3) specifically states that the visa may be refused in certain cases.

Spain issues a visa and has put a specific timeframe for issuing the latter as a prerequisite for the third-country national who is not yet in the possession of a residence permit and he/she should afterwards enter the corresponding residence application. Even in those cases where the main applicant is the employer (as is the case in e.g. the Single Permit and the EU Blue Card Directives) it will be the third-country national or his or her legal representative who needs to request the visa.

Third-country nationals do not encounter any obstacles in practice to leave the third country and/or enter the Member State, but may encounter some obstacles in practice to transit the Member State³. Spain allows third country nationals who hold a valid

³ Nationals of countries included on the list of countries subject to the obligation of an airport transit visa ([List I](#) and [List II](#)) are required to be in possession of an airport transit visa.

permit and valid travel document to enter and re-enter their national territory only on the basis of the permit.

Upon arrival, always third-country nationals, *both in a legal or illegal situation within the Spanish territory*, are required to register with the local authority, with social security institutions and with healthcare providers.

5 Post-application phase

5.1 Legal transposition of the EU legal migration acquis

For the post-application phase, Spain has overall complied with the legal transposition of the EU legal migration acquis. However, some concerns may rise as regards *Article 13 of the FRD* regarding the entry and residence of family members, where the duration of the initial residence permit for family reunification is linked to the duration of the permit of the sponsor. Even when *Article 13 (2) of the FRD* requires always residence permits of at least one year of duration, in Spain, it might be possible that the validity of the permit for the family members will be shorter. It is stated that the validity of the residence authorisation of the reunified family members will be *until the same date* as the authorisation held by the sponsor at the time of the entry of the family member in Spain (RD 557/2011, Art. 58(2) (3)). Then "the same date" could be a date before a year will be completed. Practical application of the EU legal migration acquis

There are some data available from the Report of the Commission for Reform of the Administration - *Informed de la Comisión para la Reforma de la Administración* (CORA) on the level of compliance of the timeframes set to deliver the permit following the notification of the decision. This Report keeps a record of applications which are subject to the so-called positive administrative silence (no response = positive resolution) but not about the rest of the procedures which are subject to a negative administrative silence (no response = negative resolution). In any case, it should be mentioned that the published data on such resolutions indicates only the time that has elapsed between the filing of the application and the resolution of the file, and *it does not subtract the time while the procedures are pending due to the need of the applicant to provide some documentation*.

Issues also arise in certain cases in relation to the [electronic notification procedure](#), as in many cases, this is used to communicate negative decisions on applications. The procedure states that if the person does not access the online resolution after 10 working days, the resolution will be in any case considered as formally notified and then the time for the appeal will start counting too. However, applicants although they are formally notified about this procedure, they are not always fully aware of the functioning of this channel for communication and they do face difficulties to access it. As a consequence of it, they often may *face the possibility of losing their right to appeal if they have missed the corresponding deadline for doing so*.

As regards the number of national authorities involved in the application procedure, the Ministry of Interior, the Ministry of Employment and Social Security and the Ministry of Foreign Affairs do have shared competences in this area. This can lead in practice to incoherence issues, as applicants and professional sometimes face situations where i.e. the same documentation may be subject to different assessment procedures. For example:

Third country national who renew their residence and work permit for 2 years. He has a criminal record (but the penalty has been suspended and therefore he/she is entitled to ask for the renewal of the authorization (article 71.2.5. of the RD 557/2011.). The government delegation (Ministry of Ministry of Presidential Affairs & Public Administration) initially denies the permit. But after entering an appeal receives a positive resolution. Afterwards at the moment of asking for the Foreigner Identity Card, the Police (Ministry of Interior) opened a sanctioning procedure as they got evidence of the existence of a criminal record (article 57.2 of the Law 4/2000). Then the residence permit

ends extinct based on a criminal record that has been already valued by the government delegation.

Other example, a third country national with Argentinean nationality that it's married with other Argentinean citizen. First, at the moment of asking for the visa for a family reunification permit, the Consulate (Ministry of foreign affairs) considers the marriage valid and issue a valid visa. But once the family member is already in Spain, the Ministry of Justice considers it as a fraudulent marriage and not possible to take full effect. Finally an appeal was introduced and it did get a positive response, but it should be taken into consideration as well the "risk" of which court could be allocated.

Directive	FRD	LTR	SD	RD	BCD	SPD
Minimum validity of the first permit	12	60	6	No information	12	6.
Maximum validity of first permit	60	60	12	24	60	60
Minimum validity of permit renewal	No information	No information	No information	No information	No information	No information
Maximum validity of permit renewal	Until the same date that the authorization that is incumbent for the sponsor	60	12	12	2 years after the first and second renewals applications	(Investor: 5 years Entrepreneurs: 2 years. Highly qualified professionals: 2 years Researchers: The application for residence permits and renewals extends the validity of the stay or residence status of the applicant until the procedure is terminated · intra-corporate transferees of third

country
nationals
(non EU):
2 years)

The Member State has a set timeframe to deliver the permit following the notification of the decision of 30 days. In practice, it takes 15-20 days on average.

The employer is the main applicant but is not involved in the delivery of the permit.

5.2 Differences between national statuses and the EU legal migration acquis

No legal differences between the national statutes and EU directives were identified during the fitness check regarding the post-application phase.

6 Residency phase

6.1 Legal transposition of the EU legal migration acquis

For the residency phase, Spain has overall complied with the legal transposition of the EU legal migration acquis, although some provisions may raise concerns in relation to the **FRD** in particular its *Article 6(2), first subparagraph*, as Spain on the one hand provides for the possibility to refuse an application for family reunification on the basis of reasons of public policy, public security and public health (in conformity with the Directive) but on the other hand, when referring to the renewal/withdrawal of the permit, it considers violations of obligations on taxation and social security as possible grounds to be taken into consideration and finally withdraw the permit. Moreover, *Article 6(2), second subparagraph*, may also raise concerns since Spain does not provide for any of the factors to be taken into account in order to balance the refusal or the withdrawal of the permit. Some questions also arise from the implementation of *Art. 6(3) of the FRD* since it is possible that the renewal of a permit of a family member is refused due to an illness suffered after the issue of the residence permit. *This is also true for Art.16 (1) (a) of the FRD* because, in order to renew the permit of a family member who is sixteen years old or younger, the applicant needs to provide proof that the minor (who must still be receiving compulsory education) is effectively enrolled in an educational program.

By not transposing the option provided in *Article 16(2) (b), second subparagraph of the FRD*, it can be said that Spain offers more favourable provisions than that made possible by the Directive. This 'may clause' allows Member States to "reject an application for entry and residence when making an assessment with regard in particular to the fact that the marriage, partnership or adoption was contracted *after* the sponsor had been issued his/her residence permit". *It could be understood as a more favourable provision* as in Spain only it is allowed to take into consideration the accreditation of the existence of the family ties or the relationships, registered partnerships at the moment of entering the application. Issues such as the initial date for those conditions to exist could not be included as reasons for rejections, notwithstanding the regular national measures in place to be taken in the fight against fraudulent marriages.

Some concerns may also arise from the implementation of *Article 12 (a) of the RD*, which refers to equal treatment with regard to the recognition of professional qualifications acquired in a Member State of the EU, different from the one where the application is submitted. In Royal Decree 1837/2008, which transposes Directive 2005/36, Spain does not explicitly recognize equal treatment for third country migrant workers (but this has to be considered regarding the practical application).

6.2 Practical application of the EU legal migration acquis

When considering the practical application of the provisions of the EU legal migration Directives relevant to the residence phase, the important functions of the Autonomous Communities (i.e. Catalonia) within the Spanish public administration need to be taken into consideration. Those competencies held by the Autonomous Communities and/or the Local Council have particular and relevant consequences for example in the case of drafting to the reports of the effort of social integration and/or the reports on the housing for the family reunification where those reports are a prerequisite for the corresponding authorization to be granted. The functions and powers of city halls are also important for understanding day-to-day practices in those Autonomous Communities which have delegated competences to the local level.

A practical issue has also arisen in relation to the procedures for the concession of Spanish nationality by residence and its amendment, which entered into force in 2016⁴. The Ministry of justice allows a dispensation from the language test (DELE) as well as from the constitutional and sociocultural knowledge of Spain (CCSE) test in three cases: People that don't know how to read or write, people with learning difficulties and applicants who have been attending school in Spain and have completed compulsory secondary education. However, a procedure to exercise that right is still pending further clarification. So far, in practice it is required to enter an application through a written statement but there is not yet a formal and standardized application form and it does provoke uncertainty as far as the compliance with the required conditions.

A plan to speed up naturalisations is in place since 2016. But actually it seems to exist an average delay in the resolutions of the naturalisation applications for up to two years. In January 2017 the applications entered in 2015 supposed to start getting registered. According to the Spanish legislation (article 11.3 RD 1004/2015) if one year after filing the application for Spanish nationality by residence you have not received response, this means that your application is considered as refused by administrative silence.

For the moment, there is not yet any resolution over the applications registered after the article 11.3 RD 1004/2015 entered into force in 2015. Therefore it could be understood that all of them did get a negative resolution as this legislation stated that after one year the resolution should be understood as rejected (negative administrative silence). Actually the authorities are in the process of registering applications entered previously. Therefore certain practitioners are recommending to enter an appeal as it was a negative resolution to comply with the law. But there is a common understanding that the resolutions will be issued later after the authorities manage to solve the backlog. This level of ambiguity is provoking legal insecurity. Furthermore this situation is hurting certain groups such as the minors whose parents have requested the Spanish citizenship. In Spain, a minor may access the Spanish citizenship when their parents have the nationality. Otherwise and as the procedure suffers such delay the minors turn to be over eighteen they will have to find other option to access the citizenship different from the one linked to their parents.

a. Use of the permit:

The residence permit is issued using the format as set out in Regulation (EC) No 1030/2002 for residence permits. The permit has a constitutive value. It gives third-country nationals to right to move freely on the Member State's territory.

⁴ 11st October 2016, it was published in the BOE the Ministerial (Article 10.5 (JUS / 1625 / 2016, of 30 of September). Orden JUS/1625/2016, de 30 de septiembre, sobre la tramitación de los procedimientos de concesión de la nacionalidad española por residencia).

The Member State allows third-country nationals holding residence permits from other Member States applying the Schengen acquis (together with a valid travel document) to enter and move freely within its territory.

The permit is required as a legal document for the following other administrative procedures:

Access to education	Access to healthcare	Registration with PES	Fixed telephone subscription	Utility subscription	Open a bank account	Social security registration
X	X	X	X		X	X

b. Renewals of the permit:

National or EU law imposes a direct or indirect requirement to renew a valid residence document.

The renewal process follows a single procedure, involving one authority. A different authority is involved as in the first application procedure.

c. Change of status and naturalisation

Status changes are possible for most statuses with the exception of the LTR permit as per the Directive and the LTR national scheme. The procedure for requesting a status change is different from the first application procedure.

In order to obtain citizenship, there are 5 options to access it. There are: 1- citizenship by residence, 2- citizenship by naturalization charter, 3- citizenship for person of Spanish origin, 4- citizenship via possession of status, 5- citizenship by option⁵.

The third-country nationals needs to comply with the several conditions depending on the applicable category regulation.

If it's requested under the option of the citizenship by residence, the application may be entered preferably through the electronic office of the Ministry of Justice, or through any of the entities referred under article 16 of the law 39/2015 (registration offices of the General Directorate of the State or through the ones of the autonomous communities or through the ones of the local authorities).

The subsequent proceedings *after* the acquisition of Spanish nationality must be made in the Civil Registry offices.

In case the Spanish citizenship have been acquired *by residence, by charter of nature or by option*, it is requested that:

The 14-year-old when he/she is able to provide a statement by itself, he/she will have to swear or promise loyalty to the King and obedience to the Constitution and the laws.

He/she declares that they do renounce their previous nationality. Unless the person concerned would be under the dual nationality cases.

⁵ See more detailed information <http://www.mjusticia.gob.es/cs/Satellite/Portal/es/areas-tematicas/nacionalidad/nacionalidad/como-adquiere-nacionalidad/modos-adquisicion>. And <http://www.mjusticia.gob.es/cs/Satellite/Portal/es/areas-tematicas/nacionalidad/nacionalidad/textos-legales> Last access 17th January 2018.

The Spanish law requests a name and two surnames.

Since October 2015, it'll be necessary to hold an A2 level diploma (DELE A2 (or an upper level)) of Spanish language is a minimum requirement for those not native Spanish-speaking candidates.

d. Employment rights on the basis of the permit

In general, a work-related permit is linked to a certain employer. When changing employer, the third-country national needs to request a change to the permit.

e. Equal treatment

Spain does could be observed a formal and legally recognized equal treatment in relation to the working conditions, including pay and dismissal as well as health and safety at the workplace, as well as the freedom of association and affiliation and membership of an organization representing workers or employers or of any organization whose members are engaged in a specific occupation, including the benefits conferred by such organizations. It will be also applicable to the education and vocational training until the age of 16 years old and the tax benefits, in so far as the worker is deemed to be resident for tax purposes in the Member State concerned. Besides it's equal in relation to the access to goods and services and the supply of foods and services made available to the public including procedures for obtaining housing as provided by national law, without prejudice to the freedom of contract in accordance with Union and national law. Likewise, equal treatment is provided by the advice services afforded by employment offices and for the recognition of diplomas, certificated and other professional qualifications in accordance with the relevant national procedures.

Nevertheless certain restrictions may be reflected in reference to the Social security benefits listed in Article 3 of Regulation 883/2004 such as: invalidity benefits and the old-age benefits (non-contributory social pensions) where the foreigner will be request 5 and 10 years respectively. Even in the case of the widowhood pensions if the beneficiary survivor is in an "irregular" situation – not legally staying in Spain, he/she will be entitled to receive that benefit.

With regard to identifying labour exploitation, the Member State does have a mechanism in place to monitor the exploitation of third-country nationals. Other specific measures in place to prevent labour exploitation of third-country nationals include those addressing the crimes of trafficking in human beings for the purpose of labor exploitation (article. 177 bis of the Spanish Criminal code).

f. Integration:

Specific integration procedures and conditions apply to third-country nationals once established on the territory of the Member State. There are consequences if the third-country national does not participate in these or fails the integration measure.

6.3 Differences between national statuses and the EU legal migration acquis

In the case of the **FRD**, the national statuses are more favourable than the EU legal migration acquis as the option established by *Articles 14(2) of the FRD*, has not been

applied and Spain gives the family members an unrestricted right to access to the labour market.

As regards the **SD**, the time period that a third country national remains for the purposes of studies, pupil exchange, unremunerated training or voluntary service in Spain is considered as "stay" and not fully "residence", and then it is not taken into account when calculating the previous residence necessary for the purposes of the acquisition of nationality.

7 Intra-EU mobility phase

7.1 Legal transposition of the EU legal migration acquis

Spain has overall complied with the legal transposition of the EU legal migration acquis in relation to the intra-EU mobility phase. Spain has chosen not to apply Article 14(3), first and second subparagraph, of the **LTR** that sets out an option according to which Member States may examine the situation of their labour market, nor *Article 14(4) of the LTR* that sets out an option for the limitation of the total number of persons entitled to be granted right of residence. However, as these are 'may clauses', Spain is still, in practice, compliant with the Directive's obligations.

Furthermore, the economic conditions set by Spanish regulation to issue an EU long term residence permit are not compatible with *the Art 15.2 of the LTR*, considering the requirements made by the European Court of Justice in C-578/08 (paragraph 48 of the judgement) where the Court stated that it is not possible to fix minimum thresholds in the legislation, but only amounts for reference. In Spain, the art. 152. b of the RD 557/2011 contains the requirement for the evidence of sufficiency of economic means. It does refer to the conditions applied to the family reunification permits (Article 54(1) RD 557/2011) that states that the third country national needs to prove to have more than 150% of the Public Index of Income for Multiple purposes (IPREM) ("Indicador Público de Renta para Efectos Múltiples") if there are two members in the household plus 50% of the IPREM per each additional member of the household. Then it should be concluded that, although there is flexibility as well, there are conformity issues as such amount referred as minimum at the time the authorisation is requested.

When it comes to the **RD** and in the case stated in the Art. 13 (2), if the researcher stays in Spain (considered as the second Member State) on the basis of the hosting agreement concluded in the first Member State for a period of up to three months, the Spanish law (Art. 84.1 of the RD 557/2011) does not *explicitly* mention any request for the availability of sufficient resources in Spain or any comment on the need not to be considered as a threat to public policy, public security or public health in Spain.

In July 2015⁶, Spain declared that the **SWD** is considered to be transposed without the need for any additional transposition measure as the provisions of the SWD were already consistent with the Spanish legal system.

7.2 Practical application of the EU legal migration acquis

In general terms the EU residence permits suffice, in addition to valid travel documents to enter and travel in Spain during the first 3 months. Afterwards an application for an authorization to stay or a residence permit should be entered in order to legally stay in the country.

There are certain differences in the rights available to EU-Long term residence permit holders and EU Blue Card holders as the first ones have the possibility of obtaining an

⁶ Orden ESS/1975/2016, de 27 de diciembre, por la que se prorroga la vigencia de la Orden ESS/1/2012, de 5 de enero, por la que se regula la gestión colectiva de contrataciones en origen para 2012 (BOE 314, de 29/12/2016)

authorization of residence or residence and work in other Member States, under the conditions that they determine, while the EU Blue Card holders do not enjoy that option. Moreover, EU-Long term residence permit holders may submit the application either in Spain (second Member State) or in the first Member State, depending on which Member State the third-country national is whereas the EU Blue Card applicants should submit the application only within the Spanish territory.

For short-term mobility, the Member State:

- Does not require the third-country national to notify
- Requires the third-country national to ask for authorisation.

7.3 Differences between national statuses and the EU legal migration acquis

Spain has chosen to transpose *Article 15(2) (a) of the LTR Directive* which includes the requirement of sickness insurance along with proof of sufficient economic means in order to obtain the EU-Long Term residence permit. The *equivalent national status for long term residence* is more favourable as it does *not* include the requirement of sickness insurance along with demonstrating economic means. Equally the equivalent national status for the long term residence permit offers a different options that in the event of losing the LTR authorization. In the cases where the person would like *to regain the LTR authorization*, there is a difference between both statuses. The EU-Long Term residence permit requires always a period of at least six years outside the Spanish territory. By contrast, under the national scheme the period without returning to Spain may be no longer than 3 years in certain cases.

When it comes to *conditions for readmission*, in the case of a **EU Blue Card residence** permit granted by Spain, if the third country national **holder** of that EU Blue permit is targeted with a repatriation order issued by another EU member state (due to expiry of initial residence authorization to reside in that country or due to the fact that the residence application to stay in that country has been rejected), he/she will be readmitted in Spain with no need of additional formalities. If so, those family members previously reunified will be also included (Sixth Additional Provision of the Law 4/2000).

8 End of legal stay / leaving the EU phase

8.1 Legal transposition of the EU legal migration acquis

Spain has overall complied with the legal transposition of the EU legal migration acquis for the end of legal stay / leaving the EU phase.

8.2 Practical application of the EU legal migration acquis

Once the third-country national holds legal residence in Spain accredited through any of the residence permits under the Spanish legal system, they have *access to the benefits of the Spanish Social Security system* on equal terms compared to Spanish nationals while legally staying within the country.

The Member State allows third-country nationals to export certain social security benefits. However, the information on the portability of social security benefits is not easy to find and not clear. This portability is based on the existing multilateral and bilateral agreements, the so-called Social Security Conventions (*Convenios de la Seguridad Social*)⁷, between Spain and certain countries outside the EU.

⁷ Such as the European Convention on Social Security as well as the [Ibero-American Multilateral Convention on Social Security](#) and several [bilateral agreements on social security](#) also signed with third countries. In the case of Spain, there are bilateral agreements with Argentina, Brazil, Chile, Ecuador, Paraguay, Uruguay and Peru. The Multilateral Ibero-American Social Security (Convenio Multilateral Iberoamericano de Seguridad Social) agreement is an instrument for the coordination of the Social Security laws, with respect to the pensions of the different Latin American States that ratify it and that, in addition, sign the agreement of Application, available at: http://www.seg-social.es/Internet_1/Masinformacion/Internacional/ConvMultiber/VigorMultiber/index.htm. Last access 17th January 2018.

These agreements contain all the provisions of relevance to the coordination of social security systems with third countries, under the principles of aggregation of contributions and of *pro rata temporis*. They generally only apply to *contributory pensions*. *Unemployment benefit* may only be aggregated and exported under the regulations for social security coordination applicable in the European Economic Area, Switzerland and Australia. For example, in certain *Voluntary Return Programmes*, such as the Payment in Advance of allowances to foreigners (*Abono Anticipado de Prestación a Extranjeros (APRE)*), the third-country nationals who voluntarily return to their country of origin receive a **cumulative advance payment of their contributory unemployment benefit** as an advance lump sum⁸.

At the moment of renewal of the card, difficulties are often faced due to the necessity to *keep abreast with all tax and social security obligations*, even though no money is owed, such as a delay in the presentation of a tributary settlement and the lack of compliance with a tax obligation.

The Member State has measures or a scheme in place to allow circular migration. A third-country national residing in the Member State is allowed to be absent from the territory for a maximum of 90 days (364 days for BCD only in the case of absence for business reasons) days before s/he loses the residence permit and/or right to stay. The absence of third-country nationals is monitored by the Member State. The consequences of deliberate overstay of the duration of the residence permit are:

The third-country national will stay within the Spanish territory as an "irregular" migrant illegally staying in the country. At any time, he/she may face an expulsion order if the authorities do request her/his identity document and became aware of his illegal stay in Spain.

In certain cases it may be forced to return when he/she 'll be taken by force to exit the frontier and/or enter in one of the flights prepared.

In any case, those illegally staying will keep their right to access health care, labor rights, or to register their kids into the general education system and/or if they do comply with the required conditions later on to enter an application to obtain a residence permit under what it's known as authorization for exceptional circumstances.

There are specific procedures in place for third-country nationals who choose to leave the Member State. These include the 3 main differentiated types of **Voluntary Return programs**⁹ such as:

1. *Voluntary* social care return program (includes airline ticket and economic amount).
2. Productive *Voluntary* Return Program (includes airline ticket and business entrepreneurship in origin country).
3. *Voluntary* Return Program APRE complements (includes plane ticket for people who have capitalized unemployment).

If the third-country nationals does hold as well the Spanish nationality (dual nationality cases), he/she cannot apply for a *Voluntary* Return program. The exit of the country will be properly registered, in certain cases a period of no return will be established and the residence permit should be returned.

When it comes to the **entry bans** that are imposed following all return decisions, in Spain they can be revoked *for those who do cooperate with a return decision. As far as the possibility of returning the permit is concerned, in practice, this is only*

⁸ Royal Decree-Law 4/2008, of 29 September 2008.

⁹ http://extranjeros.empleo.gob.es/es/Retorno_voluntario/programa/index.html. Last access 17th January 2018.

implemented in cases where the third-country nationals is benefiting from a voluntary return programme.

In Spain, third-country nationals may access the so-called **"Return authorization"** - that is, they enjoy permission to leave and subsequently return to the national territory when their authorization of residence or stay is in the process of being renewed or extended. This permission is only valid for Schengen border crossings. The number of days of absence allowed will be 90 days maximum. And may not be granted when there is a ban at the moment of departure from Spain or a limitation on its freedom of movement issued by the judicial authority as a precaution in an extradition process or as a result of judgment. The possible conditions for it to be granted are: a) when the holder of an authorization of residence or stay has initiated procedures for renewal or extension of the authorization that enables him or her to stay in Spain within the legal deadline; and/or b) when the identity card holder was overseas and was forced to submit an application for duplicate card by theft, loss, destruction or rendering unusable; and/or c) Provide proof that the trip responds to a situation of need and are exceptional reasons and have favourably resolved the initial authorization of residence or stay and have pending the issuance of the identity card.

8.3 Differences between national statuses and the EU legal migration acquis

No legal differences between the national statutes and EU directives were identified during the fitness check regarding the end of legal stay / leaving the EU phase.

9 Main findings and conclusions – state of practical implementation of EU legal migration legislation in the Member State

In Spain, when it comes to the pre-application phase, a relevant improvement may be observed after the changes introduced in 2015 with the law 14/2013 on international mobility. This law brought an important update of the online information on those authorization permits and it also allowed the centralisation of the permit procedures in a specific unit, namely the UGE-CE.

The presentation of the application for authorization of residence or renewal before the UGE-CE automatically extends the validity of the status of residence or stay of that holder. This measure will be of special relevance for the SD and ICT beneficiary holders and in the case of highly qualified professionals. The renewal of immigration status until the administrative procedure is resolved makes applications for status changes easier, especially in the case of international students of business schools who wish, once their studies have finished, to become entrepreneurs.

This reform of the section of international mobility in 2015, responding to the evaluation of the experience in the first year of application of the law 14/2013 meant the full transposition of the ICT. It has also served to extend the scope of family reunification for certain groups, including persons with a similar relation of affectivity, children who are older than 18 years of age who have not established a family unit of their own and depend economically on the holder, as well as parents in charge, as well as, the regulation of the extended family of the EU citizens.

It should be also noted that Spain includes in the transposition of the SD, the provision applicable to students, also to pupils, trainees and volunteers too. And the transposition of the S & DR into the Spanish legal system will mean the beginning of performances of reform in order to accommodate the legal provision before May 23, 2018 at the latest.

As far as the **post-application phase** is concerned, in 2012 the adoption of the CORA system introduced many changes that have made it possible to publish processing times online, reduce processing times and make significant cost savings on the procedures, although applicants and practitioners declared the convenience of extend the actual information to all the legal migration procedures. Nowadays it does reflect the processing times for the LTR permits as well as for the all type of renewal applications unlike the vast majority of initial applications or request for modifications, *where the administrative silence is negative and are not reflected*. All the procedures contained are subject to the so called positive administrative silence. To implement this measure, the General Secretary of immigration and emigration publishes the average times of processing and data concerning the procedure of resolution of two of immigration procedures (...), including the number of cases resolved in the month as well as the average in each province time and totals. Although it should be noted that the time that a record is pending in the absence of which the interested party provide some documentation it's not subtracted.

Another problematic area of concern is naturalisation. In 2012, an Intensive Processing Plan, so-called "The Project GEN", was launched, for the management of nationality files. An agreement named "Civil Online registration (Registro Civil en línea)", was signed between the Ministry of Justice and the Secretary of State for Justice through the enterprise red.es, and the professional association of the Land Registrars¹⁰. Additionally a plan to speed up naturalisations is in place since 2016 to correct the actual delay in the resolutions of the naturalisation applications of approximately two years.

Finally and as a consequence of the *complex distribution of competences between the central government (which decides on residence applications) and Autonomous Community (who decide on work permits)*, more information on the distribution of competences and its impact on the single permit procedure will be advisable.

¹⁰ See detailed info: <http://www.mjusticia.gob.es/cs/Satellite/Portal/es/areas-tematicas/nacionalidad/plan-intensivo-tramitacion>

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