

"THE REGULATORY CHALLENGE OF GREEN PUBLIC PROCUREMENT IN THE FRAMEWORK OF "EUROPE'S CHOICE" AND IN A CHANGING INTERNATIONAL CONTEXT"¹".

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This paper analyses recent regulatory developments in the field of green public procurement in the framework of "Europe's Choice" (July 2024) and in a changing international context. It provides an overview of the regulatory challenge, identifying its main features, challenges and trends.

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Keywords: Descarbonización, compra pública verde, Europa choice, biodiversidad

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1. CONTEXTUALISATION: A REGULATORY TSUNAMI AND A PARADIGM SHIFT

In Spain, the approval of Law 9/2017 of 8 November on Public Sector Contracts² marked a turning point in the achievement of strategic targets through public procurement³. Since then, the transformation towards a sustainable and fair economic model based on combating climate change has accelerated at the European level. Sustainability is now at the core of this transformation, with a clear cross-cutting (non-sectoral) character, and therefore with a significant impact on all the policies and strategic lines of the European Union (EU).

The current state of the legal framework applicable to public procurement can best be described by the graphic expression "regulatory tsunami"⁴. This is meant to underline a quantitative aspect, i.e. the very many regulations that have been adopted in a very short period of time, but also the depth and breadth of change. It should be said that this accelerated regulatory change is taking place in a context of profound economic and social transformation to achieve the targets set by the Paris Agreement, especially as set out in the 2019 strategic milestone the European Green Deal (EGD), and more recently the strategy of the new European Commission presented in Europe's Choice 2024.

Just to give an idea of the scale of this "regulatory tsunami", in 2023 and 2024, the EU made progress on key issues mainly geared towards the fight against climate change and the transition towards a more sustainable economy. For example, in

² See GIMENO FELIÚ, José María (dir.). *Estudio sistemático de la ley de contratos del sector público*. Navarre: Aranzadi Thomson Reuters, 2018.

This approach was also adopted in the emergency legislation (Royal Decree Law 3/2020 of 4 February) transposing Directive 2014/25 of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors.

³ See, among others, the following collective studies: RAZQUIN LIZARRAGA, Martín María. *Nueva contratación pública: Mercado y medio ambiente*. Aranzadi Thomson Reuters, 2017; LAZO VITORIA, Ximena. *Compra pública verde*. Atelier, 2018; GALÁN VIOQUE, Roberto. *Las cláusulas ambientales en la contratación pública*. Universidad de Sevilla, 2018; MORENO MOLINA, José Antonio. *Hacia una compra pública responsable y sostenible. Novedades principales de la Ley de Contratos del sector público 9/2017*. Tirant lo Blanch, 2018; QUINTANA LÓPEZ, Tomás. *La contratación pública estratégica*. Tirant lo Blanch, 2020; AGUADO I CUDOLÀ, Vicenc. *La contratación pública responsable. Funciones, límites y régimen jurídico*. Aranzadi Thomson Reuters, 2021; LAZO VITORIA, Ximena. *Compra pública verde y cambio climático*. Atelier, 2022.

⁴ The term tsunami is widely used in landmark papers and seminars on the subject; see for example PERNAS GARCÍA, Juan José. The regulatory "Tsunami" arising from green transition economic policies: towards a substantive public procurement law for "sustainability" and "resilience" in the EU, *Boletín del Observatorio de Contratación Pública*, 7, 2023. Available at: <https://dialnet.unirioja.es/servlet/articulo?codigo=9327666> (Last accessed 28/01/2025). See also my paper: LAZO VITORIA, Ximena. El Tsunami del "producto local" llega a la contratación pública en España. *Revista General de Derecho Administrativo*, 64, 2023. Available at: <https://laadministracionaldia.inap.es/noticia.asp?id=1514637> (Last accessed 28/01/2025).

2023, the EU adopted the Carbon Neutral 2050 Regulation, which reinforces the targets of the EGD, accelerating action to achieve climate neutrality by 2050, with a focus on decarbonising the most challenging sectors: transport and industry. Significant steps were also taken towards the implementation of the Green Taxonomy⁵, which broadens the definition of sustainable economic activities, promoting investments in green projects. In 2024, the Biodiversity Strategy for 2030 was updated to include more ambitious ecosystem restoration and species protection targets in response to the growing biodiversity crisis⁶. A few months ago, several European regulations were approved in key areas such as the European manufacturing ecosystem for zero-emission technologies, a framework for the establishment of eco-design requirements for sustainable products, and the regulation on key raw materials⁷.

For the period 2024-2029 the European Commission has defined a new roadmap set out in the document "Europe's Choice. Political guidelines for the next European Commission 2024-2029". To a large extent, these guidelines will shape the EU's strategic missions and operational framework to navigate a complex and changing global landscape (pandemics, wars, growing economic dominance of Asia). In the words of LETTA (2024), the aim is to establish a strong political commitment to "empower a new Single Market"⁸ especially from the perspective of sustainability and innovation. "*Europe's Choice*" underlines the need to make better use of public procurement as "one of the main levers available to develop innovative goods and services and create lead markets in clean and strategic technologies". This includes

⁵ As is well known, taxonomy legislation is a classification system that defines which economic activities can be considered environmentally sustainable. This regulation aims to provide clear rules for companies to identify sustainable initiatives.

⁶ In June last year, Regulation (EU) 2024/1991 of the European Parliament and of the Council on nature restoration and amending Regulation (EU) 2022/869 was adopted.

⁷ Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of key raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020.

⁸ LETTA, Enrico. Mucho más que un mercado. *Le Grand Continent*, 2024. Available at: <https://legrandcontinent.eu/es/2024/04/18/mucho-mas-que-un-mercado/> (Last accessed 17-01-2025).

an announcement of a forthcoming revision of the Procurement Directives⁹, underpinned by a stated intention to include a preference for European products¹⁰.

In the Spanish domestic sphere, regulatory changes have been equally intense and dizzying. This is largely due to the necessary adaptation to and compliance with the new mandates of EU law. But also because, as I have examined in a previous paper¹¹, the regulation on strategic procurement has gone beyond its natural scope (LCSP) to make its way into other sectors, and to propose new developments¹². This is the case, for example, of the specific legislation on climate change that includes ever broader regulation to encourage green public procurement¹³. Thus, for example, [Law 7/2021, of 20 May, on Climate Change and Energy Transition](#) (LCCTE) incorporates significant green public procurement provisions. This rules that public contracts tendered by the General State Administration must include emission reduction and carbon footprint criteria specifically to combat climate change, in the form of technical specifications. To facilitate compliance with this obligation, the

⁹ This process is already underway, following the European Commission's announcement that it is launching a consultation period for the evaluation of the Public Procurement Directives, with the aim of improving competition, streamlining processes and achieving strategic targets. The briefing note explains that: "As announced in the Political Guidelines for the next term 2024-2029, the European Commission is set to launch a comprehensive evaluation of the Public Procurement Directives. This is in line with the requests of the European Court of Auditors (ECA) and the Council... to carry out an in-depth analysis of the public procurement legal framework." See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14427-Public-procurement-directives-evaluation_en (Last accessed 28/01/2025).

¹⁰ We will have to wait for a draft of the new Directives to see how this idea materialises and how far it extends.

¹¹ LAZO VITORIA, Ximena. Spain: Transitioning Towards Sustainable Public Procurement Mandatory Requirements JANSSEN, Willem y CARANTA, Roberto. *Mandatory Sustainability Requirements in EU Public Procurement Law. Reflections on a Paradigm Shift*, Hart Publishing, Bloomsbury Publishing, 2023.

¹² For example, the market approach and the trend in favour of local produce. On this trend, see the collective work LAZO VITORIA, Ximena (coord.) Monographic section Producto local y contratación pública, no. 64, 2023. See also ANDHOV, Marta; KANIA, Michal and MIKULIC, Sven. *How to Procure Sustainable Food and Include Farmers in Public Procurement? -Legal Constraints and Opportunities*. SSRN, 2024.

¹³ Several Autonomous Communities have passed climate change laws. At the time of going to press, these laws are as follows: Law 16/2017, of 1 August, on climate change in Catalonia; Law 8/2018, of 8 October, on measures against climate change and for the transition to a new energy model in Andalusia; Law 10/2019, of 22 February, on climate change and energy transition in the Balearic Islands; Regional Law 4/2022, of 22 March, on Climate Change and Energy Transition in Navarre; Law 6/2022, of 5 December, of the Generalitat, on climate change and ecological transition in the Valencian Community; Law 6/2022, of 27 December, on climate change and energy transition in the Canary Islands; and Law 1/2024, of 8 February, on Energy Transition and Climate Change in the Basque Country. On the other hand, the Galician Draft Climate Bill is currently pending and is expected to be approved in 2025. For its part, the State approved Law 7/2021 of 20 May on climate change and energy transition in 2021.

law provides for the creation of a catalogue of services whose criteria to combat climate change must be considered in the procurement process, and which must specify their emissions reduction and carbon footprint criteria, including those related to sustainable and healthy diets. Also noteworthy is the mandatory inclusion of ecological criteria specifically when awarding project design contracts, works contracts and works concessions. The LCCTE gives a very prominent role to the carbon footprint as an environmental indicator of greenhouse gas emissions (GHG). This means it is widely used as a technical specification and as an award criterion for certain contracts, and the construction sector is encouraged to use materials with the lowest possible carbon footprint.

The same can be said of general second- or third-generation regional laws that have incorporated general and specific mandates on green public procurement in a novel way. For example, [Law 10/2021, of 9 December, on the Environmental Administration of the Basque Country](#) (Law 10/2021) which, in its Explanatory Memorandum, explicitly states that "green public procurement is a fundamental tool for fulfilling the law's objectives, and public administrations are encouraged to promote and enhance it." These provisions are mainly set out in Article 84 of the Law, "Green Public Procurement", but also in Articles 82 (promotion of the use of the EU Ecolabel), 83 (environmental footprint) and 85 (eco-innovation). The Basque legislator establishes a general obligation for contracting bodies' administrative clauses and specific technical specifications to include award criteria, special performance conditions and clauses or conditions that contribute to achieving the objectives set out in Law 10/2021. It goes on to rule that:

"In particular, this may include, inter alia, considerations aimed at reducing greenhouse gas emissions; maintaining or improving environmental values likely to be affected by the performance of the contract; more sustainable management of water and the origin of wood; promoting the use of renewable energies; promoting the recycling of products and the use of reusable packaging; or encouraging the delivery of bulk products, local products and organic production, provided that they are linked to the subject matter of the contract and are compatible with Community law" (Art. 84.2. second paragraph).

For its part, the [Law of the Principality of Asturias 1/2023, of 15 March, on Environmental Quality](#) (Law 1/2023) has also opened up space for rules on green public procurement within its Title II "Instruments for the improvement of environmental quality", with the aim of promoting the low-carbon economy, eco-innovation and the circular economy and helping public administrations to promote changes in the market that are beneficial to environmental protection and the fight against climate change (Art. 20.1). With this in mind, the Asturian legislator establishes the obligation to make public tenders greener: "environmental clauses shall be included in the administrative clauses and specific technical specifications...",

highlighting a series of aspects such as reducing and offsetting GHG emissions, the use of renewable energy, and encouraging the supply of local or organic products and those from organic production, provided that there is a link with the object of the contract and compatibility with Community law (Art. 20.2 *in fine*).

Finally, this trend towards updating environmental legislation and giving a leading role to public procurement can also be seen in other legal systems, and can be described as a global trend. For example, several Latin American countries have recently adopted regulations that explicitly include an advanced approach to sustainable procurement. This is the case in Chile following the approval of [Law No. 21.634 updating Law No. 19.886](#) and other laws to improve the quality of public spending, raise standards of probity and transparency and introduce circular economy principles in government procurement (published on 11 December 2023 in the Official Gazette)¹⁴. The case of the Dominican Republic can also be cited with the approval of [Decree No. 617-22 of 24 October 2022, which declares the promotion of sustainable and inclusive public procurement to be of national interest](#), making it mandatory for government institutions to purchase works, goods and services with a lower environmental impact and greater value for money. The Cabinet for Sustainable and Inclusive Public Procurement has also been created, and is in charge of gradually incorporating new and better practices and management tools, and promoting sustainable public procurement, applicable to the public institutions indicated in [Law No. 340-06 on Procurement and Contracts of Goods, Services, Works and Concessions](#). And, finally, in February 2023, a new [Green Public Procurement Policy](#) was presented, issued by the Ministry of Environment and the General Directorate of Public Procurement (DGCP) establishing actions to promote the national system. Lastly, we can cite the case of Paraguay, which in 2022 approved [Law No. 7.021/ on Public Procurement and Contracting](#). It establishes that procurement procedures carried out by public institutions must comply, among other things, with criteria that respond to sustainable public procurement policies.

This rapid development of the regulatory framework inevitably brings to mind the idea of complexity. There is undoubtedly a huge task involved in translating, educating, simplifying, alphabetising and transferring the knowledge required to ensure that businesses, economic operators, the Administration itself and the public

¹⁴ ee LAZO VITORIA, Ximena and CASTRO FUENTES, Camila Antonieta: Contratación Pública Sostenible en la Ley N° 21.634 que moderniza la Ley de compras públicas. En LAZO VITORIA, Ximena; OBANCO CAMINO, Iván (Edits.) y CASTRO FUENTES, Camila Antonieta (Coord.). Nueva Ley de compras públicas-Estudio sistemático y práctico de la reforma a la Ley N° 19.886. Thomson Reuters, 2024.

sector in general can move towards a successful transition¹⁵. Public procurement is identified as a key instrument in this transition because of its enormous market-transforming power. However, it is also true that recent reports have identified some significant obstacles that need to be overcome for this regulatory framework to effectively achieve the expected results. In this respect, one can cite [Report Special Report No. 28/2023 of the European Court of Auditors "Public Procurement in the European Union"](#), which is highly critical of the effective implementation of the strategic approach¹⁶. And in Spain, the Independent Office for Regulation and Supervision of Public Procurement (OIReScon) has been carrying out analyses and making recommendations in successive specific reports on this subject¹⁷.

2. TRENDS IN GREEN PUBLIC PROCUREMENT

From all the regulations approved or in the process of being approved, we can draw some general guidelines that enable us to better understand the evolution of regulation in this area and the role assigned to public procurement. The main features are highlighted below.

2.1. Mandatory Green Public Procurement and the use of mandatory minimum standards

¹⁵ Hence the importance of having fine-tuned technical support tools that favour the greening of public tenders. In this regard, it is worth noting that, for the first time, the General State Administration has published a manual aimed at simplifying the integration of sustainability in public procurement. See LAZO VITORIA, Ximena (Coord.). *Manual para la contratación pública ecológica de la Administración General del Estado*, Ministerio para la Transición Ecológica y el Reto Demográfico, 2024.

¹⁶ The report states that "Most contracting authorities in the Member States apply strategic public procurement to a very limited extent" (emphasis added). In this regard, the European Court of Auditors recalls that one of the key goals of the reform of the Directives in 2014 was to encourage greater consideration of environmental, social and innovative aspects in the public procurement of works, goods and services, that is, what is generally referred to as strategic public procurement. The Court clarifies that the strategic approach means that contracting authorities can go beyond the criterion of the lowest price and look for "the most economically advantageous tender". However, the Court's analysis of data nevertheless shows "that the share of contracts awarded in favour of lowest bid still accounts for the bulk of all awards in all member states. In 2021, there were eight member states in which the level of award in favour of the lowest bid even exceeded 80 %, which is red-flagged..." (points 59 and 60).

¹⁷ Specifically, OIReScon has produced a total of 4 Special Reports on Strategic Procurement, which are as follows: the Special Report on Strategic Procurement Oversight in 2020. Reserved contracts and environmental, social and innovation criteria. March 2022; the Special Report on Strategic Procurement Oversight in 2021. April 2023; the Special Report on Strategic Procurement Oversight in 2022. December 2023 and the Special Report on Strategic Procurement Oversight in 2023. November 2024, all available for consultation at the following link <https://www.hacienda.gob.es/es-ES/Oirescon/Paginas/ics.aspx> (last accessed on 19/02/2025).

There has traditionally been a voluntary approach in European law to the incorporation of environmental considerations in public procurement. However, a look at the standards adopted in recent years reveals a decided shift towards a model based on mandatory minimum ecological standards. This has taken place primarily through the [Sustainable Europe Investment Plan](#) (SEIP) and the [Circular Economy Action Plan](#) (CEAP), and other regulations and instruments for the development of the EGD, such as, for example, the [Farm to Fork Strategy](#) and the [EU Biodiversity Strategy for 2030](#)¹⁸. An example from the recent [Regulation \(EU\) 2024/1781 of the European Parliament and of the Council of 13 June 2024 establishing a framework for the setting of ecodesign requirements for sustainable products, amending Directive \(EU\) 2020/1828 and Regulation \(EU\) 2023/1542 and repealing Directive 2009/125/EC](#) (Regulation 2024/1781) will serve to illustrate the change highlighted here. The regulation provides for the following:

"Article 65 Green Public Procurement

1. Contracting authorities and contracting entities shall, in accordance with Directive 2014/24/EU or 2014/25/EU, award public contracts complying with the minimum requirements set out pursuant to paragraph 2 of this Article for the purchase of products covered by delegated acts adopted pursuant to Article 4, or for works or services where those products are used for activities constituting the subject-matter of those contracts ('minimum requirements').

In its recitals, the European legislator justifies this measure by stating that "compared to a voluntary approach, mandatory green public procurement requirements will ensure that the leverage of public spending to boost demand for better performing products is maximised," adding below that: "Those green public procurement requirements should be minimum requirements, meaning that contracting authorities and contracting entities should be able to set additional and more demanding requirements.". (Recital 100). Mandatory minimum requirements thus allow public resources to be directed only to those product groups that meet the standards set by the EU, beyond which additional levels of environmental protection can be added. In this way, a compulsory threshold (minimum standard) is set, thus excluding public procurement lacking an environmental approach.

¹⁸ On this transition see the work of JANSSEN, Willen and CARANTA, Roberto: *Mandatory Sustainability Requirements in EU Public Procurement Law. Reflections on a Paradigm Shift*. Bloomsbury Publishing, 2023. See also the work of PERNAS GARCÍA, José: Hacia una compra pública verde "en serio" de la mano del principio DNSH: propuesta básica para su necesaria articulación jurídica y técnica. *Boletín del Observatorio de Contratación Pública*, 2022, 10-11. Available at: <https://obcp.es/opiniones/hacia-una-compra-publica-verde-en-serio-de-la-mano-del-principio-dnsh-propuesta-basica> (last accessed 19/02/2025).

However, it is important to note that these minimum requirements are set by means of "delegated acts", with the European Commission itself being responsible for determining them. Pursuant to Art. 65 para. 3:

The Commission is empowered to set, by means of implementing acts, the minimum requirements in the form of technical specifications, award criteria, contract performance conditions or targets.

However, the European legislator provides some guidelines for the adoption of delegated acts. Thus, for example, the legislator states that the European Commission could establish technical specifications requiring products to "comply with the best possible performance levels as set out in the relevant delegated acts, including where available with the two highest classes of performance or scores."¹⁹ (Recital 100). As regards the award criteria, the legislator has included a specific weighting range to ensure that they can significantly influence the choice of products in favour of the most environmentally sustainable ones. The aforementioned Art. 65 states the following:

"Award criteria shall, where appropriate, have a minimum weighting of between 15 % and 30 % in the awarding process which enables them to have a significant impact on the outcome of the tendering procedure and which favours the selection of the most environmentally sustainable products."

Finally, as regards contractual performance obligations the legislator states that:

"The Commission might also set contract performance conditions and targets according to which, for instance, contracting authorities and contracting entities should award at least 50 % of their annual procurement of certain products to those with more than 70 % of recyclable material. As a result, Member States could still set higher targets for the procurement of those products. When developing implementing acts and in particular when considering the economic feasibility for contracting authorities and contracting entities, the Commission should take into account the best possible environmental products and solutions available on the market, the effects of the requirements on competition and the fact that different contracting authorities and contracting entities in different Member States might have different budgetary capacities or other constraints such as with regard to climate conditions or network infrastructure."

Within Spain, the legislator is also moving forward with this mandatory approach, especially through sectoral regulations (e.g. LCCTE). We will give an example taken from Law 1/2023 which, as well as introducing the general obligation to include green criteria in tenders issued in the Principality of Asturias, adds the following specific provision in its Art. 20.3:

¹⁹ The role of the delegated act in this case is to indicate what these performance levels are.

"3. The specific administrative clauses and technical specifications for the execution of works and supply contracts of public administrations shall indicate the percentages of by-products, secondary raw materials, recycled materials or materials from processes of preparation for reuse to be used for each of them. The minimum percentage of use of such materials shall be 40%, unless this percentage must be reduced for justified technical reasons. Appropriate control mechanisms and, where appropriate, penalty clauses must also be established to ensure compliance with the conditions of performance laid down in the contracts.

As can be seen, the regional legislator directly establishes a minimum percentage for use of materials (by-products, recycled materials, etc.) to be included in works and supply contracts tendered in the Principality of Asturias. And it quite rightly calls for the inclusion of penalty clauses to ensure compliance with contractual performance conditions. It should also be noted that the administration is obliged to justify, where appropriate, why it is not possible to reach this percentage. This justification can in any case only be based on technical grounds. This example shows significant progress in making the ecological approach mandatory²⁰.

2.2. Change in the system of sources: from Directive to Regulation

Another feature that can be deduced from this regulatory change at the European level is a change in the use of the system of sources of law. European Regulations, which, unlike Directives, do not require a process of transposition into national law, and are mandatory after publication in the Official Journal of the European Union (OJEU), play an enormous role. As an example of the above, we can again mention Regulation 2024/1781 of the European Parliament and of the Council of 13 June establishing a framework for the setting of ecodesign requirements for sustainable products, which supersedes the European Ecodesign Directive 2009/125/EC by extending its scope. Similarly, Regulation 2023/1804 of the European Parliament and of the Council of 13 September on the deployment of alternative fuels infrastructure and repealing Directive 2014/94/EU; or Regulation 2025/40 of the

²⁰ However, some implementation problems should be noted. Shortly after its implementation, it was decided to suspend the application of the third paragraph of Article 20 of the Principality of Asturias Law 1/2023 of 15 March on Environmental Quality for a period of two years, after which the minimum percentage of by-products, secondary raw materials, recycled materials or materials from processes of preparation for reuse to be used for the execution of works and supply contracts is set at 20% for one year, except in those cases in which this percentage must be reduced for justified technical reasons. The justification for this measure is as follows: "The application at this time of the third paragraph of Article 20 of the aforementioned Law makes budgetary execution difficult because the market needs a period of adaptation to offer recycled materials and the Administration itself requires additional time to develop the necessary forecasts in order to achieve the recovery targets established in the aforementioned legal provision, in cases where this is technically possible." (See the Twelfth Additional Provision of the Law of the Principality of Asturias 8/2024, of 27 December, on the General Budget for 2025).

European Parliament and of the Council of 19 December 2024 on packaging and packaging waste, repealing Directive 94/62/EC.

The use of Regulations (instead of Directives) is intended to reduce implementation times and to ensure a more uniform application of the new legal framework.

2.3. Targeted legislation: linking to decarbonisation and biodiversity conservation targets

Seen as a whole, beyond the specific targets pursued by the new regulations discussed here, there is a *telos* that guides all the regulations approved in recent years. In this regard, we can speak of "targeted" regulations, as they are geared towards achieving the goal of decarbonisation and the conservation of biodiversity. The biodiversity crisis and the climate crisis are closely interlinked, as climate change is one of the direct drivers of biodiversity loss, so nature restoration and conservation also have an essential role to play in climate change mitigation. We can see how this is enshrined in the [European Climate Law](#)²¹ which, as is well known, sets a binding target of climate neutrality in the EU by 2050, making a significant contribution to maintaining and enhancing biodiversity and also promoting nature-based solutions.

It should be recalled that for decades there has been an ongoing effort to halt biodiversity loss, as can be seen from the large number of standards, strategies and plans focusing on the subject²². Furthermore, in 2010, during the third special

²¹ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999.

²² To recall a few milestones in this area, 1992 was a major step forward, thanks to the [Bern Convention](#), a precedent which is essential to understanding the creation of the space Red Natura 2000 in 1992, and the "Earth Summit", held in Rio de Janeiro, which recognised the importance of biodiversity conservation, incorporating it as a target and calling for national and international action for the protection of ecosystems. It was here that the [Convention on Biological Diversity](#), was signed, an international treaty with more than 196 signatory countries. This agreement constitutes a benchmark and an essential basis for the development of future regulations and the achievement of the targets set. Along these lines, the tenth meeting of the Conference of the Parties to the Convention on Biological Diversity, held in Nagoya, Japan, in 2010, adopted the [Strategic Plan for Biodiversity 2011-2020](#), which provided a framework for action to halt biodiversity loss. It is worth mentioning that in December 2022, the 15th meeting of the Conference of the Parties to the Convention on Biological Diversity approved the [Kunming-Montreal Global Biodiversity Framework](#), based on the Strategic Plan for Biodiversity 2011-2020. In the same vein, in June 2022, the European Commission presented binding targets on nature restoration by 2050 in the form of the [Nature Restoration Act](#), Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure and

intergovernmental and multi-stakeholder meeting in the Republic of Korea, an Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) was agreed under the umbrella of the United Nations Environment Programme (UNEP)²³.

Furthermore, following the adoption of the 2030 Agenda and the adoption of the Sustainable Development Goals in 2015, emphasis is now placed on the need to ensure the conservation, restoration and sustainable use of ecosystems²⁴. However, it is since the approval of the EGD that the fight for the preservation of biodiversity has intensified, with green public procurement being identified as a market tool for the implementation of sustainable public policies. The [EU Biodiversity Strategy for 2030](#)²⁵, established as part of the EGD, favours the inclusion of nature-based solutions (already announced in the EGD), such as the protection and restoration of wetlands and coastal ecosystems, and the sustainable management of marine areas, grasslands and agricultural or forest soils. It specifically announces how soil fertility and biodiversity can be increased through agroecology, pointing out that:

"At least 25% of agricultural land in the EU should be dedicated to organic farming by 2030. In addition to CAP measures, the Commission will present an action plan on organic farming, helping Member States stimulate both supply and demand of organic products. It will also ensure consumer confidence through promotional campaigns and green public procurement."

It further states that:

amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) No 347/2013. It has recently been amended by Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on Nature Restoration.

²³ This platform will be known as the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) and aims to strengthen the science-policy interface on biodiversity, and contribute to the protection, conservation and sustainable use of biological diversity. Some of its main functions are to identify relevant information on the subject, to carry out periodic evaluations, to support policy formulation and implementation, and to identify relevant instruments and methodologies. All this knowledge is captured in numerous regular reports, which can be global, regional, thematic or methodological. The Report for the Second Global Assessment of Biodiversity and Ecosystem Services was published at the eleventh session of the Plenary of the Platform, held in Namibia in December 2024, and is available at <https://www.ipbes.net/events/ipbes-11> (last accessed 27/01/2025). It is worth mentioning that this platform has a climate change equivalent in the form of the Intergovernmental Panel on Climate Change (IPCC).

²⁴ In particular SDG 15 (Life on Land) and SDG 14 (Life below Water).

²⁵ Commission Communication of 20 May 2020, "Estrategia de la UE sobre la biodiversidad de aquí a 2030: Reintegrar la naturaleza en nuestras vidas".

"To tap this potential, when proposing new legislation and guidance on Green Public Procurement, the Commission will integrate criteria and monitoring measures to encourage the uptake of nature-based solutions."

In turn, the European Commission's Communication ["Forging a climate-resilient Europe - the new EU Strategy on Adaptation to Climate Change"](#)²⁶ emphasises the development of urban green spaces, sustainable forest management and agricultural land²⁷. This Strategy foresees in the area of green public procurement that:

"The Commission will explore options to better predict climate-induced stress on buildings and to integrate climate resilience considerations into the construction and renovation of buildings through green public procurement criteria for public buildings, the digital building register, and as part of the review process of the Energy Performance of Buildings Directive and the Construction Products Regulation".

There are also other sectors that are equally important for the conservation of biodiversity, such as food, as pointed out in various documents²⁸ or even as recognised by the Common Agricultural Policy in its specific target 6 (Conserving the landscape and biodiversity).

Meanwhile, in Spanish law, concerns about biodiversity loss have prompted a regulation to address the climate and biodiversity crisis²⁹. Mention should be made of [Royal Decree 1057/2022, of 27 December, approving the State Strategic Plan for Natural Heritage and Biodiversity to 2030](#), in application of [Law 42/2007 of 13 December 2007 on Natural Heritage and Biodiversity](#).³⁰

²⁶ Commission Communication of 24 February 2021, «Forjar una Europa resiliente al cambio climático – La nueva estrategia de adaptación al cambio climático de la UE».

²⁷ Both forests and soils have an important role to play in the implementation of the European Green Deal and all the above-mentioned targets related to biodiversity loss and protection, which is why other documents such as the Commission Communication, cited above, or the Communication [«Estrategia de la UE para la Protección del Suelo para 2030: Aprovechar los beneficios de unos suelos sanos para las personas, los alimentos, la naturaleza y el clima»](#) are of the utmost importance.

²⁸ For example, the European Commission's Communication of 23 March 2022, [«Safeguarding food security and reinforcing the resilience of food systems»](#).

²⁹ See for example the work of ÁLVAREZ CARREÑO, Santiago M.; SORO MATEO, Blanca and SERRA PALAO, Pablo: *Estudios sobre la efectividad del Derecho de la Biodiversidad y del cambio climático*, Tirant Lo Blanch, 2022.

³⁰ This Plan follows the fundamental principles of the UN Convention on Biological Diversity. In accordance with the aforementioned Law 42/2007, Royal Decree 1274/2011, of 16 September, approved the Strategic Plan for Natural Heritage and Biodiversity 2011-2017, the application of which has been extended until the approval of this Plan, which replaces it.

Within the content of the Plan and in line with the use of green public procurement as a tool for the conservation of biodiversity, we find section "3.7 Natural heritage and biodiversity, and companies and the public sector" whose targets include:

"Improving and promoting the consideration of biodiversity and natural heritage in the day-to-day business and decision-making of companies and the public sector."

To this end, it identifies a series of measures to be carried out in order to achieve this target, specifically indicating that:

"The dissemination of good business practices, in particular in the area of sustainable corporate governance, including due diligence processes for value chains and financial and non-financial reporting, as well as the adoption of nature-based solutions as a source of innovation, business and employment opportunities, will be encouraged."

It further notes that:

"It will regulate the products and services that must be subject to mandatory green and biodiversity-friendly public procurement by any public administration to ensure that the underlying causes of natural heritage and biodiversity loss in Spain are adequately addressed."

To that end, it regulates the products to be included in the [Green Public Procurement Plan \(2018-2025\)](#)³¹. It also establishes an inventory of these products and the services consumed by public administrations, with the aim of identifying the different alternatives that would minimise the impact on natural heritage and biodiversity, prioritising products with eco-labelling or equivalent.

2.4. New ways of producing and consuming: the circular economy approach

The legislation we have been discussing is structured around the idea of a circular economy. This means first of all shifting the focus to the design of the products themselves. As the European Parliament has underlined in promoting multiple

³¹ Order of PCI/86/2019, of 31 January, publishing the Agreement of the Council of Ministers of 7 December 2018, approving the Green Public Procurement Plan for the General State Administration, its autonomous bodies and the managing entities of Social Security (2018-2025). This Plan sets out the list of criteria and specifications developed by the European Commission for the goods, works and services that are considered to be priorities, in order to assist Member States' contracting authorities. Among this set of priority goods, works and services is the "Design, construction and maintenance of roads" for which it states that nature-based solutions should be incorporated, defining them as being: "solutions that are adapted to local conditions, are resource-efficient and are systematic interventions inspired by or in harmony with nature, that are cost-effective and provide environmental, social and economic benefits while contributing to enhancing resilience."

initiatives in this area, "creating more efficient and sustainable products from the outset would help reduce energy and resource consumption, as it is estimated that more than 80% of a product's environmental impact is determined during the design phase."³² In this regard, the CEAP adopted by the EU in 2020 as one of the pillars of the EGD has led to a cascade of measures³³. Examples include the above-mentioned Ecodesign Regulation 2024/1781, which gradually establishes an internal market for sustainable products (common ecodesign requirements at EU level) or the Directive 2024/1275 of the European Parliament and of the Council of 24 April on the energy performance of buildings (minimum energy performance requirements), among many other regulations.

In Spain, this approach has also led to the adoption of important strategies and provisions. Among them, it is worth highlighting the [Spanish Circular Economy Strategy "Spain 2030"](#) (EEEC) approved by Agreement of the Council of Ministers on 2 June 2020, and the planning derived from this Strategy³⁴, the most recent being the II Circular Economy Action Plan (2024-2026).

The EEEEC highlights the exemplary role of Public Administrations acting as "driving forces for the shift towards a sustainable economic model that covers all types of suppliers in the production chain". The EEEEC addresses circular economy solutions by targeting strategic sectors, i.e. those with the highest impact on GHG production³⁵. In the case of construction, it stresses the proper management of waste, especially the treatment, disposal and reuse of waste from demolition. Hence also the need, as mentioned in the EEEEC, to promote and implement the use of Building Information Modelling (BIM) methodology in life cycle analysis in order to be able to properly calculate the sustainability of buildings.

The 2nd CEAP was designed broadly following the outline set by the 1st CEAP and according to the criteria of the EEEEC. Indeed, the new Plan is structured around the

³² See Action Plan for the Circular Economy, available at: https://environment.ec.europa.eu/strategy/circular-economy-action-plan_en?prefLang=es (last accessed 17/02/2025).

³³ For a brief summary of these measures and a timetable see https://environment.ec.europa.eu/strategy/circular-economy-action-plan_en?prefLang=es&ettrans=es

³⁴ Law 7/2022, on waste and contaminated soils, established mandatory approval by the General State Administration of three-year Circular Economy Action Plans. The first Plan to be approved covered the period 2021-2023 and its contents can be consulted at https://www.miteco.gob.es/content/dam/mitesco/es/calidad-y-evaluacion-ambiental/temas/economia-circular/plan_accion_eco_circular_def_nipo_tcm30-529618.pdf (last accessed 17/02/2025).

³⁵ These sectors are: construction, agri-food, industrial, consumer goods, tourism and textiles.

same five axes and lines of action established in the aforementioned Strategy³⁶. The 2nd CEAP contains a specific section dedicated to public procurement with circularity criteria (section 2.4,) 29 et seq.) Two areas are singled out here, which are the inclusion of the circular approach in the area of centralised procurement and in the area of road construction and maintenance works. With regard to the first area, the Plan establishes the *obligation* to include "qualitative award criteria" in centralised procurement, while making it optional to include other considerations with environmental content (solvency, special execution conditions and technical specifications). As for the second, there is an en bloc referral to the LCSP for the greening of the specifications.

At the regional level, we already have several laws that regulate the circular economy, such as the case of the [Law 1/2024, of 17 April, on the Circular Economy of the Community of Madrid](#),³⁷ [Law 3/2023, of 30 March, on the Circular Economy of Andalusia](#)³⁸ and [Law 7/2019, of 29 November, on the Circular Economy of Castilla-La Mancha](#).³⁹ And under development, one can mention the [Canary Islands Draft Bill on the Circular Economy](#). These rules significantly increase the circularity rate in public tenders and are paving the way for penalising the use of primary raw materials and favouring the use of secondary raw materials.

³⁶ The five axes of action mentioned above are: Production; consumption; waste management; secondary raw materials; water reuse and purification. On the other hand, the three lines of action established are: Research, innovation and competitiveness; participation and awareness; employment and training.

³⁷ See DURÁ ALEMAN, Carlos Javier: Ley 1/2024, de 17 de abril, de Economía Circular de la Comunidad de Madrid. *Actualidad Jurídica Ambiental*, No. 147, 2024, pp. 116-117.

³⁸ See SEDEÑO LÓPEZ, José Francisco: ¿Hacia una economía circular en Andalucía? Comentarios a la Ley 3/2023, de 30 de marzo de Economía Circular de Andalucía. *Revista CETRA de ciencias sociales: CETRA journal of Social Sciences*, Vol. 2, No. 1, 2023, pp. 45-62. Available at: <https://centracs.es/revista/issue/view/5> (last accessed 17/02/2024). See also GARCÍA CARACUEL, María: Chapter 8. Ley de economía circular de Andalucía. La economía circular en el sector de la construcción y edificación, en SEDEÑO LÓPEZ, José Francisco y PATÓN GARCÍA, Gemma. *Fiscalidad y economía circular: Sectores estratégicos de vivienda y transporte*, 2024, pp. 183-206.

³⁹ For a brief summary of the standard see BLASCO HEDO, Eva: Ley 7/2019, de 29 de noviembre, de Economía Circular de Castilla-La Mancha. *Actualidad Jurídica Ambiental*, N.º 97 (January), 2020, pp. 90-91. Available at: https://www.actualidadjuridicaambiental.com/wp-content/uploads/2012/01/2020_01_Recopilatorio_97_AJA_Enero.pdf (Last accessed 17/02/2025). See also GÓMEZ, Mercedes. Castilla-La Mancha, región pionera en España en implantar actuaciones de economía circular. *Retema: Revista técnica de medio ambiente*, N.º 254, 2024, pp. 58-61. Available at: <https://www.retema.es/revista-digital/especial-reciclaje-10> (last accessed 17/02/2025).

2.5. The universalisation of environmental requirements. In particular, the Corporate Sustainability Due Diligence Directive (CSDDD) and its implication for public procurement

The green approach to procurement aspires to be universal. This means that the aim is for all procurement (public and private) and thus, production systems, to be developed within a framework of sustainability. Hence, the European Commission when explaining key concepts of public procurement (e.g. life cycle costing ex Art. 67 [Directive 2014/24](#)) and when adopting technical support instruments to promote their application, underlines the need to make their use widespread. In other words, ensure they are applied to the public sector, but also that these techniques are gradually taken up by the private sector.

Another example of the extension of environmental standards and the universalisation of the respective techniques can be found in the recent approval of two European regulatory texts that have an impact on business behaviour. I refer to the [Directive \(EU\) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation \(EU\) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, with regard to corporate sustainability reporting](#) and [Directive \(EU\) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence and amending Directive \(EU\) 2019/1937 and Regulation \(EU\) 2023/2859 \(CSDDD\)](#)⁴⁰. This last European Directive includes environmental performance as an element of assessment for awarding and executing public contracts.

[Directive 2024/1760 of the European Parliament and of the Council](#) aims to establish a mandatory level or standard of due diligence and corporate responsibility in the European Union. The Directive mandates that large companies must implement due diligence processes to identify, prevent, mitigate, and account for adverse human rights and environmental impacts within their own operations, those of their subsidiaries, and their entire "chains of activities" (Art. 3.1.g)⁴¹.

⁴⁰ In order to promote its correct implementation, the European Commission has published a [Guide to the CSDDD Directive](#), *European Commission, 25 July 2024 (Last accessed on 07-01-2025)*. See also: [Debida diligencia empresarial responsable y contratación pública: implicaciones de una nueva regulación](#), *OECD Business and Finance Policy Papers*, No. 71, 2024 (Last accessed 07-01-2025). See also the working paper by TREVIÑO LOZANO, Laura: [Due diligence a standard of conduct for contracting authorities and business contractors](#), SAPIENS NETWORK, July 2024..

⁴¹ The term "chain of activities" includes the activity of upstream business partners in the enterprise chain of a company and the activity of downstream business partners related to the distribution, transport and storage of the product, where the business partners carry out such activities for or on behalf of the company. However, the Directive does not apply to the disposal of the product (Recital 25).

It also establishes the obligation for large companies to adopt a transition plan to mitigate climate change that aims to make the company's business model and strategy compatible with the transition to a sustainable economy and with the 1.5° limit (Paris Agreement).

For public procurement, the Directive provides that due diligence obligations may be incorporated in public contracts in the form of an award criterion or as an obligation in contractual performance. Thus, Art. 31, "Public aid, public procurement and public concessions" states that:

"Member States shall ensure that compliance with the obligations resulting from the provisions of national law transposing this Directive, or their voluntary implementation, qualifies as an environmental or social aspect that contracting authorities may, in accordance with Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, take into account as part of the award criteria for public and concession contracts, and as an environmental or social condition that contracting authorities may, in accordance with those Directives, lay down in relation to the performance of public and concession contracts.."

The consequences of this regulation are far-reaching because they mean that aspects of company policy may be considered as award criteria or as an obligation in the execution of contracts. After all, the nature of due diligence means integrating a corporate risk and impact management tool into company policies.

The Directive also opens the door for the European Commission to revise existing European public procurement directives to enable the implementation of these provisions. This is what it states in its Recital 92, last part:

"To ensure consistency of Union legislation and support implementation, the Commission should consider whether it is relevant to update any of those directives, in particular with regard to the requirements and measures Member States are to adopt to ensure compliance with the sustainability and due diligence obligations throughout procurement and concession processes."

Finally, the EU has intensified its policy of environmental protection beyond its territorial boundaries. This is the case, for example, of the recently adopted [Regulation \(EU\) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation \(EU\) No 995/2010.](#)

2.6. Extending procurement bans as an ordinary means of environmental protection

Another feature that can be drawn from recent European rules is the extensive use of procurement bans as a mechanism for environmental protection. One reason for such use is precisely the effectiveness of such measures. For example, the [Directive \(EU\) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC](#) (Directive 2024/1203) clarifies in recital 31 the following:

"Accessory penalties or measures are often seen as being more effective than financial penalties, especially for legal persons. Accessory penalties or measures should be therefore available in the relevant proceedings. Those penalties or measures could include the obligation to restore the environment, the exclusion from access to public funding, including tender procedures, grants and concessions, and the withdrawal of permits and authorisations. This is without prejudice to the discretion of judges or courts in criminal proceedings to impose appropriate penalties in individual cases."

In other words, exclusion from the public procurement market can be considered to be more effective than criminal sanctions. Hence, Directive 2024/1203 calls for the inclusion of other "criminal or non-criminal penalties or measures...such as exclusion from access to public funding, including tender procedures, grants, concessions and licences" (Art. 7.1.c).

Another example can be found in the [Regulation \(EU\) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation, and repealing Regulation \(EU\) No 995/2010](#) (Regulation 2023/1115). However, in this case, the procurement ban is a measure that is necessarily linked to non-compliance with the obligations set out in the European Regulation. Indeed, the European legislator provides that the Member States shall establish a system of penalties and that these shall include:

"(d) temporary exclusion for a maximum period of 12 months from public procurement processes and from access to public funding, including tendering procedures, grants and concessions". (Art. 25.2. d).

2.7. Energy: climate targets and the financing mechanisms specified in the PNIEC 2023-2030 update

At the end of September 2024, the Spanish Ministry for Ecological Transition and the Demographic Challenge (MITECO) published the [updated National Energy and Climate Plan \(Plan Nacional Integrado de Energía y Clima\). Update 2023-2030](#)

(PNIEC 2023-2030)⁴². This update is part of the recent review of EU legislation resulting from the reformulation of the climate targets and embodied in the "[Fit for 55](#)" package, as well as the requirements of the [Recovery and Resilience Mechanism](#) and the [REPowerEU plan](#). Decarbonisation, economic recovery and security of energy supply emerge as the pillars on which the energy measures included in the 2023-2030 PNIEC update are based. The PNIEC 2023-2030 modifies the description of many of the measures, thus addressing the change of context, as well as the targets and action mechanisms. In addition, the PNIEC 2023 adds innovative measures to scale up concrete actions to accelerate the sustainable transition. Importantly, it has increased the requirements to promote sustainable public procurement as a strategic means to achieve the envisaged targets. In particular, there is a strong commitment to promote public-private partnership models to achieve climate targets. Indeed, the PNIEC 2023-2030 refers specifically to two PPP mechanisms, namely Energy Performance Contracts (EPCs) and Energy Savings Certificates (ESCs) in its own executive summary, stating that:

"The Plan proposes that public administrations should be exemplary in terms of energy saving and efficiency. ...Among others, energy performance contracts will be one of the mechanisms that will enable this type of action in the public sector." (Executive summary p. 31).

"The development of a system of Energy Saving Certificates (ESC) has been completed, which will be a fundamental element in promoting energy efficiency, allowing us to recover part of the cost of investment in actions in this area. (Executive summary p. 14).

As regards *energy performance contracts*, Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast) and incorporating the "energy efficiency first" principle underlines that such contracts avoid investment costs by using part of the value of the energy savings to pay for all or part of the investment made by a third party. And that this feature of EPCs "can help attract private capital,

⁴² Note that Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action of 18 December (Regulation 2018/1999) set out a coordinated energy and climate strategy requiring Member States to draw up national plans for the period 2021-2030. These plans set out a framework for action that establishes targets in five areas: decarbonisation, energy efficiency, energy security, the internal energy market, and research, innovation and competitiveness. The first National Energy and Climate Plan 2021-2030 was adopted in 2020 and the update reported here fulfils the mandate of Art. 14.2 of Regulation 2018/1999. This rule establishes a timetable for updating the plans, and the targets can only be revised upwards. In Spain, Law 7/2021 of May, on climate change and energy transition, establishes the regulation of the National Energy and Climate Plans (Art. 4), defining them as "the national strategic planning tool that integrates energy and climate policy, and reflects Spain's contribution to the achievement of the targets established within the European Union".

which is key to increasing building renovation rates in the Union, bringing expertise to the market and creating innovative business models."

In Spain, this figure was first regulated by Royal Decree-Law 6/2010, of 9 April, on measures to boost economic recovery and employment. The characteristic elements are that, on the one hand, energy service companies (ESCOs) must face a *certain degree of economic risk* when providing their services or, in other words, that remuneration must depend, at least to a significant extent, on the achievement of verifiable and measurable energy savings. And, secondly, that the services covered by the contract must include investments of all kinds necessary to optimise quality and reduce energy costs. The current regulation is set out in Royal Decree 56/2016, of 12 February, transposing Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, as regards energy audits, accreditation of energy service providers and auditors, and promotion of energy supply efficiency.

Within the horizontal measures related to energy efficiency, the PNIEC 2023-2030 includes Measure 2.16: promotion of energy performance contracting. Here again, the role of EPCs as a mechanism for PPPs and risk-taking by private companies is pointed out:

They "fulfil a dual function of energy savings and efficiency, they contribute to reducing investment pressure... offloading it onto the energy service companies, who will recover the investment through the economic value of the energy savings generated, i.e. they monetise energy efficiency."

However, at the same time, it is noted that there are a series of barriers that prevent greater application of EPCs, such as a lack of knowledge and uncertainty regarding the application of Law 9/2017 on public sector contracts for this type of contract⁴³.

For their part, ESCs are a tool to monetise energy savings and are also clearly geared towards achieving energy and decarbonisation targets. The regulation of these certificates is mainly found in Law 18/2014, of 15 October, approving urgent measures for growth, competitiveness and efficiency, and in the recent regulatory

⁴³ It is likely that many of the implementation problems referred to in the PNIEC 2023-2030 relate to selecting the appropriate contract type. In this regard, see the following decisions of administrative courts for contractual appeals on whether or not operational risk should be transferred when the concession contract has been chosen Resolution no. 285/2015, of the Central Administrative Court for Contractual Appeals, of 30 March 2015; resolution no. 240/2022, of the Administrative Court of Public Contracts of the Community of Madrid, of 22 June 2022; resolution no. 125/2020, of the Catalan Public Sector Contracts Court, of 25 March; resolution 174/2024, of the Administrative Court of Contractual Appeals of the Regional Government of Andalusia, of 26 April 2024; and resolution 356/2024, of the Administrative Court of Contractual Appeals of the Regional Government of Andalusia, of 2 September 2024. Also of interest is the Report of the National Evaluation Office "Energy services concession contract for the comprehensive management of the outdoor public lighting service in the municipality of Castro del Río", dated December 2022.

development by Royal Decree 36/2023, of 24 January, which establishes a system of Energy Saving Certificates.

The application of this tool to the public sector opens up enormous possibilities to accelerate the process of renovation and rehabilitation of a large part of public buildings and facilities. However, its application in the field of public procurement remains virtually unheard of.

3. BIBLIOGRAPHY

AGUADO I CUDOLÀ, Vicenc. *La contratación pública responsable. Funciones, límites y régimen jurídico*. Aranzadi Thomson Reuters, 2021.

ÁLVAREZ CARREÑO, Santiago M.; SORO MATEO, Blanca and SERRA PALAO, Pablo. *Estudios sobre la efectividad del Derecho de la Biodiversidad y del cambio climático*, Tirant Lo Blanch, 2022.

ANDHOV, Marta, KANIA, Michal and MIKULIC, Sven. *How to Procure Sustainable Food and Include Farmers in Public Procurement - Legal Constraints and Opportunities*. SSRN, 2024.

BLASCO HEDO, Eva. Ley 7/2019, de 29 de noviembre, de Economía Circular de Castilla-La Mancha. *Actualidad Jurídica Ambiental*, No. 97 (January), 2020, pp. 90-91. Available at: https://www.actualidadjuridicaambiental.com/wp-content/uploads/2012/01/2020_01_Recopilatorio_97_AJA_Enero.pdf (Last accessed 17/02/2025).

EUROPEAN COMMISSION. *Guidance on the CSDDD Directive*, European Commission, 25 July 2024. Available at: https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en (Last accessed 07-01-2025).

DURÁ ALEMAÑ, Carlos Javier. Ley 1/2024, de 17 de abril, de Economía Circular de la Comunidad de Madrid. *Actualidad Jurídica Ambiental*, No. 147, 2024, pp. 116-117.

GALÁN VIOQUE, Roberto. *Las cláusulas ambientales en la contratación pública*. University of Seville, 2018.

- GARCÍA CARACUEL, María. Chapter 8. Ley de economía circular de Andalucía. La economía circular en el sector de la construcción y edificación, in Sedeño López, José Francisco and Patón García, Gemma. *Fiscalidad y economía circular: Sectores estratégicos de vivienda y transporte*, 2024, pp. 183-206.
- GIMENO FELIÚ, José María. Estudio sistemático de la ley de contratos del sector público. Navarre: Aranzadi Thomson Reuters, 2018.
- GÓMEZ, Mercedes. Castilla-La Mancha, región pionera en España en implantar actuaciones de economía circular. *Retema: Revista técnica de medio ambiente*, No. 254, 2024, pp. 58-61. Available at: <https://www.retema.es/revista-digital/especial-reciclaje-10> (last accessed 17/02/2025).
- JANSSEN, Willem and CARANTA, Roberto. *Mandatory Sustainability Requirements in EU Public Procurement Law. Reflections on a Paradigm Shift*. Bloomsbury Publishing, 2023.
- LAZO VITORIA, Ximena. *Compra pública verde*. Atelier, 2018.
- LAZO VITORIA, Ximena. *Compra pública verde y cambio climático*. Atelier, 2022.
- LAZO VITORIA, Ximena (coord.) Monographic section Producto local y contratación pública, *Revista General de Derecho Administrativo*, 64, 2023.
- LAZO VITORIA, Ximena. El Tsunami del “producto local” llega a la contratación pública en España. *Revista General de Derecho Administrativo*, 64, 2023. Available at: <https://laadministracionaldia.inap.es/noticia.asp?id=1514637> (Last accessed 28/01/2025).
- LAZO VITORIA, Ximena. Spain: Transitioning Towards Sustainable Public Procurement Mandatory Requirements in JANSSEN, Willem and CARANTA, Roberto. *Mandatory Sustainability Requirements in EU Public Procurement Law. Reflections on a Paradigm Shift*, Hart Publishing, Bloomsbury Publishing, 2023.
- LAZO VITORIA, Ximena (Coord.). *Manual para la contratación pública ecológica de la Administración General del Estado*, Ministerio para la Transición Ecológica y el Reto Demográfico, 2024.
- LAZO VITORIA, Ximena and CASTRO FUENTES, Camila Antonieta. Contratación Pública Sostenible en la Ley N° 21.634 que moderniza la Ley de

compras públicas. In LAZO VITORIA, Ximena; OBANCO CAMINO, Iván (Eds.) and CASTRO FUENTES, Camila Antonieta (Coord.). Nueva Ley de compras públicas-Estudio sistemático y práctico de la reforma a la Ley N° 19.886. Thomson Reuters, 2024.

LETTA, Enrico. Mucho más que un mercado. *Le Grand Continent*, 2024. Available at: <https://legrandcontinent.eu/es/2024/04/18/mucho-mas-que-un-mercado/> (Last accessed 17-01-2025).

MORENO MOLINA, José Antonio. *Hacia una compra pública responsable y sostenible. Novedades principales de la Ley de Contratos del sector público 9/2017*. Tirant lo Blanch, 2018.

OECD. Responsible Business Due Diligence and Public Procurement: Implications of New Regulation, *OECD Business and Finance Policy Papers*, OECD Publishing, 71, 2024. Available at: https://www.oecd.org/en/publications/responsible-business-due-diligence-and-government-procurement_e30b4f38-en.html

PERNAS GARCÍA, Juan José. Hacia una compra pública verde “en serio” de la mano del principio DNSH: propuesta básica para su necesaria articulación jurídica y técnica. *Boletín del Observatorio de Contratación Pública*, 2022, 10-11. Available at: <https://obcp.es/opiniones/hacia-una-compra-publica-verde-en-serio-de-la-mano-del-principio-dnsh-propuesta-basica> (Last accessed 07-10-2024).

PERNAS GARCÍA, Juan José. El “Tsunami” regulatorio derivado de las políticas económicas de transición ecológica: hacia un derecho sustantivo de la contratación pública para la “sostenibilidad” y la “resiliencia” en la UE, *Boletín del Observatorio de Contratación Pública*, 7, 2023. Available at: <https://dialnet.unirioja.es/servlet/articulo?codigo=9327666> (Last accessed 28/01/2025).

QUINTANA LÓPEZ, Tomás. *La contratación pública estratégica*. Tirant lo Blanch, 2020.

RAZQUIN LIZARRAGA, Martín María. *Nueva contratación pública: Mercado y medio ambiente*. Aranzadi Thomson Reuters, 2017.

SEDEÑO LÓPEZ, José Francisco. ¿Hacia una economía circular en Andalucía? Comentarios a la Ley 3/2023, de 30 de marzo de Economía Circular de

Andalucía. *Revista CETRA de ciencias sociales: CETRA journal of Social Sciences*, Vol. 2, No. 1, 2023, pp. 45-62. Available at: <https://centracs.es/revista/issue/view/5> (last accessed 17/02/2024).

TREVIÑO LOZANO, Laura. *Due diligence a standard of conduct for contracting authorities and business contractors*, SAPIENS NETWORK, July 2024. Available at: https://sapiensnetwork.eu/wp-content/uploads/2024/07/ESR8_WorkingPaper-Duediligence-1.pdf (Last accessed 06/02/2025).