

Boletín de la Asociación Internacional de Derecho Cooperativo

International Association of Cooperative Law Journal

No. 60/2022

DOI: <http://dx.doi.org/10.18543/baidc602022>

ARTICLES / ARTÍCULOS

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Vega María Arnáez Arce

doi: <http://dx.doi.org/10.18543/baidc.2389>

Submission date: 18.11.2021 • Approval date: 26.03.2022 • E-published: July 2022

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Socially sustainable public procurement: the cooperative model as an alternative

(La contratación pública socialmente sostenible.
La alternativa del modelo cooperativo)

Vega María Arnáez Arce¹
University of Deusto, Faculty of Law (Spain)
Universidad de Deusto, Facultad de Derecho (España)

doi: <http://dx.doi.org/10.18543/baidc.2389>

Submission date: 18.11.2021
Approval date: 26.03.2022
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¹ Lecturer in Administrative Law, PhD, email: vegamaria.arnaez@deusto.es

desempate en la adjudicación de los contratos públicos. IV. El modelo cooperativo como alternativa social sostenible para la contratación pública: 4.1. Contextualización; 4.2. La identidad cooperativa; 4.3. El movimiento cooperativo y la contratación socialmente responsable; 4.4. la contribución del cooperativismo a la gestión sostenible de los servicios públicos. V. Conclusiones. VI. Bibliografía. VII. Resoluciones e informes de órganos administrativos

Abstract: In September 2015, the United Nations General Assembly passed a resolution adopting the 2030 Agenda for Sustainable Development. It is an action plan for people, the planet, and prosperity, which also seeks to strengthen universal peace and access to justice.²

The United Nations 2030 Agenda for Sustainable Development arises, above all, as a new global and local social contract which demands that all social stakeholders and public authorities work on a coordinated basis. This new social contract requires relying on an integrating and comprehensive vision that brings together internal public policies and makes them consistent with sustainable development as part of a joint collective effort. To accomplish this, it is necessary to generate mechanisms that foster cooperation and progress in the achievement of what have been called *Sustainable Development Goals* (SDGs), focusing on the importance of public procurement as an instrument for achieving them.

Keywords: The 2030 Agenda for Sustainable Development; social contract; the cooperative movement.

Resumen: En septiembre de 2015, la Asamblea General de las Naciones Unidas adoptó la Agenda 2030 para el Desarrollo Sostenible. Se trata de un plan de acción a favor de las personas, el planeta y la prosperidad, que también tiene entre sus objetivos los de fortalecer la paz universal y el acceso a la Justicia. La Agenda 2030 de las Naciones Unidas para el desarrollo sostenible, se presenta, ante todo, como un nuevo contrato social global y local que obliga a todos los actores sociales y a todas las Administraciones públicas a trabajar de forma coordinada.

Palabras clave: Agenda 2030 para el Desarrollo Sostenible; Cláusula social de la contratación pública; Movimiento cooperativo.

² See <https://www.un.org/sustainabledevelopment/> (last accessed on 29 November 2021).

1. Introduction

In September 2015, the United Nations General Assembly passed a resolution adopting the 2030 Agenda for Sustainable Development. It is an action plan for people, the planet, and prosperity, which also seeks to strengthen universal peace and access to justice.³

The United Nations 2030 Agenda for Sustainable Development arises, above all, as a new global and local social contract which demands that all social stakeholders and public authorities work on a coordinated basis.

This new social contract requires relying on an integrating and comprehensive vision that brings together internal public policies and makes them consistent with sustainable development as part of a joint collective effort. To accomplish this, it is necessary to generate mechanisms that foster cooperation and progress in the achievement of what have been called *Sustainable Development Goals* (SDGs), focusing on the importance of public procurement as an instrument for achieving them.⁴

Since socially responsible procurement demands social, environmental, and innovation criteria, as well as special public procurement performance conditions, access should be ensured for small and medium-sized companies and social economy enterprises. The aim is to contribute to building a better society through public procurement, which is seen as a strategic element for the execution of public policies in general and social policies in particular (Campos, 2021, 2).

Public procurement should therefore ensure that award criteria and contract performance terms are conducive to high-quality works, supplies, and services. Specifically, this can be done by including qualitative, environmental, social, and innovative aspects related to the object of the contract. This process should be aimed at pursuing efficiency in public spending and respect for the principles of equal treatment, non-discrimination, transparency, proportionality, and integrity (Campos, 2021, 4).

In light of the above, this paper addresses one of the current challenges for the cooperative movement. This challenge concerns the relationship between strategic public procurement and the promotion of the cooperative movement. From its origins, the cooperative movement has made a specific social commitment and contribution to the promotion of the general interest in the areas of education, housing, social health care,

³ See <https://www.un.org/sustainabledevelopment/> (last accessed on 29 November 2021).

⁴ See <https://www.un.org/sustainabledevelopment/sustainable-development-goals/> (last accessed on 29 November 2021).

and the protection and defence of the environment. This is in accordance with the terms of the seventh cooperative principle, which advocates that cooperatives should work for the sustainable development of their communities consistently with the policies adopted by their members.

II. Regulatory background

2.1. *The Europe 2020 Strategy and the Fourth Generation of EU Directives*

Public procurement has played a determining role in the regulatory scenario outlined by the so-called *Europe 2020 Strategy*. It is an internal-market based instrument in the hands of public institutions that can be used to achieve smart, sustainable, and inclusive economic growth, while at the same time ensuring a rational and more effective use of public funds.

The regulatory efforts to promote the *Europe 2020 Strategy* took the form of three Directives that completed the review and update of public procurement regulations.

The objective of these regulations was to increase the effectiveness of public spending and facilitate, in particular, the participation of small and medium-sized enterprises. These Directives were also intended to enable the public authorities to use public procurement to support and attain social objectives, while ensuring the sustainability of public services, especially in the area of care.

The latest package of European directives on public procurement (the so-called *Fourth generation Directives*) therefore played a particularly important role because they constituted a pioneering framework to regulate two essential aspects of public procurement: contract performance and concessions.

This process involved shifting from regulations that merely coordinated the formalities and procedures for awarding public contracts to rules that governed substantive issues such as compliance with obligations, contract amendment and termination, and the establishment of a harmonised, specific, and autonomous regulatory framework for concessions.⁵

Furthermore, the opening of public procurement to the game of competition, together with the promotion of smart, sustainable, and in-

⁵ Until then, public works concessions were awarded according to the basic rules of Directive 2004/18/EC (*Official Journal of the European Union*, no. L134, of 30 April 2004), whereas service concessions were subject solely to compliance with the Principles of the Treaty on the Functioning of the European Union (TFEU).

clusive economic growth, became both the point of departure and the point of arrival for the new current regulations on public procurement.

It is worth noting how the *Europe 2020 Strategy* had previously highlighted the importance of procurement policy as a mechanism for ensuring a more effective use and management of public resources.

In this sense, one of the most important developments introduced by the *Fourth-generation Directives* was bringing them into alignment with the principles of public procurement, consistently with those contained in the *Europe 2020 Strategy*.

In particular, this was intended to promote a strategic use of public contracts by incorporating clauses whereby social and environmental criteria had to be taken into account and assessed in public tenders.

However, this instrumental use of public procurement at the service of a more rational and efficient application of public funds required that it be also combined with the rules of Competition Law.

In this regard, Article 18 of Directive 2014/24/EU, related to the principles of procurement, specifically established: “[...] contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner”.

Therefore, the conditions of validity of these criteria should be analysed in order to avoid violations of the principle of competition, which is a key part of public procurement.

2.2. Social considerations in public procurement

Public procurement represents approximately 19% of European GDP and 18.5% of Spanish GDP. These data support GIMENO FELIÚ’s statement that “[...] the economic impact of public contracts is such that it has an impact on whether the objective of the internal market and the development of cross-border economic activity is met’ (Gimeno Feliú, 2015, 45).”

For her part, Burzaco Sampert took a more global approach and considered that “the significance of the public funds being invested in procurement makes it essential to reflect on the feasibility of realising general interest goals that go beyond the object of each contract” (Burzaco Samper, 2016, 281).

Indeed, in light of the *Europe 2020 Strategy*, and based on Article 9 of the TFEU,⁶ public procurement is no longer only conceived as

⁶ Article 9 of the TFEU reads: “In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high

an immediate purpose. Due to its capital role in the economy, it has become one of the most powerful instruments for promoting other direct public policies such as those concerning employment, inclusion, gender, and the environment.

According to Rodríguez-Arana Muñoz, the connection of the public authorities and, therefore, of all the public institutions (including public procurement) to the general interest, especially within a social and democratic State of Law, involves the defence, protection and promotion of these and other aspects that arise from the very dignity of the human being (RODRÍGUEZ-ARANA MUÑOZ, 2016, 23).

In the words of GIMENO FELIÚ, they are aimed at “[...] guaranteeing the higher values of the legal system, notably including freedom, equality and solidarity” (Gimeno Feliú, 2004, 65).

In view of this, the European Union wanted to give a final legislative boost to public procurement as a lever for social and environmental progress and, consequently, to strengthen it as a new form of intervention within the promotional measures to be implemented by government authorities.

The latest package of Directives on procurement were intended to refine, systematise, and develop the few provisions contained in the previous regulations in this regard.⁷

As stated above, Article 18 of Directive 2014/24/EU obliged the Member States to adopt measures to ensure compliance with social and environmental obligations during the performance phase of public contracts. It should not be forgotten that these clauses provide the potential for going above and beyond the minimum requirements of the law and generate added value for procurement processes.

Although the rules already included in the previous directive provided for the right to tender for reserved contracts on a voluntary basis, Article 20 extended the scope of application of the sheltered employment framework to economic operators whose main general aim is the social and professional integration, provided that at least 30% of their employees are disabled or disadvantaged.

Under Article 77, Member States may provide that contracting authorities reserve social service contracts for certain organisations, which may include social economy enterprises, for example.

level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.”.

⁷ It is worth noting that Directive 2004/18/EC contained an optional provision on reserved contracts (Article 19) and established that special social and environmental requirements may be imposed in relation to the performance of a contract (Article 26).

Article 67 of Directive 2014/24/EU included another major new development. As Razquin Lizarraga rightly noted, by upholding the most economically advantageous tender as the criterion for awarding contracts, the Directive integrated life cycle costing as a basis for its determination and accentuated the pre-eminence of the best value for money criterion (Razquin Lizarraga, 2015, 124-125).

It should not be forgotten, however, that the main improvement for the purposes of this paper is that it pointed to social and environmental characteristics in assessing the best value for money criterion.

It seems logical to think, therefore, that doubts have been dispelled about the legality of the role of social and environmental clauses in the award phase. Award criteria or contract performance conditions concerning social aspects were: (i) that they are linked to the object of the contract, that is, that they “relate to the works, supplies or services to be provided under the contract”; (ii) that they do not confer unrestricted freedom of choice on the contracting authority, or in other words, that they guarantee effective competition in the market; and (iii) that the procurement documents define the relative weighting which they give to each of the criteria.

However, in actual practice there have been strong disputes between those who advocate the use of this strategic tool in the award phase, subjecting its validity to it being related to the object of the contract, on the one hand, and the defenders of free competition, who argue that procurement of works, supplies, and services for public authorities and other public sector entities, by being awarded to the most economically advantageous bids should be the main objective of contracting, emphasising the necessary equality between bidders.

While Article 43 of the Directive allows contracting authorities that intend to purchase works, supplies or services with specific social or environmental characteristics to require a specific label as means of proof that they correspond to the required characteristics, Article 57 sets out the grounds for excluding economic operators from participation in contracting procedures if they are in breach of social or environmental legislation, including violations of competition rules, among others.

2.3. Public procurement in the 2030 Agenda for Sustainable Development

In September 2015, the UN General Assembly approved a resolution regarding the Agenda for Sustainable Development (the 2030 Agenda), an action programme for people, the planet and prosperity, which also sought to strengthen universal peace and access to jus-

tice. The 2030 Agenda formulated seventeen sustainable development goals (SDGs), with 169 integrated, indivisible targets in three areas of public policy action: economic, social and environmental.⁸

Regarding the importance of public procurement as an instrument to achieve these goals, Gimeno Feliú stated that “[...] the 2030 Agenda proposed, among other goals, sustained, inclusive and sustainable economic growth, which are essential for achieving prosperity. Likewise, the 2030 Agenda addressed the factors that generate violence, insecurity and injustice, such as inequalities, corruption and poor governance, among others” (Gimeno Feliú, 2021, 2).

In the current situation derived from the 2020 pandemic, economic, environmental, and social sustainability has become a pressing need, an alternative, and an added value that public management can choose to benefit from (Pernas García, 2020).

It can be affirmed, therefore, that under the auspices of the SDGs of the 2030 Agenda, social and environmental considerations are an inherent and essential part of the concept and reality of *strategic public procurement*. This instrument serves the implementation of different public policies through which general-interest goals such as job stability, environmental quality, and social assistance and integration can be achieved.

In short, following Gimeno Feliú, it can be concluded that “the transformation sought by the United Nations Agenda requires a proactive attitude and aptitude to ensure that citizens’ needs (which are not simply ideological) are best advanced”. The insertion of social and environmental clauses in public contracts is a strategic option provided for in current applicable Spanish law (Gimeno Feliú, 2021, 4).

III. Sustainable public procurement in spanish administrative law

3.1. *General considerations*

The social, economic, and political transformations experienced in recent years have decisively marked how public bodies and institutions manage their intervention in the different areas under their remit. At the same time, they have contributed to shaping the relations between government authorities and the legal system (Mir Puig, 2004, 19).

⁸ See <https://www.un.org/sustainabledevelopment/> (last accessed on 29 November 2021).

The public authorities, on the one hand, and individuals and legal bodies, on the other, have been compelled to work jointly and collaboratively on everything that has to do with meeting general interest needs and the management of public services.⁹

The new public management schemes have opted for innovation in its different forms as a key means for promoting the effectiveness and efficiency of public sector actions; ensuring the best protection for citizens; and appropriately meeting the growing social and welfare demands of citizens (Arnáez Arce, 2018, 114).

The inclusion of social criteria, together with the traditional efficiency and advertising criteria, are therefore essential in public procurement. The legislator has established a number of social criteria to promote and encourage the participation of small and medium-sized enterprises in public procurement procedures.

However, what is most interesting in the new regulation of public procurement, based on the changes enacted by the abovementioned legal provisions, is that it refers to the need to adopt specific measures to promote the so-called *social clauses*. These are conceived as an essential instrument to promote and ensure the management and provision of high-quality, sustainable public services through cooperative societies and other entities belonging to the third economic sector.

To this end, the new legal regime for public procurement includes social, environmental and innovation and development criteria and considerations.

The introduction of social and environmental clauses in public contracts is intended to meet the objective or purpose of the EU legislator of turning public procurement into one of the engines that generates citizens' overall well-being and sustainability.

For this reason, as stated by Martínez Fons, "[...] the nature of the [social and/or environmental] clause and the timing of its inclusion in public procurement procedures will determine the terms of the complex relationship between social and/or environmental clauses and the rules that monitor free competition in the market [...]" (Martínez Fons, 2009, 48).

⁹ In this sense, the Preamble of Law 2/2011, of 4 March, on Sustainable Economy (BOE no. 55, of March 5), affirms the need to promote efficiency, especially within public procurement and collaboration between the public and private sectors as "essential players in the relationship between the government authorities and the business community, which are also areas where the link to economic sustainability parameters must be strengthened [...]" .

Razquin Lizarraga is likewise of the view that these social clauses are firstly incorporated into public procurement procedures by establishing the social and environmental requirements in the very definition of the object of the contract. They can be inserted either in the general administrative clauses, or in the particular administrative clauses, or in the particular technical conditions of the procurement documents. Even the choice of a specific name such as "social" or "environmental" for the contract would have a positive influence and, above all, would give it greater visibility (Razquin Lizarraga, 2016, 126).

Another stage of the contracting procedure in which social and environmental aspects should be considered is the selection phase. In particular, in the proof of the standing of the bidders, including social and environmental criteria, together with their economic and financial standing and their technical and professional ability.

It should be considered that the principle of proportionality prevents requiring minimum standing levels that go beyond what is necessary for the performance of the contract to be awarded.

However, provided that social and environmental criteria are related to the object of the contract, they may constitute a guarantee of fulfilment and therefore also contribute to realising the principle of proportionality.

Moreover, the consideration of these criteria could be used as a means of encouraging those economic operators that had relegated corporate social responsibility aspects to a secondary place to (at least) reconsider their position.

The main challenge concerning social and environmental clauses included in contract performance conditions is that, even though they do not affect the evaluation of the bid and are, therefore, less problematic for free competition than when they operate as award criteria, no appropriate measures are usually foreseen to monitor and penalise breaches.

In general, social, and environmental clauses have no place in practice as award criteria, as they collide directly with the foundations of the principle of competition as it is usually considered.

Specifically, Article 67 of Directive 2014/24/EU includes the requirements for their validity at this stage of the procedure. In view of the open debate on how to determine their scope, it will be necessary to abide by the resolutions to that effect in the jurisprudential doctrine and in those passed by administrative courts that adjudicate contract disputes.

However, the position adopted by the European Union in general, and in Directive 2014/24/EU, in particular, raises no doubts as to the

support and protection given to social and environmental matters, including in public contracts.

Ultimately, this is a path of no return undertaken by EU institutions, which will result in regulations that will consolidate responsibility in public procurement in the short and medium term.

In this regard, the enthusiasm conveyed by Lesmes Zabalegui is to be commended, as he asserted: "while there is still some uncertainty, we must be brave when moving in this direction" (Lesmes Zabalegui, 2016, 3).

Having a clear and firm political commitment is essential if the basic guidelines of the European Union are to be expanded, improved, and incorporated into the internal legal systems of the Member States.

Although future research may be oriented towards other lines of action in relation, for example, to minor contracts, the division of the object of the contract into lots, or the access of small and medium-sized enterprises to contracting procedures, this paper seeks to highlight the importance of reflecting on the very concept of "competition".

While competition is certainly a crucial element in public procurement, which cannot and should not be questioned, many future dilemmas may arise in seeking to harmonise it with other values that recently enhanced its meaning and strengthened its endeavours, namely, efficiency and integrity.

3.2. The provisions of Law 9/2017, of 8 November, on Public Sector Contracts (the Spanish Public Contracts Act)

Law 9/2017, of 8 November, on Public Sector Contracts (the Spanish Public Contracts Act) establishes that social considerations can be included in contracting procedures at two points during the process. One is at the stage of drafting and establishing the award criteria, as qualitative criteria to evaluate the best value for money; and the other is at the point of setting out special conditions for contract performance, provided that their relationship to the object of the contract is proven.

Specifically, if social aspects are included as special execution conditions, the law imposes on the contracting authority the obligation that at least one of them must match any of those expressly set forth in Article 202 of the Spanish Public Contracts Act, concerning the special social, ethical, environmental, and other conditions for the performance of contracts.

In accordance with the provisions of Section 2 of Article 202 of the Spanish Public Contracts Act, the purposes for incorporating social or employment-related considerations include the following:

- asserting the rights recognised in the United Nations Convention on the Rights of Persons with Disabilities; hiring a number of people with disabilities greater than that required by national law;
- promoting the employment of people with special difficulties in entering the labour market, in particular, people with disabilities or at risk of social exclusion through social enterprises.
- eliminating inequalities between men and women, encouraging the application of measures that promote equality in employment between women and men;
- promoting greater participation of women in the labour market, and work and family life balance; combating unemployment, particularly when concerning young people, women, and the long-term unemployed; promoting training in the workplace;
- ensuring health and safety protection in the workplace and compliance with bargaining agreements applicable to the different industries and geographical areas;
- introducing measures to prevent occupational accidents; other purposes established with reference to the coordinated strategy for employment, defined in Article 145 of the TFEU;
- guaranteeing respect for basic labour rights throughout the production chain by demanding compliance with the fundamental conventions of the International Labour Organisation (ILO), including those considerations that seek to offer favourable conditions to small producers in developing countries with whom commercial relations are maintained, such as the payment of a minimum price and a premium given to producers, and greater transparency and traceability of the entire commercial chain.

Once any special conditions have been included in the contract, pursuant to the provisions of Section 4, Article 202 of the Spanish Public Contracts Act, compliance with such conditions will be required in the same way from all subcontractors involved in the performance of the contracts.

In short, regarding the consideration of social aspects in public procurement, the Spanish Public Contracts Act continues to regulate contracts reserved for special employment organisations and the possibility of reserving contracts for sheltered employment programmes. This is extended to social enterprises and requires all of them to have in their

employ the percentage of disabled workers established in their respective specific regulations.

In the area of disability, Article 71 of the Spanish Public Contracts Act sets out a prohibition for economic operators to contract with public sector entities if they fail to comply with the requirement of having workers with disabilities on their staff (at least 2% of their employees of those companies with fifty or more workers). This requirement had already been incorporated into the Spanish legal system through the modification of the previous Recast Text of the Public Sector Contracts Law, operated by Law 40/2015, of 1 October, of the Legal Regime of the Public Sector.

Similarly, the Spanish Public Contracts Act allows for both the award criteria and the special conditions for the performance of contracts to incorporate social aspects in the production and marketing processes related to works, supplies, or services that constitute the object of the contract in question. The purpose is also to promote, encourage and foster respect for human rights and, in particular, for the basic labour rights of workers and of small producers in developing countries.

3.3. *The insertion of social provisions in public sector contracts*

Section 3 of Article 1 of the Spanish Public Sector Act establishes that “all public procurement contracts shall include social and environmental criteria on a cross-cutting, mandatory basis, provided that they are related to the object of the contract, on the understanding that their inclusion provides a better value for money in performing the object of the contract, as well as greater and better efficiency in the use of public funds”.

Based on this initial approach taken by the 2017 legislator, contracting authorities may include their own criteria and characteristics in social and environmental clauses at four points in time: i) at the time of defining the object of the contract; ii) at the time of selecting the contractor; iii) at the time of establishing the contract award criteria; and iv) at the time of performing the contract.¹⁰

¹⁰ For further information, see Circular number 35/2018, of 25 July, of the General Authority of Services, Municipal Relations and Emergencies of the Department of Public Administrations and Institutional Relations of the Provincial Council of Bizkaia, which disseminates a “Practical Guide for public contracting: criteria and instructions for the incorporation of social, environmental and other public policy clauses”, https://web.bizkaia.eus/documents/2813479/2814476/Circular_y_Guia_ca.pdf/8e3a405e-d109-a15f-6f6b-1dc430cefb6c?t=1543422162300 (last accessed on 11 May 2021).

3.3.1. AS CRITERIA FOR AWARDING PUBLIC CONTRACTS

The Spanish legal system allows the inclusion of a so-called *social clause* at the time of awarding the contract. Accordingly, a criterion for awarding contracts is that “the bidding entities or companies that are majority owned by workers must be favourably considered”.

The inclusion of this award criterion must be linked to the object of the contract, must be specific and objectively quantifiable circumstances, must have been previously published, and must respect European Union Law, especially the principle of non-discrimination and, consequently, freedom of establishment and freedom to provide services.

Therefore, it is concluded that both the specific administrative clauses of the contracting procedures and the technical specifications must include social clauses.¹¹

This is in accordance with Article 145 of the Spanish Public Contracts Act, which sets out a general rule whereby multiple criteria must be taken into account in awarding procedures, to the extent that using a single award criterion based on the cost or price of the contract must be justified in the application.

Specifically, in Section 2, Article 145 of the Spanish Public Sector Contracts Acts lays down that, in order to determine the best value for money, the contracting authority will take into account both strictly economic criteria and qualitative aspects, and considerations such as any environmental or social aspects linked to the object of the contract.

Regarding social aspects or considerations, Article 145.2.1 of the Spanish Public Contracts Act expressly provides that “the social characteristics of the contract shall refer, among others, to the following purposes: furthering the social integration of disadvantaged persons or members of vulnerable groups among the persons assigned to performing the contract; subcontracting with special employment organisations or social enterprises; applying gender equality plans in the performance of the contract and, in general, fomenting equality between women and men; promoting contracts that employ women; balancing

¹¹ Contract Advisory Boards have issued several resolutions to that effect, notably including Resolution number 18/2014, of 11 March, of the Contract Advisory Board of Catalonia, due to its connection with the issues at hand. This Resolution stated that it is possible to establish “as an award criterion a preference for bids submitted by companies that apply measures to prevent occupational risks in addition to or greater than the legally established obligations, or measures to promote healthy habits or encourage personal and organisational development, provided that the bids contain equal terms to the most advantageous considering the criteria that serve as the basis for the award of the contract, in accordance with current regulations” (last consulted on 11 May 2021).

work, personal and family life; improving employment and salary conditions; job stability; employing a greater number of people for the performance of the contract; training and protection of health and safety at work; applying ethical criteria and social responsibility to the object of the contract; and criteria relating to the supply or use of products based on fair trade during the performance of the contract”.

In this sense, the Spanish Public Contracts Act devised a more efficient, transparent, and comprehensive public procurement system, in terms of achieving better compliance with public objectives. This can be implemented both by satisfying the needs of the contracting authorities, improving the conditions of access and participation in public tenders by economic operators and, of course, providing the best public services to citizens (Arnáez Arce, 2020).

In addition to clarifying the applicable regulatory framework for the sake of greater legal certainty, the Spanish legal system regarding public procurement aims to promote the use of public procurement to implement public European and domestic policies in social, environmental, innovation and development matters, promotion of small and medium-sized enterprises and defence of competition.¹²

In line with the suggestions outlined by Razquin Lizarraga in relation to the 2014 EU Directives, given that Article 145 of the Spanish Public Contracts Act maintains the most economically advantageous bid as a criterion for awarding contracts, the legislator has integrated the life cycle cost criterion to serve as the basis for its determination and has accentuated the pre-eminence of the best value for money. However, the main improvement regarding the issue at stake here should also be considered, namely, that it points to social and environmental characteristics in connection with evaluating the criterion of the best value for money (Burzaco Samper, 2016, 285).

It seems logical to think, therefore, that doubts have been dispelled about the lawfulness of the role of social and environmental clauses in the award phase. This requires compliance with three essential requirements: (i) that social clauses are linked to the object of the contract, that is, that they “relate to the works, supplies or services to be provided under the contract, in any aspect and stage of their life cycle”; (ii) that they do not confer unrestricted freedom of choice on the contracting authority, or in other words, that they guarantee effective competition in the market; and (iii) that the procurement documents define the relative weighting which they give to each of the criteria.

¹² ().

3.3.2. AS AN INSTRUMENT TO PROMOTE PUBLIC ASSISTANCE POLICIES AND SOCIAL INTEGRATION

In addition to clarifying the applicable regulatory framework for the sake of greater legal certainty, the Spanish legal system regarding public procurement aims to promote the use of public procurement to implement public European and domestic policies in social, environmental, innovation and development matters, promotion of small and medium-sized enterprises, and defence of competition (Arnáez Arce, 2018, 126).

According to the provisions of Section III of the Preamble of the current Spanish Public Contracts Act, all these matters are the effective objectives of the Act, which pursues efficiency in public spending and respect for the principles of equal treatment, non-discrimination, transparency, proportionality, and integrity at all times.¹³

As noted above, the Spanish Public Contracts Act establishes that social considerations can be included in the contracting procedures at two points during the process. These are: the stage that involves drafting and establishing the award criteria as qualitative criteria to evaluate the best value for money; and the point when special conditions are set out for the performance of contracts, provided that their relationship to the object of the contract is proven (Razquin Lizarraga, 2015, 110).

To this end, the contracting authorities must submit two options to be legally evaluated. One of them is the inclusion of an award criterion that evaluates the number of people with disabilities employed by the tenderer.

Its purpose is none other than “to promote the employment of people with disabilities, a vulnerable group who have been found to have difficulties in entering into the labour market”.

Social clauses are one of the most powerful resources for the employability of people with disabilities and for their normalisation within the labour market, since they force those who want to enter into a contract with a government authority to include a certain number of people with disabilities in their workforce.¹⁴

¹³ See Section III of the Preamble of the Spanish Public Contracts Act, which transposes into the Spanish legal system the Directives of the European Parliament and of the Council 2014/23/EU and 2014/24 /EU, of 26 February, published in Official Spanish Gazette number 272, of 9 November 2017.

¹⁴ Report of the AECEMCO (Spanish Business Association of Special Employment Organisations) on the “Application of the inclusion of social clauses in public procurement specifications to promote the employability of people with disabilities”, 2018, p. 3 (last consulted on 12 May 2021).

These types of clauses or social considerations may be included in the preparatory phase as a criterion for awarding the contract, provided that the following three requirements are respected, in accordance with the provisions of Article 145.2 of the Spanish Public Sector Contract Act: (a) that are indicated in the contract notice, and in the specific requirements; (b) that they are linked to the object of the contract and (c) that they are not directly or indirectly discriminatory, as well as being compatible with EU law.

In this sense, it is worth mentioning Resolutions numbers 234/2019, of 8 March, 235/2019, of 8 March, and 344/2019, of 29 March by the Central Administrative Court, which specifically stipulated that the social criteria for awarding public contracts referred to in Article 145.2 of the Spanish Public Sector Contracts Act have work, personal and family life balance, and the improvement of working and social conditions as their object or purpose.¹⁵

The other option to be legally evaluated as a special performance condition must be one of the obligations contained in Article 202 of the Spanish Public Contracts Act, regarding to the special contract performance conditions of a social, ethical, environmental, or other nature.

The introduction of social clauses in public contracting as special conditions for the performance of public sector contracts in EU legislation seeks to turn public procurement into a driver to ensure the well-being of the community.

This is framed in a regulatory context marked by the so-called *2020 European Strategy*. Public procurement plays a determining role, as it is deemed to be one of the instruments to be used to achieve smart, sustainable, and inclusive economic growth, while ensuring a rational and more effective use of public funds.¹⁶

According to Rodríguez-Arana Muñoz, government authorities and, therefore, of all government institutions and public sector contracts are linked to serving the general interest, especially within the social and democratic Rule of Law. This involves the defence, protec-

¹⁵ See these Resolutions of the Central Administrative Board of Contract Appeals, at [https://www.hacienda.gob.es/TACRC/Resoluciones/A%C3%B1o%202019/Recurso%200764-2018%20AST%2052-2018%20\(Res%20235\)%2008-03-2019%20VP.pdf](https://www.hacienda.gob.es/TACRC/Resoluciones/A%C3%B1o%202019/Recurso%200764-2018%20AST%2052-2018%20(Res%20235)%2008-03-2019%20VP.pdf) (last consulted on 19 May 2021).

¹⁶ The regulatory efforts to promote the 2020 European Strategy took the form of three Fourth-Generation Directives, which marked the completion of the review and update of the regulations governing public procurement. Directives 2014/23/EU and 2014/24/EU of 26 February, of the European Parliament and Council, transposed into the Spanish legal system by Law 9/2017, of 8 November, on the Legal Regime of the Public Sector.

tion, and promotion of aspects such as the one proposed by the procuring bodies, namely, *promoting the employment of people with disabilities, a vulnerable group with obvious difficulties in entering into the labour market* (Rodríguez-Arana Muñoz, 2016).

In the words of Gimeno Feliu, social clauses used as conditions for the performance of public contracts are definitively intended to “[...] guarantee higher values of the legal system such as freedom, equality and solidarity” (Gimeno Feliú, 2004, 65).

It should also be taken into account that, once any special conditions have been included in the contract pursuant to the provisions of Section 4, Article 202 of the Spanish Public Contracts Act, compliance with such conditions will be required in the same way from all subcontractors involved in the performance of the contracts.

3.4. Reserves and tie-break rules in the award of public contracts

The Spanish Public Contracts Act strengthened the concept of reserved contracts launched by Directive 2004/18/EC and incorporated into the Spanish legal system by Law 30/2007, of 30 October, in order to promote the integration of people with disabilities in the labour market (Andrés Pérez, 2018).

Directive 2014/24/EU maintained the market reserve to promote the integration of people with disabilities and extended it to economic operators mainly engaged in the social and professional integration of disadvantaged people.¹⁷

This new regulation was incorporated into the Spanish legal system through Law 31/2015, of 9 September, which normalised and updated the regulations on self-employment and adopted measures to encourage and promote self-employment and the social economy. It introduced three major new developments: (i) allowing reserved participation also for social enterprises; (ii) introducing the option of reserving not only contracts but also lots thereof; and (iii) replacing the option with mandatory reservation.¹⁸

The current Spanish Public Contracts Act expands the concept of reserved contracts, distinguishing between contracts reserved for special employment organisations and social enterprises, established in

¹⁷ See Article 20 of Directive 2014/24/EU.

¹⁸ Law 31/2015, of 9 September, which modifies the regulations on, and promotes self-employment, published in Spanish Official State Gazette number 217, of 10 September 2015.

Additional Provision 4, and the reservation of certain contracts to given organisations, contained in Additional Provision 48.

Regarding the legal evaluation of whether a reservation in the scope of Additional Provision 4 of the Spanish Public Contracts Act can be made, including both special employment organisations and associated work cooperatives, from a subjective point of view, Additional Provision 4 of the Spanish Public Sector Contracts Act specifically mentions social enterprises and special employment organisations, as pursuant to Additional Provision 16, contracts may only be reserved for social entrepreneurship organisations.¹⁹

The legal regime of social enterprises is regulated by Article 4 of Law 44/2007, of 13 December, which defines them as “all companies or cooperatives which, in addition to engaging in business operations, include in their corporate purpose the social and labour integration and training of people in a situation of social exclusion as a transition to ordinary employment”.²⁰

For their part, special employment organisations are regulated by Royal Legislative Decree 1/2013, of 29 November, which approves the Recast Text of the General Law on the rights of people with disabilities and their social inclusion (the Royal Legislative Decree on the rights and social inclusion of people with disabilities). Specifically, Article 43 of the Royal Legislative Decree on the rights and social inclusion of people with disabilities established that special social entrepreneurship employment organisations are those that are promoted and directly or indirectly held in more than 50% by one or several entities, whether public or private. They must be non-profit or have their social entrepreneurship status recognised in their governing documents, whether they are associations, foundations, public law corporations, social entrepreneurship cooperatives, or other entities of the social economy. This category also includes organisations owned by commercial companies whose share capital is predominantly owned by one of the entities mentioned above.²¹

¹⁹ The reason for this requirement specifically from special employment organisations and not from social enterprises is that the latter (companies) are legally required to be promoted in at least 51% by entities and/or non-profit organisation or foundations.

²⁰ See Article 4 of Law 44/2007, of 13 December, for the regulation of the regime of social enterprises, published in Spanish Official State Gazette number 299, of 14 December 2007.

²¹ See Article 43 of the Royal Legislative Decree on the rights and social inclusion of people with disabilities, published in Spanish Official Gazette number 289, of 3 December 2013.

However, it must also be noted that this provision has raised some disputes in terms of its practical implementation, regarding the exclusion from these reserved contracts of special employment organisations that are not social entrepreneurship organisations; it has recently been posed that reservation must be applicable equally to both special social entrepreneurship employment organisations and social enterprises.

The special appeal bodies have ruled in this regard by admitting that the application of the reservation only to special social entrepreneurship employment organisations does not violate the spirit of Directive 2014/24/EU, which provides the option of reserved contracts.²²

Among others, these include Resolutions 202/2018 of the Catalan Board of Public Sector Contracts, 860/2018 of the Central Administrative Board of Contract Appeals, and 100/2018 of the Administrative Body of Contract Appeals of the Basque Country (OARC/KEAO).

This latter stated the following:

In the opinion of this OARC/KEAO, Article 20 of Directive 2014/24/EU does not establish a clear and unconditional mandate. It provides that it (may or may not) be transposed, as this is left to the discretion of the Member States. In this way, the option of not incorporating this provision (which is an exception to the general principle of free access to contracting for all qualified economic operators, regardless of their legal form or their legal or organisational characteristics) would not have received any or legal criticism or consequences on the grounds of having been improperly transposed. All the more so because, once the option of transposition has been taken, the legislator enjoys a margin of discretion when defining and specifying in domestic law what is to be understood by “economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons”. The existence of this margin rules out the possibility that there is a precise, clear and unconditional mandate worthy of direct effect.²³

²² However, this issue has not been settled, since Resolutions 100/2018 and 129/2018 of the Administrative Body for Contract Appeals in the Basque Country Region have been appealed against before the Higher Court of Justice of the Basque Country. The latter is pending resolution at this time, and the Court of Justice of the Basque Country has filed a request for a preliminary ruling before the Court of Justice of the European Union (C-598/19).

²³ See the content of the Resolution at the following link: <https://www.contratacion.euskadi.eus/w32-kpeoarc/es/y96aResolucionesWar/busqueda/listado?locale=es#> (last accessed on 12 May 2021).

Furthermore, until now, it was assumed that the procuring body had discretion when reserving a certain contract only to special employment organisations or only to social enterprises, or to both categories on equal terms, provided that they substantiate this decision. However, Resolution 1298/2020 of the Central Administrative Board of Contract Appeals established that reservation should not only benefit special social entrepreneurial employment organisations under the Fourth Additional Provision of the Spanish Public Contracts Act.²⁴

On a different note, from a formal or procedural point of view, the nature of reserved contracts should be indicated in the contract notice, referred to in Additional Provision 4 of the Public Sector Contracts Act, as grounds for authorising reserve performance of contracts.

Due to the above, in response to the question raised by the procuring body, it was concluded that it is possible to reserve performance of contracts in the scope of Additional Provision 4 of the current Spanish Public Contracts Act for special employment organisations and associated work cooperatives, provided that it is formalised respecting the subjective and procedural requirements indicated.

Turning to tie-break criteria, they operate as the ultimate award criteria to be considered when, after applying the award criteria, the score obtained by two or more bidders is similar.

Article 147.1 of the Spanish Public Contracts Act refers to them as “specific award criteria to be applied in the event of a tie”.

Article 147 of the Public Sector Contracts Law regulates tie-break criteria in the award phase of public contracts and distinguishes between whether or not these are provided for in the Specifications.

The tie-break criteria provided for in the specifications must be linked to the object of the contract and be related to circumstances such as the percentage of workers with disabilities; bids from social enterprises; awarding of contracts related to social or assistance benefits for non-profit entities; awarding of contracts the object of which is fair trade products to fair trade organisations; and awarding of contracts to companies that include social and employment measures that promote equal opportunities between women and men.

²⁴ We shall then have to wait and see whether this criterion is maintained in future resolutions. Nevertheless, this does not seem to be in accordance with the letter of the Spanish Public Contracts Act, since the Fourth Additional Provision is not conclusive in the sense interpreted by the Central Administrative Board of Contract Appeals; in addition, the application of lots of reserved contracts regulated in Article 99 of the Spanish Public Contracts Act states that “in accordance” with the Fourth Additional Provision, one or more of the lots may be reserved for special employment organisations “or” social enterprises, “or” within sheltered employment programmes.

If no provisions have been made for tie-break criteria in the Specifications, these should be understood to refer to circumstances related to the percentage of workers with disabilities; the number of employees with temporary contracts in the workforce; greater percentage of employed women in the workforce; and ultimately, the draw.

It should be noted that, except for the draw, all other tie-break criteria established by the Spanish Public Contracts Act include or consider social aspects (Bosch, 2016).

However, despite the regulation of the tie-break criteria contained in Article 147 of the Spanish Public Contracts Act, linking tie-break criteria to the object of the contracts is neither easy nor well-settled (Blanco, 2018, 144).

Resolution number 97/2019, of 4 July 4 of the Administrative Board of Contract Appeals of Castilla y León is particularly significant and relevant to the case at hand. It annulled the particular conditions in the Specifications of a service contract by considering them contrary to the principle of equal treatment. This was based on the fact that work cooperatives and second-tier cooperatives that gather them had been used as a tie-breaker, under Article 135.6 of Law 4/2002, of 11 April, on Cooperatives in Castilla y León, which benefited certain competing bidders based on local connection criteria.²⁵

In this sense, both the scholarly doctrine and the doctrine issued by the bodies in charge of resolving contractual appeals is well-settled, as it considers that local connection criteria cannot be either standing requirements or award criteria, as the Advisory Board of Public Contracts established in Report 9/09, of 31 March. The Report reads: "The origin, registered office or any other indication of local connection of a company cannot be considered as a requirement to contract with the public sector, as these circumstances cannot be used as evaluation criteria".²⁶

Based on the above, it can be concluded that establishing a preference for associated work cooperatives registered in the regional register is inadmissible as a tie-break criterion. The reason is that this violates the guiding principles of public procurement, equality, and non-discrimination, which are at the basis of the legal regime of public contracting in force in the Spanish legal system.

²⁵ See the full text of the resolution at the following link: <file:///C:/Users/Usuario/Downloads/Resoluci%C3%B3n%2097-2019.pdf> (last accessed on 13 May 2021).

²⁶ See at <https://www.hacienda.gob.es/Documentacion/Publico/D.G.%20PATRIMONIO/Junta%20Consultiva/Informes/Informes2009/Informe%2009-09.pdf> (last consulted on 13 May 2021).

This is the case despite the fact that the regional legislation on cooperatives, exercising the exclusive regional jurisdiction over cooperatives and the promotion of the social economy, provides for such preference. When these provisions converge with aspects of public procurement such as award criteria in the event of a tie, the basic legislation on public contracts must be respected.

IV. **The cooperative model: a sustainable social alternative for public procurement**

4.1. *Context*

The cooperative movement is part of the so-called *third sector*, which has been defined as the intermediate space between the public sector and the capitalist private sector. It is made up of a wide range of entities and organisations that operate in a particularly ever-changing context, which provide the services that were traditionally rendered by government authorities (Atxabal Rada 2018, 142).

The study of the third sector has historically been approached from the point of view of the transition and evolution of economic subjects towards integrating values such as economic mutuality, gratuity, and the absence of private interests and lack of a profit motive.

Two approaches can be identified for their study: that of non-profit organisations, and that of the so-called social economy.

The non-profit organisations that form part of the third sector are those private entities that have their own legal personality, are formally organised, and have an internal stable structure in terms of engaging in non-profit general-interest activities and objectives.

According to this concept, a large number of organisations are part of the third sector, including trade and professional associations, traditional charities, those devoted to worship or religious matters, the so-called non-governmental organisations, popular development organisations and organised social movements.

From the point of view of the social economy and corporate social responsibility, the third sector can be defined as the intermediate space that exists between public management and provision of social services, on the one hand, and companies, on the other.

The term “third sector” is therefore used to bring together private non-profit institutions, to the extent that they are an alternative to the world of business and the State’s public institutions as providers of goods and services of general interest.

In this sense, it can be stated that the third sector is made up of a set of private-based organisations with voluntary participation, which have their own legal personality, and capacity for self-government, are formally organised and that are non-profit; in other words, organisations that do not seek to distribute among their members the benefits generated by their activity and have the capacity to self-govern and manage themselves independently.

This category notably includes cooperative societies, mutual societies, labour societies, associations, and foundations, as they are the core private companies characterised by prioritising people and their corporate purpose over capital; they are open and have voluntary membership; and the interests of their members and users (as recipients or customers of the goods and services they provide) coincide with the general interest of all citizens. They are also autonomous entities, independent from public authorities, which defend the application and fulfilment of the principles of solidarity and responsibility by assigning the surplus of their activity to social purposes. These include the creation of employment, the promotion of new business activities, the return on invested capital, and service to the community, among others (Salas, 2009, 29-31).

The third sector is grounded in its social role and functions. However, unlike what happens with for-profit companies, third sector entities seek to satisfy general goals and interests, in other words, to meet demands that are not expressed in economic or monetary terms (Atxabal Rada, 2018, 150).

In the current context of the economic and social crisis, at a time when the role of the State in the planning and implementation of public policies is questioned from all points of view, government authorities increasingly demand the participation and active collaboration of the so-called third sector as an agent of innovation that works to meet social demands effectively and efficiently.

We are witnessing a process when these types of organisations and companies are gaining momentum and are being promoted in the design, planning, execution and evaluation of public policies and services of general interest, in collaboration with the work conducted in such matters by government authorities and public sector entities.

This constitutes a new structural and functional paradigm, a new form of interaction with citizens, and a challenge for Administrative Law and its purpose of achieving authentic sustainable institutional, economic, and social development.

Ultimately, it is an opportunity to obtain specialised, innovative, and sustainable public services. This also shows the potential for public

agents to incorporate into their actions the ethical systems and responsible practices that govern other economic and social sectors in their daily operation, notably including the cooperative movement (Arnáez Arce, 2018, 111).

This process has resulted from the restructuring of the welfare state, in which the work of the cooperative movement has continuously completed the functions attributed by the legal system to the public authorities. This entails meeting the demands and social needs of citizens, thus contributing to the improvement of their living conditions and to higher levels of social welfare (Jiménez Escobar; Morales Gutiérrez, 2006, 21-22).

4.2. *The cooperative identity*

According to the Statement on the Cooperative Identity, approved in 1995 by the General Assembly of the International Cooperative Alliance,²⁷ the cooperative can be defined as an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically-controlled enterprise (Morillas, 2008, 37).

Specifically, what distinguishes cooperative societies from other organisations and organisation forms that operate in the market is not so much the kind of activity they engage in, but rather their intrinsic nature, which reflects the guiding principles and values of their organisation and operation. These are based on self-help, responsibility, democracy, equality, equity, and solidarity.

Values which, in accordance with the Statement on the Cooperative Identity, are put into practice through the following principles: voluntary and open membership; democratic member control; economic participation; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for the community.

In the issue at stake here, namely, the awarding of public contracts to cooperative societies, the seventh cooperative principle is particularly important. It advocates that these entities work for the sustainable development of their communities in accordance with the policies adopted by their members.

²⁷ See: <http://www.aciamericas.coop/Principios-y-Valores-Cooperativos-4456> (last accessed on 10 October 2019).

According to Gadea Soler, Sacristán Bergia and Vargas Vasserot, this means that socially responsible actions are not determined by external (mainly commercial) reasons in cooperatives, but are fundamentally linked to their identity (Gadea, Sacristán, Vargas, 2009, 46).

Basically, it is their very serving nature that leads them to promote the socioeconomic progress of their members and their environment, with a view to the future of today's and tomorrow's generations (Giraldo, 2003, 128).

It can be affirmed that the cooperative movement has maintained a strong commitment to society from its origins. Moreover, it is usually presumed that all those cooperatives whose corporate purposes prioritise education, housing, social health care, and cooperation for development or the environment, among others, contribute to some extent to the optimal protection and guarantee of general interests (Arnáez Arce, 2018, 125).

However, it is the non-profit cooperatives and, within these, those classified as social entrepreneurship cooperatives, which more specifically seek to meet general interests.

It is for all these reasons that government authorities, in the current context of a global economy marked by systemic crisis and growing inequalities, increasingly require the support and active participation of cooperative societies, particularly those described as social entrepreneurship cooperatives, as agents of development and innovation with strong roots in our community. They coexist in harmony with the community in order to ensure the effective and efficient satisfaction of the basic needs of citizens.

Their foundations lie on the role and functions that the cooperative movement has been carrying out in society for a long time. This is the case because, unlike capitalist companies, cooperative societies set objectives and try to meet demands that are not expressed in merely economic or monetary terms.

4.3. *The cooperative movement and socially responsible public procurement*

Simplifying administrative procedures is one of the major challenges and most immediate objectives of Administrative Law today. It is essential for the construction of a new model of public institutions that objectively serve the general interests and operate in accordance with the principles proclaimed in Article 131 of the Spanish Constitution (Palomar, 2010, 338-345).

It is a new structural and functional paradigm, as well as a new form of interaction with citizens that aims to ensure and promote sustainable institutional, economic, and social development.

Outsourcing is an unstoppable trend in this transformation of public bodies. Driven by the doctrinal currents of the so-called *New Public Management*, it enables the incorporation of technical skills and abilities from other sectors, which translates into a great opportunity to obtain specialised and innovative public services.

It is worth mentioning how some public services are managed through the awarding of public sector contracts to cooperative societies. This is one of the key elements in ensuring that government authorities seek to fulfil the constitutional principles of effectiveness and efficiency while, in turn, protecting the strongest aspects of the productive model of the relevant sector.

According to Argudo Pérez, the key role or, at least, growing importance of cooperatives can be accounted for by their social vocation to serve the community and the development of the cooperative movement in the services industry. As noted by Argudo Pérez, these arguments necessarily determine “a confluence in the field of services to people and the community [...]” (Argudo Pérez, 2007, 182).

This confluence has been specifically supported by the Court of Justice of the European Union, specifically, in its ruling of 28 January 2016, regarding the scope of social and health benefits. The ruling considered that the EU Law is not opposed to the regulations that allow local authorities to directly award the provision of certain services, without any advertising, to non-profit entities, provided that the legal and conventional framework in which they operate effectively contributes to a social purpose and to the achievement of objectives of solidarity and budgetary efficiency (Gimeno Feliú, 2016).

4.4. *The cooperative model and its contribution to the sustainable management of public services*

The main advantage that cooperative societies represent for the system is, according to Álvarez Rodríguez, “the creation of proximity economy”, as a result of their special link to people and to their geographical area (Álvarez, 2012, 410). It is my understanding that this link in turn derives from the participatory idiosyncrasy of these entities.

In the words of Divar Garteiz-Aurrecoa “(...) the endogenous force of cooperatives is member participation (...)” (Divar Garteiz-Aurrecoa, 2010, 265). Their particular regime of property and distribution of prof-

its, and their democratic management, remove them from capitalist power structures and substantiate their strong social roots, their tendency to create stable, high-quality employment, their flexibility to adapt to changes and face crises and, ultimately, their potential to constitute a solid alternative that promotes true sustainable local development.

That is why it seems essential to briefly reflect on the meaning and scope of the collaboration of the cooperative world in the provision of public services. It is an expression of how the role of citizens has evolved in their relations with public authorities. Citizens are increasingly demanding when it comes to knowing, influencing and being part of all the decisions that affect the operation of public services that they contribute to maintain through their taxes (Atxabal Rada, 2018, 137).

Along these lines, it should be noted that Administrative Law is currently attempting to introduce a new model of public management that is fed by and represents more open and accessible institutions and practices, with growing involvement of those being administered. In other words, a model that promotes informed, dynamic, and co-responsible citizens towards the activity of the public authorities, in which the joint provision of public services enjoys greater prominence (Arnáez Arce, 2020, 114).

However, it should be noted that Cooperative Law, from its early days, pointed to the need for public authorities to support a different way of doing business, one that is more approachable and more supportive, as advocated by the cooperative phenomenon; and it urged public authorities to collaborate with cooperative societies to ensure the correct performance of their functions and the achievement of their ultimate goal, the common good.

Article 108 of Law 27/1999 on Cooperatives announces the promotion of the cooperative movement as a task of general interest. The starting point and point of arrival of this goal can be found in the Spanish Constitution, as Article 129.2 specifically recognises it and ensures its formal and functional development, while considering it as a means to fulfil social objectives. The purpose seeks to promote not only the most classic concept of the social economy, but above all, the most representative one, namely, a participatory society (Gallastegi, 2016, 3-9).

In light of the above, it can be said that collaboration with cooperatives is not only the preferred option to meet those social needs that are not sufficiently covered by the State, but also as the ideal way for citizens to have increasing and better participation in public affairs. As long as cooperative values and principles are respected, users of public services will be taken into account in terms of design, planning and provision, for the sake of their accessibility and integrity and, therefore, of their quality.

As aptly argued by both Juliá and Meliá Martí “[...] cooperatives, today more than ever, are called upon to be a key, dynamic driver for true social, economic and sustainable development. Given their special characteristics, cooperatives enable more socially and territorially cohesive development, something that a fairer, more equitable society cannot give up on” (Juliá and Meliá, 2004, 56).

Let us not forget that the cooperative movement is committed to sustainable development and the social and territorial cohesion of the community, thus putting cooperative principles and values into practice. Within this challenge, cooperative societies in general, and those qualified as social entrepreneurship societies and/or public utility societies in particular, have played a major role. They have tried to satisfy different collective needs in those spaces where the public sector has not been able to cover them properly.

In this way, cooperatives ultimately contribute to realising public purposes and are of service to society.

V. Conclusions

1. In the current context in which the functioning and validity of the welfare state is called into question, public sector authorities and institutions increasingly need the engagement and active participation of all economic and social agents of innovation in the management of public services. These agents should include among their challenges and objectives the effective, efficient, and sustainable satisfaction of social assistance needs, which are not expressed in merely economic or monetary terms.

The process of restructuring, reforming, and innovating of the public sector, in the sense of enhancing its competitiveness, effectiveness and efficiency, is seeking ever greater and more real interaction with citizens; citizens, in turn, demand an increasingly important, more active role in the planning, implementation, and evaluation of public policies that aim to provide assistance services to the population.

2. The cooperative movement and the organisations within it base their actions on the values of solidarity, democracy, equity, equality, self-help, and self-responsibility. Since their inception, they have played a major role in, and contributed to promoting development and achieving social goals of general interest. It is unquestionable that any cooperatives that prioritise goals such as social and health care, education, housing, the protection and defence of the environment, the

promotion of the social economy and the protection of social peace as part of their corporate purpose are of service to the general interest.

3. The main advantage that cooperative societies provide in the management and provision of public services as partners of public institutions lies in their particular regime of ownership and distribution of profits, as well as their democratic management. These characteristics mean that they are removed from capitalist power structures, as evidenced by their strong social roots, their tendency to create stable, high-quality employment, their flexibility to adapt to changes and face crises and, ultimately, their potential to constitute a solid alternative that promotes true sustainable local development.

4. Administrative Law is currently attempting to introduce a new model of public management that is fed by and represents more open and accessible institutions and practices, with growing involvement of those being administered. In other words, a model that promotes informed, dynamic, and co-responsible citizens vis-à-vis the actions of the public authorities, in which the joint provision of public services enjoys greater prominence.

This paper stresses the importance of the collaboration of the cooperative world in the provision of public services, as an opportunity to materialise the new role of citizens in their relations with public institutions. Citizens are becoming increasingly demanding when it comes to influencing, being aware and part of all the decisions that affect the operation of public services, which they contribute to maintain through their taxes.

5. It should be noted that Cooperative Law, from its early days, pointed to the need for public authorities to support a different way of doing business, one that is closer and more supportive, as advocated by the cooperative movement; and for them to collaborate with cooperative societies to ensure the correct performance of their functions and the achievement of its ultimate goal, the common good.

Pursuant to Article 108 of Law 27/1999, promoting the cooperative movement is a general interest endeavour. The starting point and point of arrival of this goal is found in the Spanish Constitution, as Article 129.2 specifically recognises it and ensures its formal and functional development, while considering it as a means of fulfilling social objectives.

6. Collaboration with cooperatives is not only the preferred option to meet those social needs that are not sufficiently covered by the

State, but it is also seen as the optimal way for citizens to have increasing and better participation in public affairs. The goal is that once cooperative values and principles are respected, users of public services will be taken into account in their design, planning and provision, for the sake of their accessibility and integrity and, therefore, their quality.

7. This paper has addressed the process of transformation of Administrative Law in relation to the contractual operation of public authorities and organisations, with the ensuing opportunity to yield specialised and innovative public services.

As some public services are managed through public sector contracts awarded to cooperative societies, this is both a challenge and an opportunity. It is also a key element in ensuring that government authorities seek to fulfil the constitutional principles of effectiveness and efficiency and, in turn, protect the strongest aspects of the productive model of the relevant sector.

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