



SPAIN

Does the country or institution have their own list of designated, banned, or proscribed groups?

No.

What type of system does the country or institution use?

Proscription – While Spain has no formal list, it does have the ability to proscribe a political group domestically. Article 6 of the Spanish Constitution states with regard to political groups that “[t]heir creation and the exercise of their activities are free in so far as they respect the Constitution and the law.”⁹⁷ There are two possible ways to proscribe a political group. Firstly, a procedure of criminal law enables groups to be banned for being anti-constitutional (article 6) in conjunction with article 515 of the Spanish Penal Code which prohibits illicit associations with paramilitary/terrorist/violent groups or those that incite hate and discrimination against others.⁹⁸ Secondly, a civil procedure outlined in the Organic Law 6/2002 on Political Parties permits both the government and Prosecution Office to request the Judicial Authorities to initiate the procedure allowed in certain cases and outlined in article 9.2 of the law.⁹⁹ These cases include instances when the group: which prohibits illicit associations with paramilitary/terrorist/violent groups or those that incite hate and discrimination against others.¹⁰⁰ Secondly, a civil procedure outlined in the Organic Law 6/2002 on Political Parties permits both the government and Prosecution Office to request the Judicial Authorities to initiate the procedure allowed in certain cases and outlined in article 9.2 of the law.¹⁰¹ These cases include instances when the group:

- Systematically violates fundamental freedoms and rights by promoting, justifying or exculpating attacks against the life or integrity of persons, or the exclusion or persecution of persons because of their ideology, religion or beliefs, nationality, race, sex or sexual orientation.
- Encourages, propitiates or legitimises violence as a method for the achievement of its political objectives or to eliminate the conditions necessary for the exercise of democracy, pluralism and political freedoms.
- Complements and politically supports the action of terrorist organisations in order to achieve their goals of subverting the constitutional order or seriously altering public peace.
- Attempts to subject public authorities, certain persons or groups of society or the population in general to a climate of terror, or contributes to multiply the effects of terrorist violence and the fear and intimidation generated by the same.

⁹⁷ [The Spanish Constitution](#), Government of Spain, 1978.

⁹⁸ [Spanish Penal Code](#), Spanish Ministry of Justice, 2016.

⁹⁹ [Organic Law 6/2002 of 27 June](#), on Political Parties, Government of Spain, 2002.

¹⁰⁰ [Spanish Penal Code](#), Spanish Ministry of Justice, 2016.

¹⁰¹ [Organic Law 6/2002 of 27 June](#), on Political Parties, Government of Spain, 2002.





<p>What is the definition of “terrorism” the country or institution employs?</p>	<p>Definition of Terrorism – Article 573 Spanish Criminal Code 2019.¹⁰²</p> <ul style="list-style-type: none"> • Terrorism is defined as “[t]he commission of any serious crime against life or the physical integrity, liberty, moral integrity, sexual freedom and indemnity, heritage, natural resources or the environment, public health, of catastrophic risk, fire, document falsification, against the Crown, attack and possession, trafficking and deposit of arms, ammunition or explosives, provided for in this Code, and the seizure of aircraft, ships or other means of collective or merchandise transport.” • To come under the rubric of terrorism, the above offences must be carried out for the following purposes: <ul style="list-style-type: none"> o Subvert the constitutional order, or to suppress/seriously destabilise the functioning of political institutions or the economic or social structures of the State, or to force the public powers to carry out an act or refrain from doing so o Seriously alter the public peace o Seriously destabilise the functioning of an international organisation o Cause a state of terror in the population or in a part of it.
<p>How does the designation process relate to the relevant authority’s definition of terrorism?</p>	<p>In relation to designation, Spain relies on external lists so there is no relationship to the country’s definition of terrorism. Terrorist organisations are considered the same as Criminal Organisations (Article 570 Bis) but with their purpose being the commission of crimes in Articles 572-580 (terrorism). The civil procedure for proscribing political groups can be used in relation to terrorism, if the group supports the action of terrorist organisations or attempts to subject public authorities, certain persons or groups of society or the population in general to a climate of terror, or contributes to multiply the effects of terrorist violence and the fear and intimidation generated by the same. In 2004, the Special Chamber of the Supreme Court criminalised and dissolved Batasuna under the Law of Political Parties, having proved it was an instrument created by and part of the terrorist organisation ETA. Partido Comunista Español (reconstituida) or PCEr was banned under the same law in 2003, as it was considered a single terrorist structure with The First of October Antifascist Resistance Group (GRAPO).</p>
<p>Does the country follow UN or EU (if relevant) designation lists and sanctions?</p>	<p>Yes - Spain relies on the EU framework and UN designations pursuant to resolution 1267/1989/2253 (al-Qaeda and the Islamic State) and resolution 1988 (the Taliban).¹⁰³ The Spanish regulatory framework has made the decision to designate groups that have been also designated by the UN as part of its commitments to the Security Council.</p>
<p>Does designation have an effect on the online realm? Is content created by terrorist groups illegal?</p>	<p>No. However, the online activities and assets (websites, online platform accounts etc.) of proscribed political groups should be suppressed (based on LPP, however online is not specifically mentioned). In the criminal case of Batasuna, the court ordered that web pages should be deleted and internet services used by Batasuna should be notified to the police.</p>

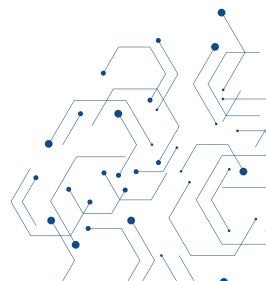
¹⁰² Article 573 Spanish Criminal Code 2019, Government of Spain, 2019.

¹⁰³ [Resolution Adopted on the ISIL \(Da'esh\) and Al-Qaida Sanctions Committee](#), Security Council Report, 2020.





<p>Is online content that incites acts of terrorism illegal?</p>	<p>The Spanish Criminal Code criminalises online content that glorifies terrorist acts (art. 578 subsection 1) or incites terrorism (art. 579).</p>
<p>Is online content that supports designated terrorist groups illegal?</p>	<p>Yes, as long as it glorifies terrorist acts or incites terrorism. This adjudicates on the nature of the content and not the source of the content (whether it's official).</p>
<p>Is there a sufficient balance between far-right and violent Islamist groups and individuals?</p>	<p>Two extreme far-right groups have been proscribed in relation to the offence of unlawful association in relation to illicit activities not linked to terrorism (Article 515.5 of Penal Code). They were Blood & Honour España and Hammerskin España, both proscribed in 2011.</p> <p>However, political proscription only applies to far-right political groups that operate domestically, excluding internationally designated far-right groups such as Atomwaffen Division (AWD). Furthermore, given Spain relies on EU/UN lists, there is a heavy skew towards violent Islamist groups such as al-Qaeda and IS.</p>
<p>Are there human rights-compliant mechanisms in place for delisting a group?</p>	<p>The judicial dissolution of a political group must be decided by the Special Chamber of the Supreme Court and is therefore based on the rule of law and the Constitution. As there is no formal list for dissolved political groups, there is no regular review process for 'delisting'.</p>
<p>What are the weaknesses in the designation process?</p>	<ul style="list-style-type: none"> ● The process of political proscription is based on the constitution and penal code rather than on terrorism legislation. This judicial process explicitly considers political groups on a case-by-case basis (not a list) and is therefore an unsuitable mechanism to use for the designation of terrorist entities. ● Spain relies on EU/UN lists so lacks autonomy in this process and cannot proactively designate. ● Current supranational lists overlook the threat of extreme far-right organisations. ● Spain should be commended for tying proscription to online regulation, through the Law of Political Parties under which the online activities and assets (websites, online platform accounts etc.) of proscribed political parties are illegal. ● However, there is no link between designation and online regulation. Tech companies are provided with no legal clarity on the removal of online terrorist content.





What do we recommend?

- We recommend clarifying Spain's process for designating terrorist entities and separating it from political proscription.
- Depending on EU/UN progress in this area, we recommend that Spain consider developing a national designation process in addition to EU/UN lists to consider entities that threaten national security. We advise accounting for the threat posed by extreme far-right groups and lone actors, starting with those which have already been politically proscribed.
- We propose developing an explicit definition of online terrorist content, as part of online regulation legislation, which considers the source of the content to ensure official content from designated terrorist groups can be included. This would tie designation to online regulation and thus provide tech companies with clear legal and factual basis for the removal of terrorist content.
- Alongside online regulation, the establishment of a regulatory body should be considered to provide more clarity for tech companies on the practical steps tech companies can take to identify and remove illegal terrorist content. The regulator would also have punitive measures available to enforce compliance.
- In addition to online regulation and a regulator, we propose considering an independent 'classification office' where material from designated groups and content falling under the definition of terrorist content can be considered and classified. Based on the definition of online terrorist content, counterterrorism experts alongside civil society representatives would adjudicate on the legality of specific pieces of content. This would provide additional clarity for tech companies.
- We propose creating a review process for individuals and groups that are designated to protect human rights.
- To respond to the changing threat landscape from terrorist groups, Spain should consider including civil society representatives, counterterrorism specialists and human rights lawyers in the designation process.
- We advise keeping records so that the designation of groups, actors, or content happens transparently and making such records available for judicial oversight.

Further information and comments

Pursuant to article 577 Subsection 2 of the Spanish Criminal Code, a penalty of 5-10 years may be imposed on those who carry out any "recruitment, indoctrination or training activity, which is directed or which, due to its content, is capable of incitement to join a terrorist organisation".

As well as the criminalisation of incitement and support, Article 575 Subsection 2 of the Criminal Code covers:

- The crime of "receiving indoctrination" which incurs a prison sentence on conviction of 2-5 years applicable to anyone who "regularly accesses one or more communication services accessible to the public online or content accessible through the internet or an electronic communications service" whose contents aim to "incite [another] to join a terrorist organisation or group, or to collaborate with any of them or for their purposes". This applies when the offence is committed in Spain and the content is accessible in Spain.
- This crime is also committed when an individual acquires or has in their possession documents that "encourage the incorporation of a terrorist organisation or group or collaboration with any of them."

