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Public promotion of employment for people with disabilities: from access to the civil service to the promotion of their inclusion in cooperative societies and social economy enterprises

Promoción pública del empleo para personas con discapacidad: desde el acceso a la función pública hasta el fomento de su inclusión en sociedades cooperativas y empresas de economía social

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(Promoción pública del empleo para personas con discapacidad: desde el acceso a la función pública hasta el fomento de su inclusión en sociedades cooperativas y empresas de economía social)

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del fomento de políticas sociales. III. El marco jurídico de acceso al empleo público para las personas con discapacidad: 3.1. Normativa básica de ámbito estatal; 3.2. Desarrollo normativo para su implementación autonómica: Ley 11/2022, de 1 de diciembre, de Empleo Público Vasco. IV. La contratación pública sostenible en el derecho administrativo español: 4.1. Consideraciones generales; 4.2. Las previsiones de la Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público; 4.3. La utilización de cláusulas sociales en los contratos del sector público: 4.3.1. Como criterio de adjudicación de contratos públicos; 4.3.2. Como instrumento para fomentar otras políticas de bienestar público e integración social; 4.4. Contratos reservados y criterios de desempate en la adjudicación de contratos del sector público. V. Conclusiones. VI. Referencias. VII. Resoluciones e informes de órganos administrativos y otras entidades.

Abstract: The 2030 Agenda for Sustainable Development passed by the United Nations General Assembly, is an action plan that seeks to benefit people and the planet and foster prosperity. It also aims to promote world peace and ensure access to justice. The 2030 Agenda is framed as a new global and local social contract which requires all social actors and public administrations to engage in coordinated and collaborative action.

A comprehensive review is proposed to link domestic public policies and ensure that they are coherent with sustainable development, fostering a collective effort. To achieve this, it is essential to establish mechanisms to facilitate cooperation and ensure progress towards the Sustainable Development Goals (SDGs). There is therefore a need to highlight the commitment to the inclusion of people with disabilities, enabling them to lead full personal, social and working lives.

This paper focuses on analysing the current regulations related to the management and promotion of access to employment for people with disabilities from two perspectives. Firstly, a descriptive analysis will be made of the laws applicable to the access of people with disabilities to jobs in the public sector, paying special attention to the new Public Employment Law in the Basque Country. Secondly, the use of public procurement will be explored as a tool for the public sector to facilitate the access of people with disabilities to the labour market, ensuring that they are considered in this process.

Keywords: Agenda 2030; Social sustainability; Access to and promotion of employment for people with disabilities; Cooperativism and social economy.

Resumen: La Agenda 2030 para el Desarrollo Sostenible, aprobada por la Asamblea General de las Naciones Unidas, es un plan de acción que busca beneficiar a las personas y al planeta, así como fomentar la prosperidad. Asimismo, tiene como objetivo promover la paz mundial y garantizar el acceso a la justicia. La Agenda 2030 se plantea como un nuevo contrato social, tanto global como local, que exige a todos los actores sociales y a las administraciones públicas emprender acciones coordinadas y colaborativas.

Se propone una revisión integral para vincular las políticas públicas internas y asegurar su coherencia con el desarrollo sostenible, impulsando así un esfuerzo colectivo. Para lograrlo, resulta esencial establecer mecanismos que faciliten la cooperación y garanticen el avance hacia los Objetivos de Desarrollo Sostenible (ODS). Por consiguiente, es necesario destacar el compromiso con la inclusión de las personas con discapacidad, permitiéndoles llevar una vida plena en los ámbitos personal, social y laboral.

El presente trabajo se centra en analizar la normativa vigente relativa a la gestión y el fomento del acceso al empleo para las personas con discapacidad desde dos perspectivas. En primer lugar, se realizará un análisis descriptivo de la legislación aplicable al acceso de este colectivo a puestos de trabajo en el sector público, prestando especial atención a la nueva Ley de Empleo Público del País Vasco. En segundo lugar, se examinará el uso de la contratación pública como herramienta para que el sector público facilite la incorporación de las personas con discapacidad al mercado laboral, garantizando que se las tenga en cuenta en dicho proceso.

Palabras clave: Agenda 2030; Sostenibilidad social; Acceso al empleo y promoción del mismo para personas con discapacidad; Cooperativismo y economía social.

I. **Introduction**

The United Nations General Assembly adopted the 2030 Agenda for Sustainable Development in September 2015. 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 is presented, above all, as a new global and local social contract which demands that all social stakeholders and all public administrations work together.

This new social contract requires an integrated and comprehensive approach that unites domestic public policies and ensures their coherence with sustainable development through a shared collective effort. To this end, it is necessary to establish mechanisms that spur cooperation and progress towards achieving the Sustainable Development Goals (SDGs), while emphasising the commitment to the inclusion of persons with disabilities to ensure that they can enjoy a full personal, social and working life.[3]

In light of the above considerations, this paper studies the current regulatory framework on the management and promotion of access to employment for people with disabilities. It addresses it from two points of view. On the one hand, through a descriptive analysis of the laws and regulations governing access for people with disabilities to employment positions in the public sector, with particular attention to the provisions of the new Basque Public Employment Act. On the other hand, public procurement is proposed as an alternative instrument available to the public sector for fostering access to the labour market for persons with disabilities, ensuring that this approach is duly taken into account.

II. **Promoting the employment of people with disabilities in the framework of the 2030 agenda**

2.1. *Access to employment for people with disabilities in the 2030 Agenda for Sustainable Development*

In September 2015, the UN General Assembly approved a resolution regarding the Agenda for sustainable development, an action programme for people, the planet and prosperity, which also seeks to pro-

[2] See https://sdgs.un.org/2030agenda (Last accessed on 20 February, 2025).

[3] See https://www.un.org/sustainabledevelopment/ (Last accessed on 20 February, 2025).

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mote universal peace and foster access to justice. The Agenda 2030 formulated 17 sustainable development goals (SDGs), with 169 integrated, indivisible targets in three areas of public policy action: economic, social and environmental.[4]

In the aftermath of the 2020 pandemic, economic, environmental and social sustainability has become an urgent necessity, a choice and an opportunity to enhance public management through this added value.[5]

Before analysing the positive law in force and its application in the Spanish legal system, in my view, it is first necessary to consider that people with disabilities are an important vulnerable population group that is explicitly referred to in a significant part of the Sustainable Development Goals.

In September 2015, the United Nations General Assembly passed a resolution adopting the 2030 Agenda for Sustainable Development. An action plan for people, the planet and prosperity, which also aims to strengthen universal peace and access to justice, as well as to end poverty in all its forms throughout the world.

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

I contend that this new social contract must be grounded in an integrated and comprehensive approach capable of bringing together domestic public policies and ensuring coherence across all public actions aimed at sustainable development—a goal that can only be achieved through a collective effort.

To this end, the public sector must generate mechanisms that allow for cooperation and progress towards the achievement of the Sustainable Development Goals (SDGs).

Of these, two are worth mentioning because of their relation to the integration of people with disabilities:

Sustainable Development Goal 4, which aims to 'ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.'

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[4] See https://sdgs.un.org/2030agenda (Last accessed on 19 February 2025).

[5] (Pernas García, 2020, 3). See in 'La contratación circular: el papel de la compra pública en la realización de una economía circular y la utilización eficiente de los recursos', at http://www.obcp.es/index.php/opiniones/la-contratacion-circular-el-papel-de-la-compra-publica-en-la-realizacion-de-una-economia http://www.obcp.es/index.php/opiniones/la-contratacion-circular-el-papel-de-la-compra-publica-en-la-realizacion-de-una-economia (Last accessed, 19 February 2025).

And Sustainable Development Goal 8, which aims to 'promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all'.

It is also important to understand that the different Sustainable Development Goals related to people with disabilities are cross-cutting and therefore interrelated: as a result, if one of them is successful, this affects the success of the others, and vice versa.

Therefore, the promotion and enforcement of public policies and measures aimed at ensuring that people have access to quality education and decent jobs has a direct impact on the first of the Sustainable Development Goals to 'end poverty in all its forms everywhere'.

2.2. *Public procurement at the service of promoting social policies in the 2030 Agenda for Sustainable Development*

Gimeno Feliú aptly noted the importance of public procurement as an instrument to achieve these goals, as he stated that '[…] the 2030 Agenda proposes, among other goals, sustained, inclusive and sustainable economic growth, which is essential to achieve prosperity. The Agenda also addresses the factors that generate violence, insecurity and injustice, such as inequalities, corruption and poor governance, among others' (Gimeno Feliú, 2021, 2) .[6]

In the aftermath of the 2020 pandemic, economic, environmental and social sustainability has become an urgent necessity — a choice and an opportunity to enhance public management through this added value.[7]

It can be affirmed, therefore, that both social and ecological considerations are an inherent and essential part of the concept and the practical reality of what has become known as *strategic public contracting,* an instrument at the service of public policies to be implemented under the auspices of the 2030 Agenda's Goals for Sustainable Development. In this way, general-interest goals can be achieved, such as job stability, environmental quality, and social assistance and integration.

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[6] (Gimeno Feliú, 2021a: 2). See 'Los retos de futuro de la contratación pública: los ODS y la experiencia de la pandemia', at http://www.obcp.es/opiniones/los-retos-de-futuro-de-la-contratacion-publica-los-ods-y-la-experiencia-de-la-pandemia (Last accessed on 20 February 2025).

[7] (Pernas García, 2020, 3). See in 'La contratación circular: el papel de la compra pública en la realización de una economía circular y la utilización eficiente de los recursos', at http://www.obcp.es/index.php/opiniones/la-contratacion-circular-el-papel-de-la-compra-publica-en-la-realizacion-de-una-economia (Last accessed on 20 February 2025).

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In short, following Gimeno Feliú, it can be concluded that 'the objective of the transformation sought by the United Nations Agenda requires a proactive attitude (and aptitude) to provide the best solution to the needs of citizens, which are not merely ideological'. Including social and environmental clauses in public contracts is a strategic option provided for in current applicable Spanish law.[8]

III. **The legal framework for people with disabilities to access public employment**

3.1. *Baseline Spain-wide laws and regulations*

Recent regulatory precedents governing access to public employment for people with disabilities can be traced back to legal provisions applicable to Spain as a whole. Law 53/2003, of 10 December 2003, on the employment of persons with disabilities,[9] introduced the obligation to reserve a quota of not less than five per cent of the advertised positions to be filled by persons with a degree of disability equal to or greater than 33 per cent, in each year's tenders for employment opportunities in the public sector, in order to ensure that this population group should eventually represent two per cent of the total State Administration workforce, a target that is yet to be achieved.

This initiative was launched as a result of the enactment of Council Directive 2000/78/EC of 27 November 2000, later transposed into Spanish law, which established a general framework for equal treatment in employment and occupation. Its provisions are also applicable to people with disabilities, include anti-discrimination measures and guarantee effective equal opportunities.

Subsequently, Royal Decree 2271/2004 of 3 December was passed to regulate access to public employment[10] and the allocation of posts for people with disabilities. It aimed at promoting positive action measures that encourage equal opportunities, while maintaining the princi-

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[8] (Gimeno Feliú, 2021b: 4). See 'Los retos de future de la contratación pública: los ODS y la experiencia de la pandemia', at http://www.obcp.es/opiniones/los-retos-de-futuro-de-la-contratacion-publica-los-ods-y-la-experiencia-de-la-pandemia (Last accessed on 20 February 2025).

[9] B.O.E. (Spanish Official Gazette) No. 296 of 11 December 2003. See its consolidated version at https://www.boe.es/buscar/doc.php?id=*BOE*-A-2003-22717 (Last accessed on 20 February 2025).

[10] B.O.E. No. 303 of 17 December 2004. See its consolidated version at https://www.boe.es/buscar/act.php?id=*BOE*-A-2004-21221 (Last accessed on 20 February 2025).

ple of equal conditions for all candidates to access public employment positions.

At present, the baseline provisions applicable across Spain are set out in Royal Legislative Decree 5/2015 of 30 October, which approves the Revised Text of the current Basic Statute for Public Employees (hereinafter 'the Statute').[11] Article 14 of the Statute established the right of public employees to non-discrimination on the grounds of disability, consistently with the legal nature of their employment relationship with the public sector organisation to which they belong.

Regarding access to public employment, Article 59 of the current recast text of the Basic Statute for Public Employees increased the quota established under the 2003 law on the employment of people with disabilities. It stipulated that tenders for employment opportunities must allocate at least seven per cent of vacancies to people with disabilities, provided they successfully complete the selection processes and demonstrate both their disability and their fitness to perform the required duties, with the aim of progressively achieving a representation of two per cent of the total workforce in each Administration or public sector body.

Specifically, and in accordance with Article 59 of the Statute, the minimum seven per cent quota shall be allocated in such a way that at least two per cent of the job opportunities in tenders are reserved for people with intellectual disabilities, while the remaining positions are reserved for people with any other type of disability.

To this end, each Public Administration must take all necessary measures during selection processes to establish appropriate and reasonable adjustments in terms of time and resources. Moreover, once the selection process has been completed, any necessary adjustments must be implemented in each position to meet the needs of people with disabilities entering public employment.

3.2. *Developing a regulatory framework for regional implementation: Law 11/2022, of 1 December, on Basque Public Employment*

Law 11/2022 on Basque Public Employment[12] was approved in the Autonomous Community of the Basque Country on 1 December 2022

[11] B.O.E. No. 261 of 31 October 2015. See its consolidated version at https://www.boe.es/buscar/act.php?id=*BOE*-A-2015-11719 (Last accessed on 20 February 2025)

[12] B.O.P.V. (Basque Country Official Gazette) No. 245, 26 December 2022. See its consolidated version at https://www.boe.es/buscar/act.php?id=*BOE*-A-2023-353 (Last accessed on 20 February 2025)

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(hereinafter, the 'Basque Public Employment Law'). As explicitly stated in its preliminary title, '[…] it is directly linked to [that] long process of rationalisation and modernisation of the civil service […]'.

The main objective of this regulation was to improve the institutional quality of Basque public employment by introducing some baseline elements of innovation that promote a model of quality public employment, one that is professionalised, objective, impartial and accountable for managing its outcomes.

While the Basque Public Employment Law remained consistent with the public employment model applicable across Spain and with the model of previous regional regulations, it was also strongly aligned with provincial and local autonomy, university autonomy, as well as the regulatory and organisational powers of each of territorial authority.

Chapter Two of Title Five of the Basque Public Employment Law sets out the regulatory framework for the management and promotion of access to public employment opportunities for people with disabilities. It defines the constitutional principles and those established in the basic Spain-wide legislation, as well as the access requirements. Additionally, various positive action measures are provided to promote access to public employment for people with disabilities, including the establishment of a specific access system for this population group.

In my view, under the Basque Public Employment Law, the public authorities in the Basque Country are notably expected to use considerable determination and leadership skills regarding people with disabilities entering public employment. Throughout its provisions, the Law underscores and strengthens the Basque Public Administrations' commitment to guaranteeing and promoting effective, high-quality access to public employment for this population group.

It does so through the provisions outlined in the series of sections (analysed below) related to access to employment in the Basque public sector and the individual rights of Basque public employees.

Article 74 of the Basque Public Employment Law stipulates that all recruitment competitions within the Basque public sector must reserve a minimum quota of seven per cent of available positions for people with disabilities, as defined under the applicable legislation, with a view to progressively ensuring that people with disabilities constitute two percent of the total staff of each public sector body.

In order to enter public employment, applicants must pass the relevant competitive recruitment processes and provide evidence of their disability and their fitness for performing the tasks involved the relevant job.

Pursuant to paragraph two of Article 74 of the Basque Public Employment Law, the seven per cent quota must be allocated in such a way that two per cent of the vacancies are reserved for persons with intellectual or mental disabilities, while the remaining positions will be allocated to persons with other types of disability.

The same provision assigns responsibility for ensuring that the quota of vacancies reserved for people with disabilities is distributed in a balanced manner among the administrations and bodies that make up the Basque Public Sector, taking into account the different functional groups to which the positions offered in each call for applications belong (Article 74.5 of the Basque Public Employment Law).

Basque public administrations shall therefore regulate the type of jobs and conditions for the filling of vacancies by people with disabilities and shall implement the appropriate measures to promote the progressive entry of people with disabilities into all Basque public administrations.

From a formal point of view, and in accordance with the provisions of Article 75 of the Basque Public Employment Law, access to employment in the Basque public sector for people with disabilities and the quotas allocated to them may be implemented by using two different systems:

One of them is based on the fact that the general system for access by people with disabilities operates through vacancy quotas being reserved in the calls for competition arising from the public employment plan.

In this context, the access of people with disabilities through the general system will take place in accordance with the terms, rules and levels of demand applicable to the rest of the candidates who participate in the same call for applications through other selection procedure systems. Similarly, those people with disabilities who are eligible to access public employment through the general system must give preference to the positions offered in the selection process that the Basque public administrations and their affiliated bodies have reserved in their list of job opportunities or equivalent instrument, for coverage by such people.

The second avenue relies on the existence of a specific system of access for people with intellectual or mental disabilities, which involves a call for specific selection processes independent of the call for applications.

In other words, it establishes a specific access system for individuals with intellectual or mental disabilities that is based on separate recruitment processes available only to candidates with a recognised degree of limitation in intellectual or mental functioning of at least thirty-three percent.

In relation to the specific employment access scheme, Article 75(5) of the new Basque Public Employment Law establishes that three requirements:

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First: Only vacancies that the public administrations have reserved in their vacancy list of or similar instrument available for people with disabilities may be filled within this scheme.

Second: The selection process tests carried out under this specific scheme must be primarily aimed at assessing the basic behavioural competencies of the candidates in relation to the performance of the duties or functions inherent to the position.

Third, and last: Those people who enter a public body by means of this specific scheme may go on to hold other posts in the public administration through the relevant mobility process, provided that they can provide evidence of their fitness to perform the duties involved in each case.

In both of the avenues for access described above, the terms of the call for applications, in accordance with Article 79 of the Basque Public Employment Law, must specify the total number of vacancies available, indicating the group, department, scale, professional category not requiring a qualification, or professional group to which they correspond, as well as the quota reserved for internal promotion and, where applicable, for persons with disabilities.

In procedures for civil service positions, preference in the choice of destination shall be given to candidates with disabilities, provided that such preference is justified by territorial, personal dependency or similar reasons. This prevents situations in which a destination's unsuitability arising from a disability results in a candidate who has successfully passed the examinations being unable to take up the position.

Provision is also made for other measures aimed at promoting the inclusion of people with disabilities, including facilitating access to training, offering specific courses for persons with disabilities who face particular difficulties in becoming integrated in the workplace or in being promoted to ordinary positions or to special projects to support inclusion.

The rights of people with disabilities shall respected in all cases, ensuring that they always have the option to choose between open competition and reserved quota.

IV. **Sustainable public procurement under spanish administrative law**

4.1. *General considerations*

The social, economic and political transformations in recent years have decisively shaped the way in which public administrations and bodies manage their intervention across different areas of activity and,

at the same time, have given rise to a new configuration of what are known as legal-administrative relationships.[13]

The public powers, 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.[14]

The new public management schemes have chosen to use innovation in different ways as a key element to promote the effectiveness and efficiency of the public sector's actions, ensure the best protection for citizens, and appropriately meet the growing social and welfare demands of citizens.[15]

In this sense, the inclusion of social criteria, together with the traditional efficiency and advertising criteria, are 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.

What is most noteworthy about the new regulation of public procurement, following the amendments introduced by the aforementioned legal provisions, is its explicit emphasis on adopting specific measures to promote *social clauses*. These clauses serve as a key instrument for advancing and ensuring the implementation of various sectoral public policies, including the one relevant here: the promotion of employment for people with disabilities.

The new legal regime for public procurement includes social, environmental and innovation and development criteria and considerations.

In this regard, it is worth noting that 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 general well-being for citizens and sustainability.

For this reason, following Martínez Fons , it can be stated that '[…] the nature of [social and/or environmental] clauses and the timing

[13] (Mir Puig, 2004: 19).

[14] In this sense, the Preamble of Law 2/2011, of 4 March, on Sustainable Economy (*BOE* no. 55, of 5 March 2011), affirmed 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 […]' .

[15] (Arnaez Arce, 2023: 114).

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of their inclusion in public contracting 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 […]'.[16]

In the same sense, RAZQUIN LIZARRAGA is 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 purpose 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 contracting 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 grant it greater visibility.[17]

Another point of procurement procedures in which social and environmental aspects should be considered is the selection phase; in particular, proof of the standing of 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 provide adequate assurances of performance and, therefore, also contribute to fulfilling the purpose inherent to the very principle of proportionality.

Moreover, the consideration of this type of 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.

Indeed, the main challenge faced by social and environmental clauses included in the conditions for the performance of a contract 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 cases of non-compliance.

In general, social and environmental clauses have no place as award criteria in practice, as they are usually considered to be in direct conflict with the foundations of the principle of competition.

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[16] (Martinez Fons, 2009: 48).

[17] (Razquin Lizarraga, 2016to: 126).

Specifically, Article 67 of Directive 2014/24/EU includes 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 both the jurisprudential doctrine and by administrative courts.

However, the position adopted by the European Union, in general, and under Directive 2014/24/EU, in particular, is clear as to the support and protection given to social and environmental matters, including in public contracts.

Ultimately, EU institutions have taken a path of no return, which will result in regulations that will strengthen 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 that 'while there is still some uncertainty, we must make brave moves forward in this direction'.[18]

It is key is to have a clear political will and firm commitment to expand and improve the basic guidelines of the European Union, and incorporate them into the internal legal systems of the Member States.

Finally, although future research may be oriented towards other lines of action in relation, for example, to smaller 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 undoubtedly a vital aspect of public procurement and must remain unquestioned, attempts to balance it with other values that have recently gained importance, such as efficiency and integrity, may prevent many dilemmas in the future.

4.2. *The provisions of Law 9/2017, of 8 November, on Public Sector Contracts*

Law 9/2017, of 8 November, on Public Sector Contracts (hereinafter, the 'Spanish Public Contracts Act) establishes that social considerations can be included in the procurement procedures at two points during the process. One is the stage that involves drafting and establishing the award criteria, such as qualitative criteria based on which the best price-quality ratio can be evaluated; and the other is at the

[18] (lesmes Zabalegui, 2016: 3)

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point of setting out special conditions for the performance of contracts, provided that their relationship to the object of the contract is proven.

Specifically, if social aspects are included as special performance conditions, contracting bodies are legally required to include at least one of the conditions set forth in Article 202 of the current Spanish Public Contracts Act, concerning special social, ethical, environmental or other conditions for the performance of contracts.

It is worth noting that, in accordance with the provisions of Section 2 of Article 202 of the Spanish Public Contracts Law, social or employment-related considerations may be introduced, among others, for any of the following purposes:

- 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 who experience particular difficulties in entering the labour market, in particular, people with disabilities or at risk of social exclusion through social enterprises supporting employment for disadvantaged groups or people with disabilities ('empresas de inserción');
- Eliminating inequalities between men and women, encouraging the application of measures that promote equality in employment between women and men;
- Fostering greater participation of women in the labour market and better work and family life balance; combating unemployment, particularly among young people, women and the long-term unemployed; promoting training in the workplace;
- Ensuring safety and health 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;
- Ensuring respect for basic labour rights throughout the production chain by demanding compliance with the fundamental conventions of the International Labor 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 throughout the entire supply chain.

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 Law, all subcontractors engaged in the performance of the contracts shall be subject to the same compliance requirements.

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 ('centros especiales de empleo') and the possibility of reserving contracts for sheltered employment programmes. This is extended to social enterprises supporting employment for disadvantaged groups or people with disabilities and requires all of them to have on staff the percentage of workers with disabilities established in their respective specific regulations.

Article 71 of the Spanish Public Sector Contracts Law sets out a prohibition related to the area of disability whereby economic operators shall not permitted to enter into contracts with public sector bodies if they fail to comply with the requirement of having workers with disabilities on their staff (at least 2% of their employees of the companies with 50 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, on the Legal Regime for the Public Sector.

Similarly, the Spanish Public Sector Contracts Law 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 which form 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.

4.3. *Using social clauses in public sector contracts*

Pursuant to Section 3 of Article 1 of the Spanish Public Sector Contracts Law, 'social and environmental criteria shall be included in all public procurement procedures in a cross-cutting and mandatory manner, provided that they are related to the object of the contract, on the understanding that their inclusion ensures better value for money in contractual performance and promotes as greater efficiency in the use of public funds'.

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Based on this initial approach of the 2017 legislator, contracting bodies may include their own criteria and characteristics in social and environmental clauses at four points in time within the procedure: 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 the performance of the contract.[19]

4.3.1. As a requirement for the award of public contracts

The Spanish legal system allows what has been called a *social clause* to be included at the time of awarding the contract. It provides that preference may be accorded, as an award criterion, to 'bidding companies or enterprises that are majority-owned by employees'.

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

Therefore, both the particular administrative clauses of procurement procedures and the technical specifications in procurement documents must include social clauses.[20]

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 award procedures, to the extent that using a single award criterion based on the cost or price of the contract must be justified in the dossier.

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[19] For this purpose, see Circular number 35/2018, of 25 July 2018, 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 procurement: criteria and instructions for the inclusion of social, environmental and other public policy clauses', (last accessed on 20 February, 2025).

[20] Procurement Advisory Boards have issued several resolutions to this effect, notably including Resolution number 18/2014, of 11 March 2014, of the Procurement Advisory Board of Catalonia, due to its proximity to the issues at hand. This Resolution stated that it is possible to accord, 'as an award criterion, preference for bids submitted by companies that apply measures to prevent occupational risks additional 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'. https://contractacio.gencat.cat/web/.content/contacte/tccsp/resolucions/2014/Resolucio-Num.-18_2014-d11-demarc-de-2014.pdf (last accessed on 20 February, 2025).

Specifically, Section 2, Article 145 of the Spanish Public Sector Contracts Law lays down that, in order to determine the best price-quality ratio, the contracting body 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 amongst the persons assigned to performing the contract; entering into subcontracting arrangements with special employment organisations or social enterprises supporting employment for disadvantaged groups or people with disabilities; 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 work, personal and family life; improving working and salary conditions; fostering 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 fair trade products during the performance of the contract'.

The Spanish Public Contracts Act devised a more efficient, transparent and comprehensive public procurement system, with a view to achieving better compliance with public objectives. This is to be implemented by satisfying the needs of the contracting authorities, by improving the conditions of access and participation in public tenders by economic operators and, of course, by providing the best public services to citizens.[21]

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

In line with the observations made by RAZQUIN LIZARRAGA regarding the 2014 EU Directive, and given that Article 145 of the Spanish Public Contracts Act holds the most economically advantageous of-

[21] (Arnaez Arce, 2023: 116).

fer as the basis for awarding contracts, the legislator adopted the life cycle cost approach to guide this determination and placed greater emphasis on achieving the best price-quality ratio. However, the most significant improvement in relation to the issue under discussion is that the legal provisions now contain social and environmental factors for the evaluation of the last criterion mentioned above.[22]

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 entails 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 weighting which they give to each of the criteria.

4.3.2. As an instrument to promote other public welfare and social integration policies

In addition to clarifying the applicable regulatory framework for the sake of greater legal certainty, the Spanish legal system governing public procurement aims to promote the use of public contracts to implement public, European and domestic policies on social, environmental, innovation and development matters, promotion of small and medium-sized enterprises and defence of competition.[23]

According to the provisions of Section III of the Preamble of the current Spanish Public Contracts Law, all these matters are the effective objectives of the Law, which pursues efficiency in public spending and respect for the principles of equal treatment, non-discrimination, transparency, proportionality and integrity at all times.[24]

As noted above, the Spanish Public Contracts Law establishes that social considerations can be included in procurement procedures at two points during the process. These are: the stage that involves drafting and establishing the award criteria, such as qualitative criteria

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[22] (Razquin Lizarraga, 2015b: 104).

[23] (Arnáez Arce, 2018b: 126).

[24] See Section III of the Preamble of the Spanish Public Contracts Law, which transposes into the Spanish legal system 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.

based on which the best price-quality ratio can be evaluated; 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.[25]

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

Its intention or 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 the labour market'.

Arguably, social clauses are one of the most powerful resources for the employability of people with disabilities and for their entry into the labour market to become normalised, insofar as these clauses require those who want to enter into a contract with a public authority to include a certain number of people with disabilities in their workforce.[26]

Therefore, this type 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 met, in accordance with the provisions of Article 145.2 of the Spanish Public Contracts Law: (a) that they are included 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 neither directly nor indirectly discriminatory, and that they are compatible with EU law.

It is worth mentioning here Resolutions numbers 234/2019, of 8 March 2019, 235/2019, of 8 March 2019, and 344/2019, of 29 March 2019 issued by the Central Administrative Board of Public Contract Appeals, which specifically stipulated that the purposes of the social criteria for awarding public contracts referred to in Article 145.2 of the Spanish Public Sector Contracts Law are work, personal and family life balance, and the improvement of working and social conditions.[27]

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[25] (Razquin Lizarraga, 2015c: 110).

[26] Report by the AECEMCO (Spanish Business Association of Special Employment Organisations) on the 'Application of the inclusion of social clauses in public procurement documents to promote the employability of people with disabilities', 2018, p. 3, https://www.aecemco.es/pdf/5-APLICACION-DE-LA-INCLUSION-DE-CLAUSUSLA-%20SOCIALES-EN-LOS-PLIEGOS-DE-LA-CONTRATACION-ADMINISTRATIVA.pdf (last consulted on 20 February, 2021).

[27] See these Resolutions of the Central Board of Public 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 (last consulted on 20 February 2021).

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

The introduction of social clauses in public procurement documents as special conditions governing the performance of public sector contracts under EU legislation seeks to place public procurement as a driver for promoting citizens' welfare.

According to Rodríguez-Arana Muñoz, the fact that all public authorities and, therefore, all government institutions, as well as public sector contracts are linked to serving the general interest (especially within the social and democratic rule of law) involves the defence, protection and promotion of aspects such as the one proposed by the contracting bodies, namely, *promoting the employment of people with disabilities, a vulnerable group with obvious difficulties in entering into the labour market*.[28]

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'.[29]

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, all subcontractors engaged in the performance of the contracts shall be subject to the same compliance requirements.

4.4. *Reserved contracts and tie-breaker criteria in the award of public contracts*

The Spanish Public Contracts Act has strengthened the concept of reserved contracts launched by Directive 2004/18/EC, which was incorporated into the Spanish legal system by Law 30/2007, of 30 October, in order to promote the integration of people with disabilities into the labour market.[30]

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[28] (Rodríguez-Arana Muñoz, 2016) at http://rodriguezarana.com/site/?p=2173 (Last accessed on 20 February 2025).

[29] (Gimeno Feliu, 2004: 65).

[30] (Andrés Pérez, 2018) at http://www.obcp.es/opiniones/los-contratos-reservados-en-la-ley-92017-del-8-de-noviembre (Last consulted on 20 February 2025).

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.[31]

This new regulation was incorporated into the Spanish legal system through Law 31/2015, of 9 September 2015, 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) it allowed reserved participation also for social enterprises supporting employment for disadvantaged groups or people with disabilities ; (ii) it introduced the option of reserving not only contracts but also lots thereof; and (iii) it replaced optional with mandatory reserved contracts.[32]

The Spanish Public Contracts Act expanded the concept of reserved contracts, distinguishing between contracts reserved for special employment organisations and social enterprises supporting employment for disadvantaged groups or people with disabilities, established in Additional Provision 4, and certain contracts reserved for given organisations, contained in Additional Provision 48.

Regarding the legal evaluation of whether contracts may be reserved for both special employment organisations and associated work cooperatives in the scope of Additional Provision 4 of the Spanish Public Contracts Act, from a subjective point of view, Additional Provision 4 of the Spanish Public Sector Contracts Act specifically mentions social enterprises supporting employment for disadvantaged groups or people with disabilities and special employment organisations, as pursuant to Additional Provision 16, contracts may only be reserved for social entrepreneurship organisations.[33]

The legal regime of social enterprises supporting employment for disadvantaged groups or people with disabilities is regulated by Article 4 of Law 44/2007, of 13 December 2007, which defines them as 'all companies or cooperatives which, in addition to engaging in business operations, include within their corporate purpose the social and

[31] See Article 20 of Directive 2014/24/EU.

[32] Law 31/2015 of 9 September 2015, amending the regulations on self-employment and promoting autonomous work, published in the Spanish Official Gazette (*Boletín Oficial del Estado*), No. 217, on 10 September 2015.

[33] The reason for requiring social entrepreneurship specifically from special employment organisations and not from social enterprises is that the latter, when they are companies, are legally required (to be at least 51% owned by non-profit organisations and/or associations or by foundations.

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labour integration and training of people in social exclusion as a pathway to ordinary employment'.[34]

Special employment organisations are regulated by Royal Legislative Decree 1/2013, of 29 November 2013, which approved the Recast Text of the General Law on the rights and social inclusion of people with disabilities (hereinafter, 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 social entrepreneurship special employment organisations are those that are promoted and directly or indirectly held in more than 50% , by one or several bodies, whether public or private. They must be either non-profit or have their social entrepreneurship status recognised in their statutes, whether they are associations, foundations, public law corporations, social entrepreneurship cooperatives or other social economy enterprises. This category also includes organisations owned by business companies whose share capital is predominantly owned by one of the organisations mentioned above.[35]

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; recently it has been posited that reservation must be applicable equally to both social entrepreneurship special employment organisations and social enterprises supporting employment for disadvantaged groups or people with disabilities.

The special appeal bodies have ruled in this regard by admitting that applying reserved contracts only for social entrepreneurship special employment organisations does not violate the spirit of Directive 2014/24/EU, which provides the option of using reserved contracts.[36]

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[34] 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.

[35] 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.

[36] However, the matter remains unresolved, as Resolution 100/2018 of the Administrative Contract Appeals Body of the Autonomous Community of the Basque Country —and Resolution 129/2018 of the same body, of similar content— have been appealed before the High Court of Justice of the Basque Country and are currently pending judgment. In this context, the High Court of Justice of the Basque Country referred a preliminary question on the matter to the Court of Justice of the European Union (C-598/19).

Among others, these include Resolutions 202/2018 of the Catalan Board of Public Contract Appeals, 860/2018 of the Central Administrative Board of Public Contract Appeals, and 100/2018 of the Administrative Body of Contract Appeals of the Basque Country (known by its respective initials in Spanish and Basque as 'OARC/KEAO'). The latter states the following:

> In the opinion of the 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 at the discretion of the Member State. Therefore, the option of not incorporating this provision (which is an exception to the general principle of free access to contracts 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.[37]

Furthermore, until now, it was assumed that the contracting authority had discretion to reserve a certain contract only for either social entrepreneurship special employment organisations or for social enterprises supporting employment for disadvantaged groups or people with disabilities (or for both categories on equal terms), provided that the contracting authority justified its decision. However, Resolution 1298/2020 of the Central Administrative Board of Contract Appeals established that, under the Fourth Additional Provision of the Spanish Public Contracts Act, reserved contracts should not only benefit social entrepreneurship special employment organisations.[38]

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[37] See the content of the Resolution at the following link https://www.contratacion.euskadi.eus/w32-kpeoarc/es/y96aResolucionesWar/busqueda/listado?locale=es# (last consulted on 20 February, 2021).

[38] 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 Provi-

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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 such reserved contracts.

Turning to tie-breaking criteria, these 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 in the event of a tie'.

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

The tie-break criteria provided for in the procurement documents 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 supporting employment for disadvantaged groups or people with disabilities; awarding of contracts related to social or welfare benefits for non-profit organisations; awarding of contracts the object of which is fair trade products to fair trade organisations; and the award of contracts to companies that include social and employment measures that promote equal opportunities between women and men.

If no provisions have been made for tie-break criteria in the procurement documents, 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.[39]

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.[40]

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sion, one or more of the lots may be reserved for special employment organisations 'or' for social enterprises supporting employment for disadvantaged groups or people with disabilities, 'or' for sheltered employment programmes.

[39] (Bosch, 2016) in https://lapartecontratante.blog/2019/02/26/los-criterios-de-desempate-en-la-lcsp-por-joan-bosch/ (Last accessed on 20 February 2025).

[40] (White, 2018: 144).

Resolution number 97/2019, of 4 July 2019 of the Administrative Board of Contract Appeals of Castilla y León is particularly significant and relevant to the case at hand. The Board annulled the particular conditions in the procurement documents governing a service contract because it considered them to be contrary to the principle of equal treatment. This was based on the priority granted to work cooperatives and second-tier cooperatives composed of them 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[41].

Both the scholarly doctrine and the doctrine issued by the bodies in charge of resolving contractual appeals is well-settled, since it considers that local connection criteria cannot be either standing requirements or award criteria, as established in Report 9/09, of 31 March 2009 by the Advisory Board of Public Contracts. The Report read: 'The origin, registered office or any other indication of local connection of a company cannot be considered as a requirement to engage in contracts with the public sector, as these circumstances cannot be used as assessment criteria'.[42]

V. **Conclusions**

First. In the aftermath of the 2020 pandemic, economic, environmental and social sustainability has become an urgent priority and a crucial opportunity to enhance public management through this added value. This highlights the necessity of recognising people with disabilities as an significant vulnerable group whose needs and demands must be addressed, particularly in the current context, where the functioning and legitimacy of the welfare state are frequently questioned and associated with perceptions of inactivity and insufficient commitment within the public sector.

There is a need to undertake processes for restructuring, reform and innovation within the public sector, in order to enhance its competitiveness, effectiveness and efficiency, while fostering ever closer and more meaningful interactions with citizens; citizens, in turn, de-

[41] 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 20 February 2025).

[42] See at https://www.hacienda.gob.es/Documentacion/Publico/D.G.%20PATRIMONIO/Junta%20Consultiva/informes/Informes2009/Informe%2009-09.pdf (Last accessed on 20 February 2025).

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mand an increasingly important and active role in the planning, implementation and evaluation of public policies that aim to provide welfare services to the population.

Second. Within the current context, the *United Nations 2030 Agenda for Sustainable Development* is framed as a new global and local social contract that compels all social stakeholders and public administrations to work in a coordinated manner. It calls for an integrated approach that unites domestic public policies and aligns them with sustainable development through a collective effort that fosters cooperation, shared responsibility, and, among other priorities, a commitment to the inclusion of persons with disabilities, enabling them to enjoy a full personal, social and working life.

Third. It is also important to understand that the different Sustainable Development Goals that relate to persons with disabilities are cross-cutting and therefore interrelated, which means that if one of them is successful, this affects the success of the others, and vice versa.

Therefore, promoting and driving public policies and measures aimed at ensuring that people have access to quality education and decent jobs has a direct impact on the first of the Sustainable Development Goals to 'end poverty in all its forms everywhere'.

Fourth. From the perspective of positive law, the regulatory framework governing access to public employment for persons with disabilities finds its most recent normative origins in measures adopted within the General State Administration, specifically, in Law 53/2003 of 10 December 2003, on the public employment of people with disabilities. Law 53/2003 was enacted within the legal framework arising from the adoption and subsequent transposition into Spanish law of Council Directive 2000/78/EC of 27 November 2000, establishing a general basis for equal treatment in employment and occupation. The Directive also applies to persons with disabilities and sets out measures to combat discrimination and ensure genuine equal opportunities.

Fifth. In the Autonomous Community of the Basque Country, Law 11/2022 on Basque Public Employment was approved on 1 December 2022. It was fundamentally aimed at improving the institutional quality of Basque public employment by introducing key innovation aspects to promote a model of public employment that is high-quality, professional, objective, impartial and accountable for managing its outcomes.

In my view, under the Basque Public Employment Law, the public authorities in the Basque Country are notably expected to use considerable determination and leadership skills regarding people with disabilities entering public employment. Throughout its provisions, the Law

underscores and strengthens the Basque Public Administrations' commitment to guaranteeing and promoting effective, high-quality access to public employment for this group.

Sixth. From a substantive or material perspective, it is important to note that recent approaches to public management have increasingly stressed the inclusion of social criteria in public procurement, alongside the traditional principles of efficiency and advertising of public contracts. This shift recognises public contracting as a key tool for promoting and ensuring the implementation of various sectoral public policies, including the one analysed in this study, concerning the promotion of employment for people with disabilities.

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