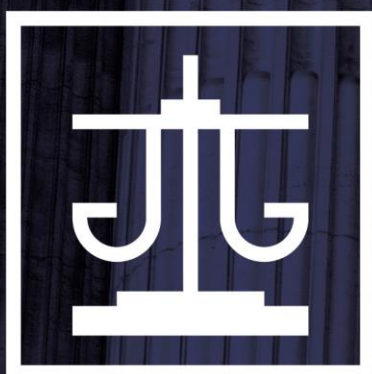




EPHESUS

Promoting fundamental rights in (post)
pandemic times in cross-border proceedings

Country Fiche Spain



1. The competent authority

a. As Issuing State

The authorities that issue a resolution on alternative measures to provisional imprisonment are the Judges or Courts that have issued the resolution of provisional release of the accused in the criminal proceedings, normally Examining Magistrates, but in some cases also Criminal Courts (and even Provincial Courts or National Courts).

General competence (General regime): Examining Magistrates or Judges where the person is living.

b. As Executing State

Examining Magistrates or Judges (or Magistrates or Judges of Violence against Women) of the place where the accused, charged or investigated has established his/her residence, with respect to the crimes that fall within their jurisdiction.

Note:

According to the EJM data, in relation to the receiving authority, the competent authority to receive the certificate is the Registry of the Court (Dean's Court) of the place where the person under investigation has his residence in Spain for its distribution either to the investigating court or to the court of violence against women depending on the subject matter".

2. Recourse to a central authority: Yes

The central authority in Spain is the Ministry of Justice, but it carries out only the functions (statistical function included) referred to in Article 7(1), not those referred to in Article 7(2). The central body designated by Spain is the Subdirectorate-General for International Legal Cooperation at the Ministry of Justice (Subdirección General de Cooperación Jurídica Internacional del Ministerio de Justicia).

Subdirectorate-General for International Legal Cooperation
Ministry of Justice
C/San Bernardo, 62
28015 Madrid

Email: sgcji@mjusticia.es
rogatoriaspenall@mjusticia.es

(see notification of the implementation of the Framework Decision on Supervision Measures made by Spain in 2015, <https://www.ejn-crimjust.europa.eu/ejn/libshowdocument/EN/334/EN>)



3. Types of supervision measures ready to supervise – common:

	Yes	No
(a) an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;	x	
(b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;	x	
(c) an obligation to remain at a specified place, where applicable during specified times;	x	
(d) an obligation containing limitations on leaving the territory of the executing State;	x	
(e) an obligation to report at specified times to a specific authority;	x	
(f) an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.	x	

4. Types of supervision measures ready to supervise – optional:

	Yes	No
(a) an obligation not to engage in specified activities in relation with the offence(s) allegedly committed, which may include involvement in a specified profession or field of employment;	x	
b) an obligation not to drive a vehicle;	x	
(c) an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once;	x	
(d) an obligation to undergo therapeutic treatment or treatment for addiction;	x	
(e) an obligation to avoid contact with specific objects in relation with the offence(s) allegedly committed.	x	
f) Others, what?		

* However, the measures in this table may only be transmitted to those EU Member States that assume their supervision by notifying the General Secretariat of the Council of the European Union.

*The decision on alternative measures to provisional imprisonment issued by a foreign authority may include these measures or others provided for in its legal system whose recognition has been ratified by Spain.

According to the notification of the implementation of the Framework Decision on Supervision Measures made by Spain in 2015, Spain is willing to supervise in addition the measures listed in Art. 8(2) under a), b), c), d) and e), but **these measures are transposed as follow:**

“Spain is prepared to assume the following additional supervision obligations:



- (a) Disqualification from involvement in specified professions or activities linked to the offence allegedly committed
- (b) Obligation not to drive motor vehicles.
- (c) Obligation to deposit a sum of money or to give another type of guarantee, either through specific instalments or entirely at once.
- (d) Obligation to undergo drug treatment or treatment for addiction.
- (e) Prohibition on owning and carrying arms or other specific objects in relation with the offence prosecuted.

(<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/1627>)

5. What is / are the body / bodies responsible for supervising the measures?

I. Supervisory measure – Common	Supervisory body / bodies
(a) an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;	Examining Magistrates or Judges (or Magistrates or Judges of Violence against Women) of the place where the accused has established his residence, with respect to the crimes that fall within their jurisdiction.
(b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;	State security forces (law enforcement officers) Note: For Violence Against Women related offences and Sexual Violence related offences, The Spanish Act on Criminal Procedure (article 544 bis, 544 ter) provides for the use of remote devices, currently supervised by the COMETA Center (further information here)
(c) an obligation to remain at a specified place, where applicable during specified times;	State security forces (law enforcement officers)
(d) an obligation containing limitations on leaving the territory of the executing State;	State security forces (law enforcement officers). Note: The judicial authority can withhold the passport of the person under investigation.
(e) an obligation to report at specified times to a specific authority;	It depends on the authority to which the report is being made. Ultimately, the Judge or Court would have to be informed of compliance or non-compliance with the measure.
(f) an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.	State security forces (law enforcement officers) Note: For Violence Against Women related offences and Sexual Violence



	related offences, The Spanish Act on Criminal Procedure (article 544 bis, 544 ter) provides for the use of remote devices, currently supervised by the COMETA Center (further information here)
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II. Supervisory measures – Optional (as transposed by the Spanish Recognition Law - Article 110 of Law 23/2014). See notification made by Spain to the General Secretariat of the Council.	Supervisory body / bodies
(a) Disqualification from involvement in specified professions or activities linked to the offence allegedly committed.	Not specified in the criminal code, thus Examining Magistrates or Judges (or Magistrates or Judges of Violence against Women) of the place where the accused has established his residence, with respect to the crimes that fall within their jurisdiction.
(b) Obligation not to drive <u>motor</u> vehicles.	Directorate-General for Road Safety Note: When a person authorized to drive a motor vehicle is prosecuted for an offense committed while driving, if the accused is to be released, the Judge, at his discretion, may provisionally deprive him of the right to use the license, ordering that the document stating this be collected and incorporated into the proceedings. The Court Clerk shall notify the administrative body that issued the license (usually the Directorate-General for Road Safety - sp. Dirección General de Tráfico) (Article 529 bis of the Criminal Procedure Code). Non-compliance with this measure is usually detected by regular traffic control functions of the State Security Forces.
c) Obligation to deposit a sum of money or to give another type of guarantee, either through specific instalments or entirely at once.	Examining Magistrates or Judges (or Magistrates or Judges of Violence against Women) of the place where the accused has established his residence, with respect to the crimes that fall within their jurisdiction.



(d) Obligation to undergo drug treatment or treatment for addiction.	The Alternative Punishments and Measures Management Services of the Penitentiary Administration
e) Prohibition on owning and carrying arms or other specific objects in relation with the offence prosecuted.	Not specified in the criminal code, thus Examining Magistrates or Judges (or Magistrates or Judges of Violence against Women) of the place where the accused has established his residence, with respect to the crimes that fall within their jurisdiction.
f) Others, what?	
* Alternative Punishments and Measures Management Services and State security forces (law enforcement officers) will inform the judge or court of enforcement about compliance with the measures.	

6. What is the duration of the measure?

I. Supervisory measure – Common	Maximum duration
(a) an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;	Pretrial detention does have time limits. However, the measures adopted during provisional release (in the provisional release order) do not have a specific limit in the legislation; These are precautionary measures that usually remain in force as long as the Judge or Court deems appropriate and may be in force until the resolution of the criminal procedure. They may be in force "during the pendency of the case"
(b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;	<i>Idem</i>
(c) an obligation to remain at a specified place, where applicable during specified times;	<i>Idem</i>
(d) an obligation containing limitations on leaving the territory of the executing State;	<i>Idem</i>
(e) an obligation to report at specified times to a specific authority;	<i>Idem</i>
(f) an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.	<i>Idem</i>
II. Supervisory measures – Optional (as transposed by the Spanish Recognition Law - Article 110 of Law 23/2014). See notification	Maximum duration



made by Spain to the General Secretariat of the Council.	
a) Disqualification from involvement in specified professions or activities linked to the offence allegedly committed.	Pretrial detention does have time limits depending on the crime allegedly committed. However, the measures adopted during provisional release (in the provisional release order) do not have a specific limit in the legislation; These are precautionary measures that usually remain in force as long as the Judge or Court deems appropriate and may be in force until the resolution of the criminal procedure. They may be in force "during the pendency of the case"
b) Obligation not to drive <u>motor</u> vehicles.	<i>Idem</i>
c) Obligation to deposit a sum of money or to give another type of guarantee, either through specific instalments or entirely at once.	<i>Idem</i>
d) Obligation to undergo drug treatment or treatment for addiction.	<i>Idem</i>
e) Prohibition on owning and carrying arms or other specific objects in relation with the offence prosecuted.	<i>Idem</i>
f) Others, what?	

7. Prolongation.

I. Supervisory measure – Common	Can it be prolonged?	By whom?	For how long?
(a) an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;	Yes	The Judges or Courts that have issued the resolution of provisional release of the accused (which contains the specific measure) in the criminal proceedings.	They may be in force "during the pendency of the case"



(b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>
c) an obligation to remain at a specified place, where applicable during specified times;	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>
(d) an obligation containing limitations on leaving the territory of the executing State;	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>
e) an obligation to report at specified times to a specific authority;	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>
(f) an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>

II. Supervisory measures – Optional (as transposed by the Spanish Recognition Law - Article 110 of Law 23/2014). See notification made by Spain to the General Secretariat of the Council.	Can it be prolonged?	By whom?	For how long?
a) Disqualification from involvement in specified professions or activities linked to the offence allegedly committed.	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>
b) Obligation not to drive <u>motor</u> vehicles.	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>
c) Obligation to deposit a sum of money or to give another type of guarantee, either through specific instalments or entirely at once.	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>
d) Obligation to undergo drug treatment or treatment for addiction.	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>
e) Prohibition on owning and carrying arms or other specific objects in relation with the offence prosecuted.	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>
f) Others, what?			



8. Can the measures be modified during the pre-trial or trial stage?

I. Supervisory measure – Common	Yes (explain)	No
(a) an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;	Yes. The provisional release orders (with the measures they contain) may be amended throughout the course of the case. In order to agree to the provisional release with bail of someone who is at liberty or to aggravate the conditions of the provisional release already agreed by replacing it with imprisonment or provisional release with bail, a request from the Public Prosecutor's Office or from any accusing party will be required. However, if in the opinion of the judge or court there are reasons, he or she will proceed to issue an order to amend the precautionary measure, or even imprisonment, if the person under investigation or accused is at liberty, but must summon, within the following 72 hours, the indicated appearance. Whenever the Judge or Court understands that it is appropriate to modify the provisional release in terms more favourable to the person subject to the measure, he or she may order it, at any time, ex officio and without being subject to the request of a party.	
(b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;	Idem	
c) an obligation to remain at a specified place, where applicable during specified times;	Idem	
(d) an obligation containing limitations on leaving the territory of the executing State;	Idem	



e) an obligation to report at specified times to a specific authority;	Idem	
(f) an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.	Idem	

II. Supervisory measures – Optional (as transposed by the Spanish Recognition Law - Article 110 of Law 23/2014). See notification made by Spain to the General Secretariat of the Council.	Yes (explain)	No
a) <u>Disqualification</u> from involvement in specified professions or activities linked to the offence allegedly committed.	<i>Idem</i>	
b) Obligation not to drive <u>motor</u> vehicles.	<i>Idem</i>	
c) Obligation to deposit a sum of money or to give another type of guarantee, either through specific instalments or entirely at once.	<i>Idem</i>	
d) Obligation to undergo drug treatment or treatment for addiction.	<i>Idem</i>	
e) Prohibition on owning and carrying arms or other specific objects in relation with the offence prosecuted.	<i>Idem</i>	
f) Others, what?		

9. Can the measure be appealed?

I. Supervisory measure – Common	Yes – to who	No
(a) an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;	Yes, an appeal may be filed against orders that decree, extend or deny provisional release of the person under investigation or accused (which may contain measures to control the person provisionally released).	



	The following may be filed against orders of the Examining Magistrates or Judges: -The remedy of reconsideration may be lodged against all orders by the Examining Magistrate -and the appeal (to be lodged before the same Judge or Magistrate, but decided by the competent superior Court). The appeal may be filed subsidiarily with the remedy of reconsideration or separately. In no case will it be necessary to file the remedy of reconsideration before filing the appeal. (the normal appeal system is followed)	
(b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;	<i>Idem</i>	
c) an obligation to remain at a specified place, where applicable during specified times;	<i>Idem</i>	
(d) an obligation containing limitations on leaving the territory of the executing State;	<i>Idem</i>	
e) an obligation to report at specified times to a specific authority;	<i>Idem</i>	
(f) an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.	<i>Idem</i>	

II. Supervisory measures – Optional (as transposed by the Spanish Recognition Law - Article 110 of Law 23/2014). See notification made by Spain to the General Secretariat of the Council.	Yes - to whom	No
a) Disqualification from involvement in specified professions or activities linked to the offence allegedly committed.	<i>Idem</i>	



b) Obligation not to drive <u>motor</u> vehicles.	<i>Idem</i>	
c) Obligation to deposit a sum of money or to give another type of guarantee, either through specific instalments or entirely at once.	<i>Idem</i>	
d) Obligation to undergo drug treatment or treatment for addiction.	<i>Idem</i>	
e) Prohibition on owning and carrying arms or other specific objects in relation with the offence prosecuted.	<i>Idem</i>	
f) Others, what?		

10. Is the country checking for double criminality? (is there a declaration in this regard?)

Yes

☐

No

☒

11. What are the languages accepted as an Executing State?

The certificate or form shall be translated into Spanish. The decision shall be translated only where required to do so by the executing judicial authority.

In practice with Portugal, it is permitted for the certificate to be written in Portuguese.

12. Are there other agreements that apply in the country that enlarge, simplify, or facilitate the mutual recognition of the supervision measures?

Yes

☒

No

☐

When the supervision measures imposed are incompatible with the Spanish legal system, the Examining Magistrates or Judges (or Magistrates or Judges of Violence against Women) will adapt them, after hearing the Public Prosecutor's Office.

For Spain, the attestation of the criminal judgment on which the certificate is based shall be sent together with the certificate.

The original of the decision or certificate shall be forwarded only at the request of the executing authority.

The certificate or form shall be signed by the judicial authority competent to issue the decision to be documented.



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According to Act 23/2014 art. 121. execution will require one of these circumstances:

“A decision on alternative measures to pretrial detention sent to Spain may only be recognized when, and the purposes required for its issuance have been met, one of the following circumstances occurs:

- a) The accused (charged or investigated) has legal and habitual residence in Spain, provided that he or she consents to return, after being informed of the measures in question.
- b) The competent Spanish authorities consent to the transfer of the decision on alternative measures to pretrial detention for execution in Spain when the accused (charged or investigated) has requested it in the issuing State”.



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