

[Home](#) > ... > [Family Matters & Inheritance](#) > [Cross-border Placement of a Child Including Foster Family](#) > [Spain](#)

Cross-border placement of a child including foster family

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European Judicial Network
(in civil and commercial matters)



Spain

1 Which authority is to be consulted and to give prior consent before the cross-border placement of a child within your territory?

Prior authorisation is the responsibility of the Ministry of Justice, as the Spanish central authority.

The Ministry of Justice, as the Spanish central authority, is the body responsible for receiving applications for cross-border placement of minors from an EU member country or a country party to the 1996 Hague Convention. Such applications must be sent by the central authority of the requesting country to obtain the necessary authorisation from the competent Spanish authorities before a child can be placed in a family.

There are no exceptions to this general rule.

2 Please describe shortly the procedure for consultation and the obtaining of consent (including required documents, deadlines, modalities of the procedure, and other relevant details) for cross-border placement of children within your territory.

The procedure is governed by Article 20 ter and quater of Organic Law 1/1996 of 15 January 1996 on the legal protection of minors, partially amending the Civil Code and the Code of Civil Procedure.

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The Ministry of Justice checks that the application contains the information required under Spanish law and meets the requirements laid down in Spanish legislation, and forwards it to the autonomous community administration responsible for approval. Once the administration has assessed the application, it sends its decision to the Spanish central authority, which forwards it to the central authority of the requesting country.

Applications for placement must be made in writing and be accompanied by the documents the Spanish central authority requires to assess whether the placement is in the minor's interests and whether the family concerned is suitable for the purpose. Under all circumstances, and in addition to what is required under the applicable international rules, the following must be provided: a report on the child or adolescent, the reasons for the proposed placement, an indication of the duration of the placement, and a statement on what provision exists for monitoring. Appropriate documentary evidence must be provided of the family situation, the prospective foster parents' ability to bring up children, their capacity for providing appropriately for the various needs of the minor(s) concerned, the extent to which their motivation matches the nature and purpose of the placement, and

their willingness to help achieve the objectives of the child's individual care plan and any family reintegration programme, so as to encourage a relationship between the young person concerned and their family of origin.

Once the competent administration has assessed the application, it sends its decision to the Spanish central authority, which forwards it to the central authority of the requesting country. Only if the decision is favourable will the competent authorities of that country issue a judgment ordering a placement in Spain, notify all the parties concerned, and apply directly to the Spanish court with jurisdiction in the region concerned for the decision to be recognised and enforced in Spain.

The maximum period for processing and responding to applications is 3 months.

Applications for placement and the accompanying documents must be accompanied by a certified translation into Spanish.

3 Has your Member State decided that consent is not required for cross-border placements of children within your territory where the child is to be placed with certain categories of close relatives? If yes, what are the categories of close relatives?

No. In Spain consent is always necessary.

In Spain, the concept of a foster family encompasses the extended family, without any limits, and thus any member of the extended family who can look after the child under the conditions required by law (Article 20 bis of Law 1/1996 of 15 January 1996 on the legal protection of minors).

4 Does your Member State have in place any agreements or arrangements for simplifying the consultation procedure for obtaining consent for the cross-border placement of children?

No.

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