

# Distant Shores? Evaluating Spain's Immigration Policy

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**Abstract** *Over the past few decades, Spain has been transformed from a net emigration country into a hub for international immigrants. In the last five years, the number of foreigners living in Spain has increased fourfold. This suggests a flow of some three million new residents streaming into Spain at a time of high unemployment and general economic paralysis. This study examines the history of Spain's immigration policy, highlighting issues such as governmental responsibility, pathways to social integration and the status of illegal immigrants.*

Keywords: Spain, immigration, economic crisis, unemployment, politics

## Introduction

In the global context of migration, Spain has shifted from a net emigration to a net immigration country over the last few decades. To attach a quick chronology to this transformation: 1973 marked the start of a period of demographic stability and a massive emigrant return to the country. Some have argued that this was triggered by the fact that much of the West had plunged into economic stagnation after the oil crisis—many in Spain's emigré community were economic refugees—however it was probably more connected with the dawn of a democratisation period that culminated in the late 1980s. Changes to Spain's domestic political system were reflected in a demographic balance between emigrants and immigrants that lasted until the mid-1990s.<sup>1</sup> Since then, there has been a noticeable shift, and Spain has emerged as a prime immigrant destination as a result of its economic growth, EU membership and participation in the Schengen Area. The

country now ranks among the most popular immigrant destinations in the world with an intake rate four times higher than that of the US and eight times more than that of France.<sup>2</sup> In 2005, Cyprus and Andorra were the only countries in Europe that had more immigrants than Spain. Spain currently ranks 10th in the world in terms of the total number of immigrants behind countries such as the US, Russia, Germany, Ukraine, France, Canada and the UK. Over the past five years, the number of foreigners living in Spain has increased fourfold, which means there has been an influx of around three million new residents since 2010.

According to the 2011 census, 14.1% of Spain's residents were of foreign nationality. Migration flows declined slightly based on the impact of the economic crisis in 2010, 2011 and 2012; around 40,000 migrants who had been living in Spain left the country in 2011 and another 230,000 followed in 2012. These figures contrast with data from the mid-'90s when the number of registered immigrants was only one million or 2.5% of the Spanish population.<sup>3</sup> In the last decade, Spain's immigrant makeup has also diversified considerably. In January 1998, immigrants coming from the EU-15 formed 41.3% of residents who were not born in Spain. In January 2011, the same group made up less than 20% of all foreigners living in Spain. This period also saw the greatest increase in immigrants coming from countries in Eastern Europe. Between 1998 and 2011, this number rose from 6.6% to 21%.

If we look more closely at the nationality of immigrants in Spain,<sup>4</sup> we find that in 1998 the majority were as follows: Moroccan (190,497), French (143,023), German (115,395), British (87,808) and Argentinian (61,323). In 2011, the list had changed and these nationalities were noticeable: Romanian (809,409), Moroccan (766,187), Ecuadorian (478,894), British (392,577) and Colombian (372,541). There were 457,650 newly registered migrants in 2011. Immigrants to Spain tend to concentrate in areas with greater economic activity and more demand for labour. The areas with the highest immigrant numbers are therefore industrial and tourist centres such as Madrid and its surrounds, the Mediterranean coast and the islands. The most popular destinations for immigrants from within the EU are the Levante, Andalusia, the Balearic Islands and the Canary Islands. The main reasons that immigrants move to these places are the good climate and competitive prices compared to their home countries. On the other hand, the regions with the lowest immigrant numbers are Extremadura (2.3%), Asturias (2.5%),

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Galicia (2.5%), the Basque Country (3.4%), Castile and León (3.6%) and Cantabria (3.7%). Overall, 44.81% of all officially registered immigrants in Spain live in three provinces (Madrid, Barcelona and Alicante). A 2009 population census indicated that the place in Spain with the largest immigrant settlement was San Fulgencio (Alicante) where 77.58% of the 12,030 inhabitants were foreigners. The only cities with a population above 10,000 where foreigners outnumbered Spanish citizens were Rojales (where foreigners were 65.25% of the population), Teulada (60.37%), Calpe (58.61%), Jávea (51.22%) and Alfaz del Pi (50.89%); all are in the province of Alicante. Torrevieja, with more than 50,000 inhabitants, also had a high proportion of foreigners (47.65% of its 84,348 inhabitants); it is in Alicante province as well.<sup>5</sup> The geographic distribution of foreigners also greatly depends on their country of origin. In the autonomous areas of Madrid and Catalonia, Latin American and African people represent two-thirds of all immigrants. There are twice as many Africans as Latin Americans in Catalonia, and in Madrid it is the other way around. Moroccan citizens form the largest migrant colony in Catalonia and Andalusia while 75.51% of all Pakistani residents live in Catalonia. Most Ecuadorians in Spain live in Madrid (34% of the total number) followed by Barcelona and Murcia. Brits are mostly clustered in Alicante and Malaga, Germans on the Balearic and Canary Islands and more than half of Romanians in Spain reside in Madrid or Castellón.<sup>6</sup>

Immigrants' origins in Spain are, thus, very diverse and considerably influenced by cultural factors. The majority come from Latin American countries (36.21% of all immigrants according to 2006 National Statistics Institute data) followed by the EU (34.45%) and North Africa (14.83%). A minority are from European countries outside the EU (4.40%); Sub-Saharan Africa (4.12%); the Middle East (2.72%); India (1.67%); North America (0.66%) and the Philippines (0.48%). Only 0.5% of all immigrants are from the rest of Asia or Oceania.

Given the historical experience and the fact that during the Franco dictatorship many emigrated from Spain, Spanish people are quite open to immigrants. According to a Public Opinion Research Centre (*Centro de Investigaciones Sociológicas*) analysis, public opinion has changed along with other phenomena connected with increased migration.<sup>7</sup> Between 2000 and 2005, for example, Spaniards saw immigration as one of the most serious threats to Spanish society.<sup>8</sup> We can find reasons for this change at many levels: economic, political and

security-related. Public opinion was influenced by the unfortunate events on the Ceuta-Melilla border as well as terrorist attacks in Madrid in 2004, the announcement of regulations targeting illegal immigrants, growing illegal immigration from the African continent and the beginning of the economic crisis.

That crisis in Spain had an impact on immigrants and how they were generally seen. There were fewer attractive work positions available to foreigners without any high-level qualifications. On top of this, due to increased unemployment, Spaniards began to demand the positions which had mostly been performed by foreigners, for example, jobs at ports or in the agriculture or building industries. As a consequence, we find that unemployment among foreigners increased more than fortyfold in the period 2008-2009 compared to 2007. Total unemployment was also seven times greater than in 2007.<sup>9</sup> According to OECD estimates, 'the registered unemployment rate among immigrants [...] reached 8% more than the unemployment rate among the Spanish citizens.'<sup>10</sup> In 2012, this figure exceeded 12%.<sup>11</sup> Based on data from the third quarter of 2012, some 333,905 immigrants to Spain were officially registered at the Spanish employment office (SEPE)<sup>12</sup> and receiving some kind of unemployment benefit; 221,398 of them were from countries outside the EU. This was considerably lower than the figure in 2011 when there were 441,689 immigrants on unemployment benefits. On the other hand, it marked an increase from 2008 when 209,200 people were registered at the Spanish employment office.

Turning to the ethnic breakdown of unemployed people, we find that more than one hundred different nationalities were registered at the employment office. The most represented were Moroccan (70,253 or 21%) followed by Romanian (57,370, 17.18%), Ecuadorian (29,332, 8.79%), Colombian (19,477, 5.83%), Bolivian (9,610, 2.88%), Argentinian (7,353, 2.20%), Brazilian (4,042, 1.21%), Uruguayan (3,034, 0.91%) and Chilean (2,394, 0.72%). Only 41% of immigrants met all of the criteria to receive unemployment benefits from the central or regional employment office. The rest obtained a temporary unemployment benefit lasting only six months or they were not registered at the employment office. The fact that immigrants in Spain only receive a limited unemployment benefit (*Los Subsidios*) instead of the full benefit (*Las Prestaciones Contributivas*) is very important to those trying to save money from the state budget. In 2012, 41.3% of immigrants received full unemployment benefits while 46.7% were given limited unemployment

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benefits. The remaining 11% of unemployment benefits was paid to difficult-to-employ individuals (*La Renta Activa de Inserción (RAI)*) while 1.1% of a special unemployment benefit went to seasonal agricultural workers in Andalusia and Extremadura.<sup>13</sup> Thus, 58.7% of all registered immigrants in Spain were on a limited form of unemployment benefits (the less costly variety). In June 2012, the total cost of foreigners' unemployment benefits to the state budget was EUR 236.8 million. This was 7% lower than the cost in 2011. Most unemployed foreigners were registered in Madrid (16.67%), Barcelona (16%), Valencia (5.69%), Alicante (4.40%) or Murcia (4.19%). Efforts to save state budget funds and impose stricter conditions have radically decreased the number of foreigners on unemployment benefits, with an overall fall of 26% in the last two years. Two years ago, 76% of all unemployed immigrants were receiving these benefits, but now the figure is only 40%.

### Immigration Policy Authorities

Spain's immigration policy is based on Article 149.1.2 of the Spanish Constitution and the authority of the central government.<sup>14</sup> The social integration of immigrants was not mentioned in the first law on foreigners and it was left largely under the control of autonomous regions and their governments.<sup>15</sup> In the '90s, the central government's immigration policy focused especially on border control and immigrants who were already living in the country. This began to change slightly in 1991 when the Managing Directorate for Immigration (*Dirección General de Migraciones*) and the Office for Foreigners (*Oficinas de Extranjeros*) were established under the Ministry of Labour and Social Affairs.<sup>16</sup> The self-governing regions took the initiative and started to make specific regional plans for integrating foreigners. These defined key questions about the conditions for involving immigrants in the labour market and options for using healthcare, education and housing as well as general integration in the local environment. Particular strategies were developed including measures respecting regional differences. The government set up the Support Fund for Reception and Integration (*Fondo de Apoyo a la Integración*) in 2005 so that autonomous governments could receive state budget funds to assist with foreigner integration. Other than the historic areas of Andalusia, Catalonia and the Basque Country, which have their own regional budget funds to support foreigner integration, these autonomous governments allocate money to regions and cities as needed. Therefore the

state only regulates the statutory standards and defines strategic goals.

Act 2/2009 on the rights and freedoms of foreigners in Spain mentions social integration in its Article 2, which calls for public support for the integration of foreigners into society according to the Spanish Constitution.<sup>17</sup> The law sets out the state administration's goal, which is the integration of immigrants into the local community, and it also names different economic, social, cultural and political tools to achieve this end. Immigrants should be made familiar with both constitutional and local laws and the values of Spanish, regional and European civilisation. They should also be made aware of human rights, democracy and the principle of non-discrimination based on sexual or gender identity. Article 2 of Spain's immigration statute details the cooperation among the central government, autonomous regions and municipalities. All of the listed authorities should cooperate according to the law and coordinate their activities leading to the goals under the strategic plans.<sup>18</sup> The autonomous governments and their regional authorities are responsible for all integration activities. They should coordinate their information and counselling provision activities with the public administration, non-profit organisations and social partners.<sup>19</sup> This is how the law describes the main authorities responsible for making immigration policy.

### *Integration Plans*

However there is not just one law that determines Spain's immigration policy. Instead the state has established integration plans for particular periods. The first Spanish Integration Plan (PIS1 - *Plan para la Integración Social de los Inmigrantes*) was adopted by the government in 1994. Soon after, an initiative started that established the Forum for the Social Integration of Immigrants (*El Foro para la Integración Social de los Inmigrantes*) and the Immigration Observatory (*El Observatorio Permanente de la Inmigración*). The Forum worked as a consultation and information body dealing with questions around the integration of immigrants<sup>20</sup> while the observatory was a statistics and information agency working on issues involving immigration, immigrants' residence in the country and international security.<sup>21</sup>

Another plan called the Global Programme to Regulate and Coordinate Foreign Residents' Affairs and Immigration in Spain (GRECO) (*Programa Global de Regularización y Coordinación de la Extranjería y la Inmigración*) was adopted for 2001-2004 with a budget of EUR 120 mil-

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lion. The ensuing Strategic Plan for Citizenship and Integration (*Plan Estratégico de Ciudadanía e Integración*), known as PECl,<sup>22</sup> was influenced by one of the four financial tools of the European Programme on Solidarity and Management of Migration Flows. The main aim was the integration of third country nationals in the EU. This plan was mostly financed by the Fund to Support Admission and Integration of Immigrants and to Strengthen Education (*Fondo de Apoyo a la Acogida y la Integración de los Inmigrantes y al Refuerzo Educativo*); it was approved in February 2007 for the period 2007-2010 with a budget of over EUR 2 milliard. The main goal was to accomplish social cohesion among local Spanish residents and immigrants. This was based on the principle of non-discrimination and the importance of equality of opportunities and rights (civil, social, political, cultural and economic) as well as guaranteed access to public services (education, employment, social services). The autonomous provinces, local authorities, non-profit organisations, immigrants' associations and the Forum for the Social Integration of Immigrants all helped to create this plan. One important part was the fight against racism and xenophobia with the aim of promoting adaptation by immigrants and their broader participation in society. In 2008, the Ministry of Labour and Social Affairs was transformed into the Ministry of Labour and Immigration. Based on these priorities, the State Secretariat for Immigration and Emigration (*Secretaría de Estado de Inmigración y Emigración*) was established as the agency responsible for developing immigration policy, integrating immigrants and updating policies on Spanish citizens abroad.<sup>23</sup>

The most recent integration plan – for the period 2011-2014 – was the Strategic Plan for Citizenship and Integration. Its main focus was on strengthening social cohesion in the new migration context with the aim of reducing migration flows. Key goals were divided into priority areas in line with previous plans:

1. Integration into Society—The main goal was the educating of immigrants with the knowledge needed to ease their integration into society. This was based on the principle of equal access to the tools for gaining material goods and services along with all attached rights and duties. Emphasis was put on developing projects to support integration and the creation of a national network to promote immigrants' integration into society and their security.
2. Education—Here the aim was assuring immigrants equal ac-

cess to education during the compulsory schooling period.<sup>24</sup> At the same time, they should be guaranteed tuition of sufficient quality to help learn the official language of the country and the region.<sup>25</sup> Other aims were adapting the education system to the heterogeneous student base; supporting students to obtain intercultural knowledge; helping students by transforming schools into spaces for communication, coexistence and immigrant integration; and improving the approach to higher education and making academic title accreditation more effective.

3. Employment—The goals were updating the law on employment and social security to ensure equal rights and duties for immigrants; improving the management of migration flows and supporting migrants' professional growth; countering the black economy and the use of unofficial employment contracts with illegal immigrants; and fighting discrimination against immigrants on the labour market.
4. Housing—Priorities were increasing the role of state-protected dwellings and ensuring the accessibility of this accommodation to low-income immigrant groups as well; combatting discrimination against immigrants in the area of housing policy; and improving conditions for the coexistence of new arrivals and original inhabitants so as to avoid immigrant segregation.
5. Social Services—Goals were adapting the public system of social services to today's multicultural society and enabling the same approach to social programmes so that integration becomes more effective.
6. Health—The focus was on ensuring immigrants' rights to health protection and their equal access to healthcare.
7. Children and Youth—Here the purpose was to support the integration of children and adolescents into the programmes designed for them.
8. Equality—The aim was to fight discrimination based on race, ethnicity or other differences and to ensure equal opportunities for all. This also meant incorporating equal treatment into public policies.
9. Women—Objectives were to help immigrants through special tailored programmes and to support their participation in all areas of civil life. A further goal was to support the social integration of immigrants in difficult life circumstances.

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10. Participation—This area was concerned with creating associations to help immigrants participate in the day-to-day ordinary and political life of each autonomous region.
11. Improving the Picture—The priorities were to improve the image of immigrants in the community and to try to change negative attitudes to immigration.
12. Coordinating Development—The focus was on identifying and supporting various possibilities for cooperation with immigrants' countries of origin. Another aim was to support immigrant integration within social development processes.

The overall budget for the plan was EUR 2 billion. Of the 12 listed areas, the main emphasis was on the first three: education (40% of the budget), immigrant integration into society (20%) and employment (11%). These plans did not have the same status as laws, and thus, the self-governing regions were not obliged to fulfil them.

### *Non-Profit Organisations*

There are many non-profit organisations in Spain that aim to help immigrants. Illegal immigrants often turn to these organisations for help. Generally, they provide free legal, interpretation and translation services as well as help with dealing with authorities. They also offer information about options for legalising residence in Spain and employment vacancies, healthcare etc. There are over one thousand registered organisations with goals of this nature in Spain.<sup>26</sup> Some of the most important non-profit organisations are *Cáritas Española*,<sup>27</sup> *ACCEM* (Spanish Catholic Mission for Migration),<sup>28</sup> (Spanish Catholic Mission for Migration), *CEAR* (Spanish Commission to Help the Refugees)<sup>29</sup> and *Cruz Roja* (Spanish Red Cross).<sup>30</sup>

### **Spain's Immigration Policy**

During Franco's dictatorship and until the mid-1980s, Spain's immigration policy was almost non-existent.<sup>31</sup> The law focused rather on foreigners as tourists. As we have seen, at the beginning of the 1980s, Spain transformed itself from a traditional emigration country into an immigration country under the influence of many factors. As a consequence, in 1984, there appeared the first law regulating asylum rights,<sup>32</sup> and 1985 brought Immigration Act LO 7/1985 on the rights and freedoms of foreigners in Spain.<sup>33</sup> The aim of both these adopted standards was to align better with European standards at the time. Act LO 7/1985

was generally very restrictive towards foreigners and did not guarantee them all their rights.<sup>34</sup> It did not deal with the problem of illegal migration or the possibility of repatriation. In 1993, the Spanish government, aware of Spain's entry into the Schengen Area, quickly created a system for giving work permits to foreigners based on calculated quotas. The main goal was to ensure the filling of work vacancies in sectors of the economy where there was low demand. The Ministries of Labour and Immigration and the authorities of autonomous provinces were responsible for managing the quota system. The final agreements were discussed with the relevant economic and social partners or employment offices.<sup>35</sup> In the first year, quotas were set at almost 21,000 work permits for foreigners in economic sectors where there was little demand: agriculture (10,000), the building industry (2,000), domestic labour (5,000) and other services (4,000). However, because information about the situation was not spread effectively, these positions were not filled; there were only 5,000 applications for these vacancies.<sup>36</sup> Subsequently, from 1994 to 2005, quotas were reduced every year. There were 30,000 work vacancies for foreigners in 2006. In contrast, the number stood at over 70,000 in 2007 based on a decision of the Socialist government of the time. Over 90% of work permits were given to foreigners employed in agriculture, a sector that was unattractive to local citizens.<sup>37</sup> To a certain extent, the aim of the quotas was also to increase the flexibility of the labour market and the economy. A foreigner coming to work in Spain had to confirm in writing that when their work contract terminated, they would return home and prove this within one month of their arrival by visiting a Spanish consulate in person.<sup>38</sup> Reforms came in 2004 in the form of a system managed by the Spanish employment office,<sup>39</sup> which began to publish a catalogue of hard-to-fill vacancies (*Catálogo de Ocupaciones de Dificil Cobertura*).<sup>40</sup> This listed offers of both skilled and unskilled positions that employers were struggling to fill with local people. This catalogue is now updated quarterly. Because of the increasing economic crisis and the country's response to market demands in recent years, the number of vacancies has fallen drastically. For example, in 2008, there were more than 200,000 vacancies in the catalogue while in the third quarter of 2012, there were only 28.

The reform of the Asylum Act<sup>41</sup> came as a result of the harmonising of Spanish standards with EU asylum laws as well as alignment with the Schengen Treaty and the Dublin Convention.<sup>42</sup> In 2000, the Span-

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ish government passed the new Immigration Act 4/2000 on the rights and freedoms of foreigners in Spain and their social integration.<sup>43</sup> This law emerged as a compromise between the governing Popular Party and the Opposition, the Socialist Party. Its main feature was its openness; it did not discriminate against immigrants based on their legal status and it protected illegal immigrants from immediate deportation. The statute granted some new political and social rights to both legal and illegal immigrants and it gave them access to free healthcare and education. Before the passing of this law, the rights of illegal immigrants had been very restricted rights. They were, for example, only able to obtain medical treatment in really urgent cases and young people in this group did not have access to education. In contrast, Act 4/2000 gave every foreigner free access to healthcare and education regardless of their legal status. This was subject only to one condition: the need to be listed in the Residents' Registry (*Padrón Municipal de Habitantes*), which provides data about all residents.<sup>44</sup> To this end, each foreigner was required to present a current valid passport and their lease contract to confirm their residence in the country. Where there was no such contract between an owner and tenant, they had to confirm their residence through a statutory declaration or a bank account in their name verifying their address. After registration, each immigrant was issued a registration certificate (*Certificado de Empadronamiento*). This certificate also made it possible for immigrants to obtain a healthcare card (*Tarjeta Sanitaria*) guaranteeing free access to medical treatment.<sup>45</sup> Illegal immigrants had access to emergency services only. The importance of being listed in the registry also came from the fact that the three-year residence period began on the date of registration; after it finished, the immigrant could apply for legal residence based on the conditions for social integration. The law also guaranteed underage foreigners access to education on the same terms as Spanish citizens.<sup>46</sup> Based on their documentation, they were assigned to the nearest school in their residential area.

The 2000 law also became the source of the government's Greco Plan—that is, the Global Programme to Regulate and Coordinate Foreign Residents' Affairs and Immigration in Spain (*Programa Global de Regulación y Coordinación de la Extranjería e Inmigración*) for 2002–2004. That programme was announced by the government in 2001 just a day before the third Spanish EU presidency<sup>47</sup>; it was the result of close cooperation with the EU Refugee Fund. The main aim was

closer alignment with European asylum and immigration policy. The plan focused on the problems surrounding Spanish immigration with a stress on four key areas:<sup>48</sup>

1. Guidance, coordination and management of immigration in Spain
2. Integration of foreign residents and their relatives who contribute to Spain's positive growth
3. Management of migration flows to guarantee peaceful coexistence in Spanish society
4. The asylum system for refugees and displaced persons.

In addition to these activities, 2003 saw the publication of a resolution on the financing of asylum and immigration-related projects in harmony with Article 9 of the European Refugee Fund rules.<sup>49</sup>

The government decided to reform the immigration law later in 2003. Following its win in the 2000 election, the Popular Party gained an absolute majority of votes in parliament and therefore did not need to seek support or make compromises with coalition partners when it came to immigration policy. The reform of Immigration Act LO 14/2003<sup>50</sup> reflected a conservative approach to immigration policy, with a central emphasis on reducing illegal immigration and supporting legal flows. It confirmed the rights of immigrants who had all required documents and put more stress on deporting illegal immigrants as part of the fight against unlawful migration. It also reduced the rights of illegal immigrants to unite, strike and demonstrate, made their deportation easier and imposed higher penalties on employers who employed them.

The 2003 Immigration Act included measures allowing police to look into registry notes; this served in practice to restrict the rights of immigrants who were afraid to be exposed. The law obliged international transport companies to report passengers who did not have return tickets, and it also defined and imposed sanctions on human smugglers and companies employing illegal workers. Immigrants were obliged to update their entry in the registry every two years. Another important point was the initiating of a programme of voluntary return to the immigrant's home country.<sup>51</sup> Unemployed foreigners had the option to use the financial support which was part of the government's voluntary return plan. The aim was to give foreigners a financial incentive to return to their homeland; they would receive the first part of the support before they left and the authorities would pay the remain-

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der on their arrival home. The programme was developed for immigrants living in Spain who had lost their jobs and decided to return to their home state. The government offered to pay out their unemployment benefit as a lump sum depending on how long they had worked in Spain<sup>52</sup> and to cover their return ticket as well.<sup>53</sup> Immigrants received these payouts on condition that they gave back their work permit and visa and agreed not to return to Spain for the next three years.

In response to increasing migration from Africa, the government adopted a directive concerning asylum policy; this set up a system of temporary protection in special cases involving the mass return of vulnerable persons.<sup>54</sup> Anxious about the high immigration rate, the public approved the government's restrictive measures, taking them to be essential for achieving the goals agreed in Tampere.<sup>55</sup> In 2004, the Spanish government asked its European partners to increase the Union's budget and the responsibility of other countries for the costs of migration mostly from Africa. The main priority was the protection of the European-Spanish naval border by the Andalusian coast and the Canary Islands.<sup>56</sup> We may understand this as the Europeanisation of the longstanding Spanish problem with African migration. In addition to fighting illegal migration from Africa, in the period 2004-2007, Spain signed bilateral agreements on mutual cooperation with 10 African countries: Morocco, Algeria, Mauritania, Senegal, Guinea-Bissau, Equatorial Guinea, Mali, Cape Verde, Ghana and Gambia.

In 2008, as a consequence of pressure from the EU in the form of the Procedural and Qualification Directive, the Family Reunion Directive and the Immigration and Asylum Pact, Spain was forced to amend its asylum law<sup>57</sup> along with its immigration law concerning foreigners.

The Qualification Directive was incorporated into the law through its Articles 6 to 966, which define the conditions of the right to asylum as well as Articles 10, 11, 12 and 36, which deal with the doctrine of supplementary protection.<sup>58</sup> The guideline mentions that supplementary protection can be given to an individual whose application has been denied if their forced repatriation would create a serious risk of violating Articles 2 and 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms<sup>59</sup> or it would cause serious danger in cases of ongoing conflict. Therefore the Qualification Directive also guarantees international protection to individuals who do not meet all the criteria under the 1951 Geneva Convention.

The implementation of the Qualification Directive into Spanish law

improved on the phrasing of the previous asylum law which had guaranteed protection to people with a 'justified fear of persecution.' The Spanish law goes beyond the scope of the Directive and includes a complementary protection status identical to the status of refugee. Concerning illegal immigration, the system of sanctions is strengthened in line with the European directive. New penalties are introduced and the list of criminal offences extended. One problematic point was the Returns Directive regarding the return of illegal immigrants to their home countries. At issue, in particular, was the right to detain immigrants for 18 months and the options of banning additional entry to the EU for five years and detaining and returning unaccompanied young people.<sup>60</sup> Given Spain's foreign policy priorities, the country at first considered not implementing this directive,<sup>61</sup> but the final version of the adopted European standard allowed EU member states to use more moderate procedures.

The fourth amendment to Immigration Act LO 2/2009 gives immigrants the right to unite, strike and take part in commerce; they are also granted the right to a free education until the age of 18 and to no-cost legal advice.<sup>62</sup> Article 12 states that foreigners with official permanent residence have the right to receive medical treatment on the same terms as Spanish citizens. All foreigners have the right to access medical treatment in case of a serious illness or an accident. Article 6 also refers to the right of foreigners who are legal residents to vote in local elections in their place of permanent residence. On the other hand, the new law restricts family reunification. Only reunions of the closest kin are allowed. In particular, the rules limit reunions with parents, which may only occur if the persons concerned are older than 65 years (except in humanitarian cases); the individual seeking the reunion must also prove that they have been a continuous resident of Spain for a minimum of five years. Against this, the law allows for the granting of work permits to reunited lineal descendants who are more than 16 years old. The reunion of *de facto* couples is also new. In keeping with the European priorities, special protection is provided for women who lack official residence and have been the victims of domestic violence. The amendment makes it possible for them to obtain temporary work and residence permits.

Aside from this, the law sets out sanction mechanisms. Illegal immigrants have a 30-day period in which to leave the country and they are not allowed to re-enter it for the next five years; that period may

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be extended to a maximum of 10 years if the foreigner could pose a serious threat to public order or security.<sup>63</sup> The detention period is also increased from 40 to 60 days. The law creates a register in order to control the movement of foreigners as they enter and leave the country; it also defines and regulates the minimum standards for warning and sanctioning the employers of illegal immigrants from third countries.<sup>64</sup> Administrative sanctions may take the form of penalties to employers per individual illegal worker as well as other potential sanctions including, for example, closure of a place of business. The law also stipulates criminal penalties including the imprisonment of employers who support or help with people smuggling and the use of illegal workers. A penalty of up to EUR 750,000 may be imposed on a person who helps illegal immigrants to enter the country through a fake marriage, a false residence confirmation or a formal invitation etc. An important amendment affects foreigners who voluntarily return to their homelands. They may retain any employment rights they have gained in their full scope.<sup>65</sup>

The law also allows the autonomous regions to make agreements with states so as to control the movements of young persons who arrive in Spain without their parents. These regions may also enter into agreements with non-profit organisations, funds and other entities in order to protect youth and take care of their interests.

The requirements for entering Spanish territory are set out in the 1985 Immigration Act and Act L.4/2000, which also lists the specific criteria for meeting these requirements.<sup>66</sup> Since 1985, a system of two different entry controls has required foreigners to apply for a visa at Spanish consulates and then have their entry documents checked at border crossings.<sup>67</sup> In the past, foreigners from Latin America enjoyed simplified visa-free entry into Spain based on their shared culture and language. The situation was the same for foreigners from Morocco. Many immigrants took advantage of this easy access, coming to Spain as tourists and then staying on.<sup>68</sup> The government had a staggered response to the arrival of these Moroccan, Ecuadorian and Bolivian “fake” tourists.<sup>69</sup> Spain imposed a visa requirement on Moroccans in 1991. In 2003, Ecuador was moved from the list of countries with simplified access to the third country list based on a decision of the European Council. As a result, Ecuadorian citizens had to have a visa in order to cross the EU’s external borders.<sup>70</sup> The imposition of visa requirements on other Latin American countries reduced the flow of immigration.

Nevertheless, these immigrants continued to come to Spain in 2004. And the number of illegal immigrants continued to grow.

The European Union's common visa policy mainly regulates short-term tourist visas, which are valid for three months. To enter Spain, individuals also require sufficient financial resources,<sup>71</sup> a return ticket and an invitation letter.<sup>72</sup> Eligibility to obtain a long-term visa is a matter which falls under the authority of the Spanish state. The Schengen regulations only harmonise the rules about free movement with this kind of visa in the Schengen Area, the form in which it is issued and the format that it takes. Long-term visas are granted to citizens of countries outside the EU who wish to stay in Spanish territory for over 90 days, but no longer than 6 months.<sup>73</sup> Foreigners are able to obtain a residence visa that allows them to live in Spain, however this does not entitle them to work. A work visa is granted on the basis of an already secured work contract, a residence visa (which is issued to reunite families) or in exceptional cases, a visa to seek work (which allows individuals to enter Spain to find a job).<sup>74</sup> Spain has also begun to deal with illegal migration under pressure from the EU and its restrictive immigration policy. In 1995, the building of border barriers in Ceuta and Melilla began, and this was co-financed by the EU. Although these barriers were fitted with modern technologies including cameras, motion detectors, infrared rays and thermal sensors, they did not stop ongoing illegal migration.<sup>75</sup> Some new navy routes also proved very difficult to control. The situation grew more difficult in 2006 when nearly 30,000 refugees set sail to the Canary Island coast.<sup>76</sup> Spain reacted by introducing a modern radar system to detect the boats. Spanish diplomats also began to make agreements with countries of origin and countries of transit on the return of illegal immigrants. These agreements specified the conditions for handing over these countries' citizens along with third country nationals who had illegally crossed the borders of the contracting countries or were staying in their territory. The main aim of these international agreements was to simplify and speed up the process of returning immigrants to the country from which they came (not necessarily their homeland though this might be the same). The first of these agreements on the politics of return were made with Morocco (1992), Nigeria (2001), Algeria (2002), Guinea-Bissau and Mauritania (2003).<sup>77</sup> Spain has gradually made agreements with many countries in Western Africa,<sup>78</sup> especially within the framework of the 2006-2008 Africa Plan,<sup>79</sup> which was formulated under the guidance of

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Ministry of Foreign Affairs. The main aims are mutual cooperation and the regulation of migration flows.

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Illegal migration to Spain has repeatedly convinced the government to proceed with “regularisation” (*regularización*) processes—both *exceptional* and *permanent*. Such processes aim to reduce the number of illegal immigrants working in the country. The exceptional measures came in response to constant increases in the number of illegal immigrants residing and working in the country. So far there have been six rounds of extraordinary regularisation (in 1985, 1991, 1995, 2000, 2001 and 2005).<sup>80</sup> The main goals were pretty much the same in each case: to reduce the number of illegally working immigrants; to increase state returns through taxes and social security payments; and to facilitate the integration of these individuals into society. We should also not forget the fact that regularisation is an easy tool which governments can use to control immigration flows and a simple solution to work vacancies. The persons affected were mostly of working age and so made a significant contribution to the country. The first round of extraordinary regularisation of illegal immigrants came after the 1985 statute on the rights and freedoms of foreigners was adopted. Applicants had to produce a work permit and prove their residence in the country. The fourth round of regularisation was in 2000. The conditions were identical: the applicants had to evidence their place residence in the country until a certain date and have a work permit or an application for a work permit in process. Immigrants also had to show a residence permit valid for the last three years. The last and largest scale regularisation process was in 2005. The government changed the name from the ‘regularisation’ to the ‘standardisation’ of illegal foreigner workers.<sup>81</sup> The main intention was to motivate employers to have their illegal workers authorised. The chief requirement was confirmation of the immigrant’s work performance in Spain for at least six months, or three months if they were working in the agriculture sector. The other prerequisites were a clean criminal record, registration with the local authority before the appointed date and a signed employment contract. Employers also had to confirm that their payment of social insurance for their employees of foreign origin and observance of those employees’ rights. The 2005 regularisation met with criticism not only from the the Popular Party but also from some EU member states, particularly Germany and the Netherlands, which feared the arrival of new immigrants and the deterioration of their own immigration situ-

ation.<sup>82</sup> These regulated processes, however, allowed illegal foreigners in Spain (almost 1.18 million people) to obtain a temporary work or residence permit which was renewable.

With the new law in 2000 came the possibility of permanent authorisation based on social integration (*arraigo social*) or incorporation in the workforce (*arraigo laboral*). In contrast with previous processes, immigrants can ask for this regularisation at any time. To be eligible for incorporation into the workforce, an immigrant must have enjoyed uninterrupted residence in the country for at least two years and have a work permit that is valid for one year. The other requirement is the absence of a criminal record in both Spain and their country of origin.<sup>83</sup> Authorisation based on social integration can be granted to foreigners who prove their uninterrupted residence for three years, as confirmed in the Residents' Registry. Close ties to legally resident relatives or other evidence that the immigrant is trying to integrate into the community can make this process easier.<sup>84</sup> Authorisation based on social integration is the most common way that illegal immigrants try to legalise their residence in the country. The result of both these methods is that the immigrant receives a residence permit for one year; this is renewable for the next two years provided that the applicant has worked and paid taxes for at least six months. An identical procedure applies after another two years has passed.<sup>85</sup> The full authorisation process takes five years and when it is complete, the immigrant receives permanent residence and a work permit (on the same terms as Spanish citizens). A permanent residence and work permit is not really permanent, however, since it must be renewed every five years. Any third country national who has had uninterrupted legal residence in Spain for the last ten years may apply for citizenship. For asylum seekers and refugees, the period is five years. For citizens of Latin America, Andorra, the Philippines, Equatorial Guinea and Portugal, it is only two years. Citizens of Latin American countries who obtain Spanish citizenship do not need to renounce their original citizenship since they are entitled to hold dual nationality for historical reasons. The residence requirement can be reduced to a period of one year in certain cases when the individual was born in Spain or has been in the care of a Spanish person or institution for the last two years. The same conditions apply to a person who is married to or the widow or widower of a Spanish citizen and to an individual born abroad who is the child or grandchild of a Spanish citizen.

## Conclusion

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Spain's immigration policy is subject to the authority of the Spanish government. After many years of development, responsibility for this policy has been divided between the central and regional governments. Based on an analysis of the data, we can say that the immigration policy goals set by different Spanish governments – that is, regulating and using migration flows according to the needs of the Spanish economy – have been shown to be unrealistic. The main cause is probably the inadequate use of methods and tools. The common view is that because of the regulation of migration flows with inadequate legislative tools that did not deal with illegal immigration, there were serious problems leading to an increase in illegal immigrants. Different governments tried to deal with the situation by implementing new policies and regularisation programmes for illegal immigrants.

As regards the integration of individuals in the community, the Spanish government, driven by the constitutional principle of decentralising and distributing of power, has done more than pass just one integration law. The process of immigrant integration follows the Strategic Plan for Citizenship and Integration, which is only a recommendation to regional governments.

The main feature of Spain's immigration policy is the delegation of a portion of state powers—especially in the area of foreign integration (education, employment, healthcare and social services)—to the autonomous regions. Every self-governing region makes its own policy decisions and plans in certain areas. These policies are often different from the policies of other autonomous regions and national policies.

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## Notes

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  - 58 Ibid.
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- 83 It is also sufficient to show a passport stamped with the date of entry into Spain.
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