

# IAS 2024

## EXECUTIVE SUMMARY



OIReScon

INDEPENDENT OFFICE FOR REGULATION AND  
SUPERVISION OF PUBLIC PROCUREMENT



The Independent Office for Regulation and Supervision of Procurement (OIReScon) aims to ensure the correct application of legislation and, in particular, to promote competition and combat illegalities in relation to public procurement in accordance with the provisions of Article 332 of Law 9/2017, of 8 November, on Public Sector Contracts.

The Annual Supervision Report and its Executive Summary was approved by the OIReScon Plenary at its meeting held on 16 December 2024 in accordance with Article 332.9 of Law 9/2017 of 8 November.

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**ABBREVIATIONS/ACRONYMS**

<b>Abbreviation/Acronym</b>	<b>Entity/Unit/Denomination</b>
GSA	General State Administration
NCEA	National Classification of Economic Activities
CNMC	National Commission on Markets and Competition
PMC	Preliminary Market Consultation
CPV	Common Procurement Vocabulary
AIHE	Assignment to an In-House Entity
NPPS	National Public Procurement Strategy
ASR	Annual Supervision Report
LCSP	Law 9/2017, of 8 November, on Public Sector Contracts, transposing into Spanish law the Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU, of 26 February 2014.
OIReScon	Independent Office for Regulation and Supervision of Procurement
TBB	Tender Base Budget
PLACSP	Public Sector Procurement Platform
<b>SME/s</b>	Small and medium-sized enterprises
SARA	Subject to harmonised regulation
ECV	Estimated Contract Value

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## **Executive summary of the Annual Report on the Monitoring of Public Procurement in Spain. December 2024.**

The Independent Office for Regulation and Supervision of Procurement (OIReScon), dated 16 December 2024, has approved the Annual Supervision Report on Public Procurement in Spain (ASR 2024), fulfilling the mandate provided for in Article 332.9 of [Law 9/2017, of 8 November, on Public Sector Contracts, transposing into Spanish law the Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU, of 26 February 2014](#) (LCSP). This report shall be forwarded to the European Commission.

This ASR includes, in compliance with the aforementioned article, the main conclusions of the control and supervision activity carried out by the competent administrations, a list of the main non-compliances detected by the external and internal control bodies in the area of public procurement, information on the prevention, detection and adequate notification of cases of fraud, corruption, conflict of interest, as well as problems of collusion detected. It also includes information on the most frequent sources of misapplication of legislation or legal uncertainty, detected from the analysis of the activity of advisory bodies, as well as through monitoring actions directly carried out by OIReScon.

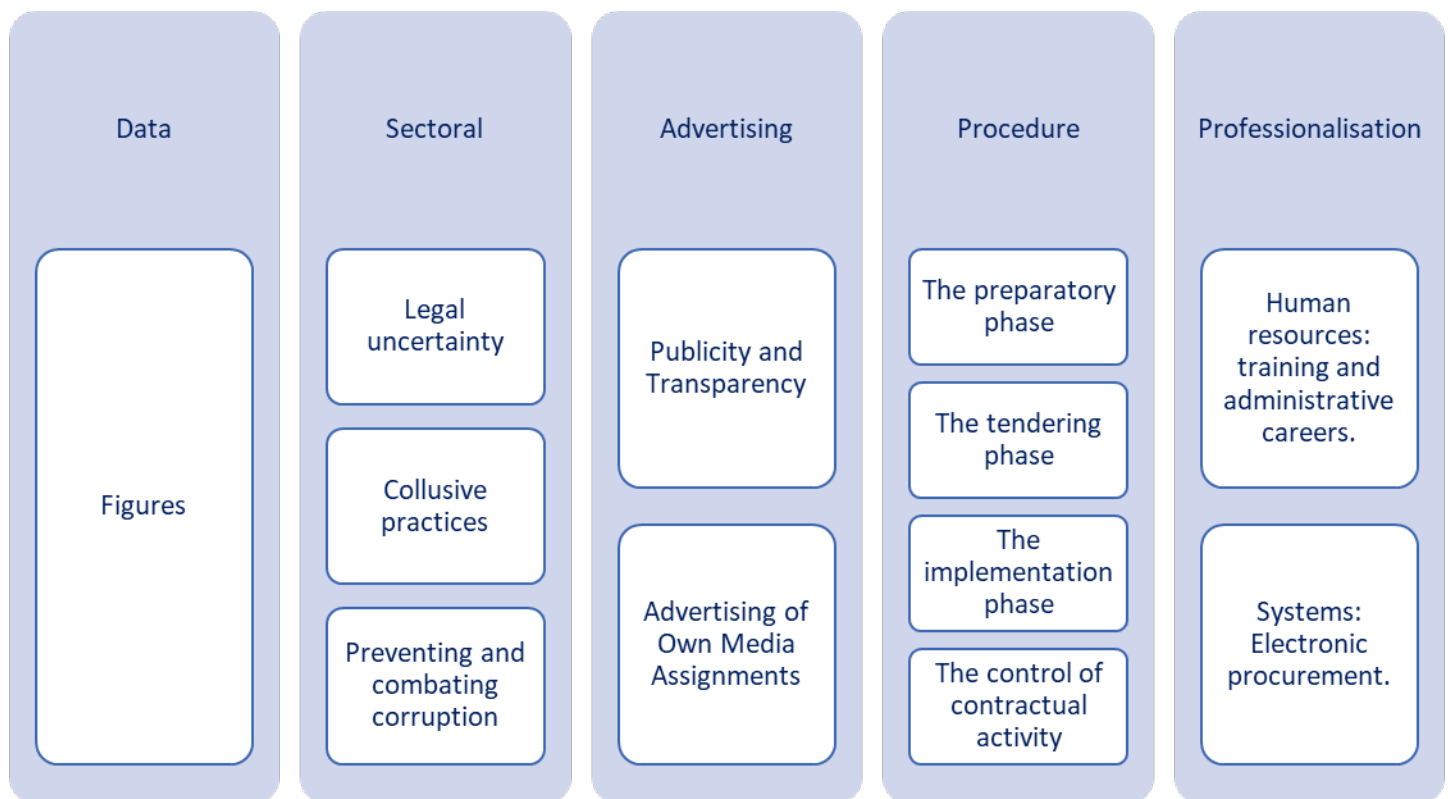
The ASR 2024 shows the most relevant figures and data on public procurement in 2023; the monitoring of consultative activity in the area of public procurement, with the aim of highlighting the issues that have given rise to most doubts regarding the interpretation of the rules; the irregularities reported for fraud, corruption or collusive practices in public procurement; the analysis of compliance with the principles of publicity and transparency required by the LCSP; the supervision of the phases of the tendering procedure; the results of the activity of the control bodies, the use and implementation of electronic procurement and the professionalisation of public procurement.

In order to make its content more accessible and agile, the structure is maintained, structured by means of Modules, according to the following detail:

- I. Public procurement figures in 2023.
- II. Legal uncertainty in public procurement.
- III. Collusive procurement practices.
- IV. Preventing and combating corruption in public procurement.
- V. Monitoring the principle of publicity and transparency in public procurement.
- VI. The publicity of Own Means Assignments.
- VII. The preparatory phase of the contract.

- VIII. The tendering phase of the contract.
- IX. The contract execution phase.
- X. Control bodies in the field of public procurement.
- XI. Professionalisation in public procurement.

**Structure of the ASR for Public Procurement**



*OIReScon elaboration*

The following conclusions can be drawn from the analysis of all the Modules

## I. Conclusions:

### 1. Module I "The figures of public procurement in 2023<sup>1</sup>:"

#### Figures for public procurement in 2023

Volume of Public Procurement in Spain in 2023		
Public Sector	196,763 tenders	107,557.679 million euros
State Public Sector	48,917 tenders	36,149.95 million euros
Autonomous Public Sector	63,048 tenders	43,507.46 million euros
Local Public Sector	84,798 tenders	27,900.26 million euros

*Source: Data from the procurement platforms of the Public Sector as a whole (PLACSP open data). OIReScon elaboration*

In terms of the number of tenders, 43.10% of all Public Sector contracting corresponds to Local Entities (EE.LL.), although in economic terms it is the Autonomous Public Sector that has the greatest percentage weight (40.45%).

76.14% of Public Sector procurement is managed according to the open or simplified open procedure. The average total processing time for procurement procedures is 125.83 days, which follows the decreasing trend since the highest figure experienced in 2020. In 2023, the median duration is the lowest of the entire time series at 92 days.

With regard to concurrence, the average number of bidders in the open procedure is 3.73 and the median is 2 bidders, with the Autonomous Public Sector having the highest average concurrence in the open procedure (4.59 bidders). In addition, 7.87% of the lots tendered in 2023 were not awarded, a decrease of more than two percentage points from the previous year (9.93% in 2022).

In terms of the reduction in the economic cost obtained from the amount at which the tender is finally awarded with respect to the TBB, the restricted procedure is

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<sup>1</sup> According to data from procurement platforms and not including minor procurement.

the one that obtains the greatest reduction, at 16.95%. In the simplified open and open procedures, the average drop is 13.93% and 12.70%, respectively.

Concession contracts represent only 5.08% of the total volume tendered in 2023 (TBB excluding taxes), with this percentage rising to 10.11% in the Local Public Sector, which is the public sector that tenders the most concession contracts. The average turnout for concession contracts reached 2.07 per tender. On the other hand, the number of concession contract procedures that were unsuccessful was 17.59% (20.51% in 2022) compared to the 7.87% already mentioned above (9.97% in 2022) for all types of public procurement. Based on these data, the main conclusions and recommendations contained in the IES for concession contracts in 2022, which was published by OIReScon in November 2023, can be considered to remain valid.

As was the case in all previous ASR, there is still no aggregate data on minor public sector procurement and no systematic analysis is possible.

## 2. Module II "The legal uncertainty in public procurement":

A total of 158 reports were produced by the advisory bodies in 2023, of which 88 were advisory and 70 non-advisory. A total of 159 cases were referred to the various Advisory Boards.

The category "contract execution and performance" was the most consulted category in 2023, the one with the highest percentage increase in queries and also the most consulted over the last four years.

### Asuntos tratados en la actividad consultiva en 2023



*OIReScon elaboration*

Particularly noteworthy is the weight of questions relating to 'Price review', with 30.82% of the total number of queries raised.



### 3. Module III "Collusive practices in public procurement":

The analysis carried out by this Office on the basis of the information received from the competition authorities (National Markets and Competition Commission and similar bodies at regional level) confirms the consolidation of the trend observed in previous years, consisting of a change in the administrative culture that seeks to promote prevention.

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*All this points to increased training and awareness of the actors involved, which in turn indicates a higher level of maturity of the antitrust mechanisms.*

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In terms of the economic sectors that have been most prone to collusive practices, in 2023 those linked to land passenger transport, those related to concessions for catering services and similar activities in public spaces, and those related to the construction of roads and railways, bridges and tunnels stand out.

The most frequent anti-competitive practice in 2023 is cartels, with bid-sharing agreements remaining in the foreground and, at a further distance, bid-rigging agreements, showing that the bidding phase is the most sensitive to anti-competitive or collusive practices.

### 4. Module IV "Preventing and combating corruption in public procurement":

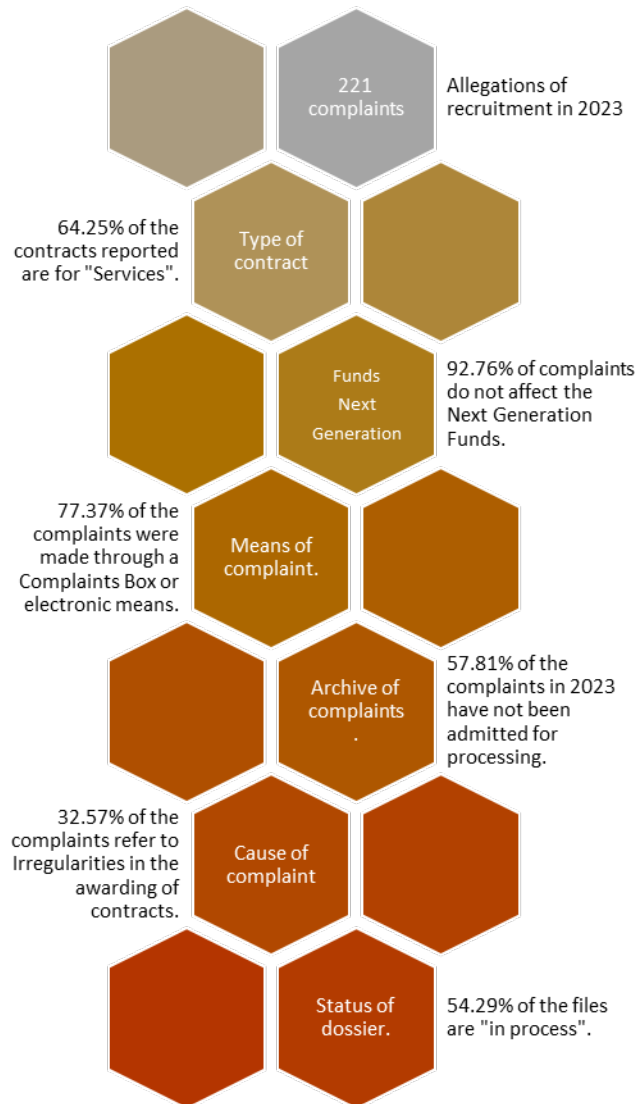
The Fraud Prevention and Combating Offices and Agencies Network initiative<sup>2</sup>, of which OIReScon is a member, is the main source of information for this analysis and monitoring.

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<sup>2</sup> In addition to OIReScon, this also includes the Anti-Fraud Office of Catalonia, the Agency for the Prevention and Fight against Fraud and Corruption of the Valencian Community, the Office for the Prevention and Fight against Corruption of the Autonomous Community of the Balearic Islands (abolished this year but operational during the year under monitoring), the Municipal Office against Fraud and Corruption of the Madrid City Council, the Ethics and Good Governance Mailbox of the Barcelona City Council, the Good Practices and Anti-Fraud Office of the Autonomous Community of Navarra, the Corruption Prevention Section of the Council of Auditors of the Autonomous Community of Galicia, the Council of Auditors of the Canary Islands, and the Anti-Fraud Coordination Service for European Union financial interests of the Comptroller General of the State.

The main results of the activity analysis are shown in the graph below:

**Public procurement fraud reporting in 2023.**



*Source: data from Anti-Fraud Agencies and Offices and OIReScon compilation.*

The 221 complaints on public procurement represent 7.24% of the total number of complaints received by the Anti-Fraud Offices and Agencies in 2023, a percentage that is on a downward trend.

## 5. Module V "Monitoring the principle of publicity and transparency in public procurement":

For the analysis of compliance with the principle of publicity included in this module, the existing indicators established since the ASR 2020 have been followed, concluding that the procurement platforms of the public sector as a whole are of high quality and efficiency, largely meeting the requirements established by the LCSP. However, there are still some areas for improvement.

There is no control or verification of the information published by each contracting body, nor are uniform quantitative or qualitative criteria followed regarding the information to be published in open data by PLACSP and the regional platforms, an aspect that directly affects the quality of the information offered.

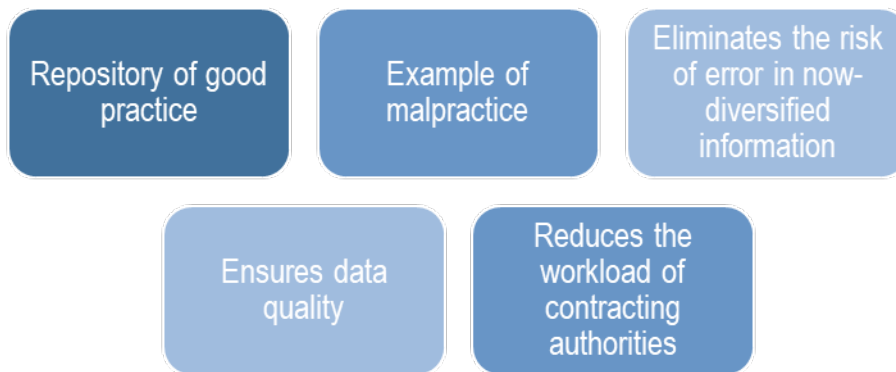
In this regard, there is still information that is not recorded or, if recorded, is not easily accessible or identifiable. Thus, shortcomings were mainly detected in the publicity of the programming of the contractual activity and the contract execution phase. However, it is worth noting that there have been important and significant changes in several procurement platforms, including advances in open data in PLACSP as well as a new notice on contract termination, there is still information that is not available or, if available, is not easily accessible or identifiable. Thus, shortcomings were mainly detected in the publicity of the programming of the contractual activity and the contract execution phase.

In addition, the lack of uniformity in the data or in their format makes their joint analysis and exploitation difficult, directly affecting the purposes that publicity and transparency in public procurement seek. Notwithstanding the above, new automatic verification rules have been identified on platforms with respect to the information recorded on them.

There seems, therefore, to be a greater awareness of the importance not only of publishing, but also of ensuring that what is published is of high quality. However, despite this, data is still not available in an open and reusable format for all procurement platforms in the public sector as a whole.

This situation leads to the conclusion that there is a need for a single source of procurement data (understood as a single source of information with which the requirements of publicity and reporting can be met) in order to allow the contracting authority to comply with its obligations and, in addition, to offer complete and quality information on public procurement, thus providing the advantages summarised in the following graph:

### **Benefit of a single source of data in public procurement**



*OIReScon elaboration*

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*Reliable data is a source of solutions as it serves as an example of both what to do (good practice) and what not to do (information on contractual remedies).*

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Furthermore, there is the potential use of procurement data for the design and implementation of public policies by applying artificial intelligence systems, as existing experiences already show.

Furthermore, and in the same sense, it is pointed out by European bodies, as reflected in the Communication of the European Commission of 16 March 2023 ["Public Procurement: A data space to improve public spending, boost data-driven policy making and improve SMEs' access to tenders" \(2023/c 98 1/01\)](#).

On the other hand, the data included in the regulation of the principle of transparency do not correspond to those included in the LCSP analysed in the first part of this Module. This, together with the diversity existing between the Autonomous Regions and the national level, results in a convoluted scenario in which transparency or access to one piece of information or another will depend on where the contract has been entered into or where the information is requested.

On the other hand, with regard to public procurement complaints, an increasing trend of transparency resolutions in absolute terms has been identified. In addition, in 2023, there is a significant increase, both in absolute values and in percentage terms, in the number of decisions referring to the request for information on the procurement dossier.

## 6. Module VI “The supervision of Own Media Order (AIHE) advertising”:

In this area, it should be noted at the outset that there are still regional platforms that do not provide data on AIHEs in their contracting authority profiles. In addition, and despite progress in transparency and publicity on PLACSP and other platforms, several contracting authority profiles have still been identified that publish their AIHEs in non-reusable formats.

In terms of the number of AIHEs, the upward trend continues in 2023, albeit slowing down when taking into account the data for the whole period 2021-2023. Specifically, the number of AIHEs published in 2023 amounts to 4,192.

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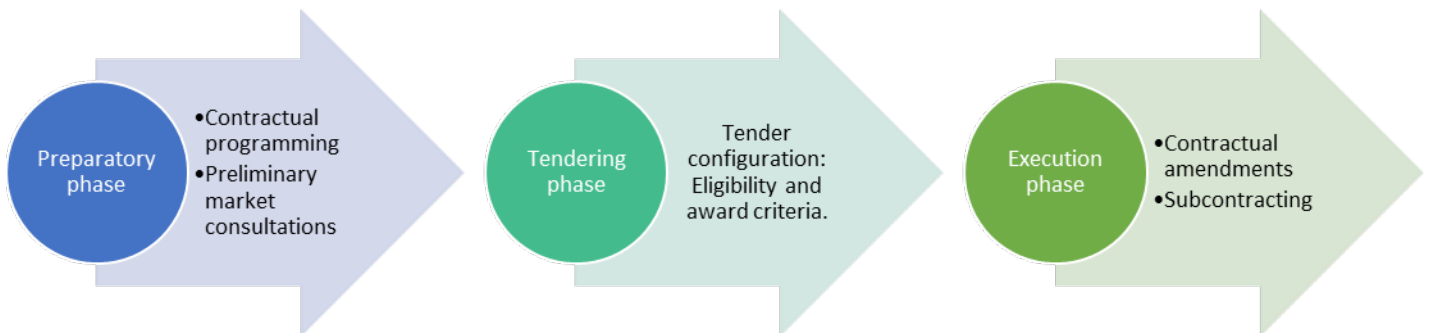
*Of the 4,192 AIHEs published in 2023, 647 were not formalised in 2023, but relate to previous years.*

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In terms of advertising, a high percentage of compliance with all the points required in the LCSP has been identified, except in the case of the MP tariffs, in which case non-compliance reaches 47.82%. With regard to the additional publicity required for AIHEs of more than 50,000 euros concerning the publication of their formalisation, a non-compliance of 7.15% has been identified.

7. Modules VII, VIII and IX "The phases of preparation, tendering and execution of the contract".

**The phases of the contract to be monitored**



*OIReScon elaboration*

In **the contract preparation phase**, deficiencies continue to be detected in compliance with the publication of contract activity schedules, reaching frankly worrying levels (96.22%). The lack of publication of a relevant percentage of the reports of conclusions or results regarding preliminary market consultations was also noted (45.41%).

On the other hand, with regard to **the contract tendering phase**, the upward trend in the adoption of measures to adapt the solvency requirements in the specifications according to the object of each contract is continuing. In view of the data, the adaptation of solvency in the types of supervised contracts is not decisive for the purpose of enhancing SME participation.

Furthermore, with regard to the award criteria, a predominance of criteria that can be evaluated by formula has been identified, which have a much greater weight (76.75%) than those that depend on a value judgement.

On the other hand, non-compliance was detected in the breakdown of the cost structure that must be included in the bidding documents, in accordance with Article 100.2 of the LCSP (23.66% of cases). On the other hand, there is a preference for the use of the "flat rate price" (53.12%) in the determination of the TBB.

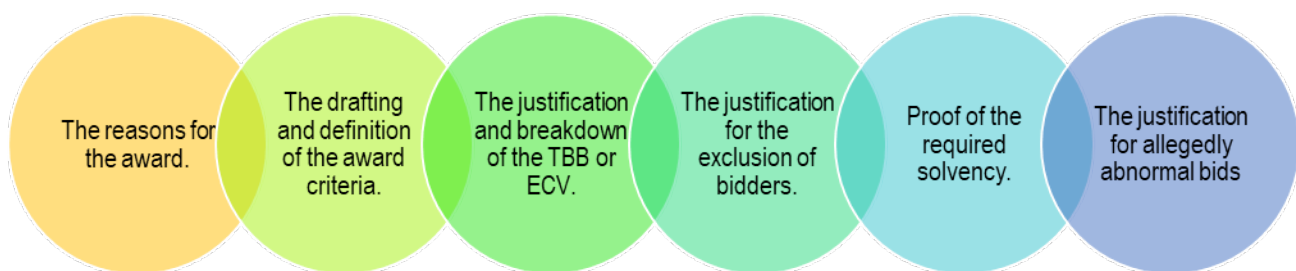
The absence of documentary reflection of **the execution phase of the contract** in the public sector procurement platforms is insisted on, which prevents adequate monitoring.

It should be noted that it is still not possible to know, in the light of the data available through the above mentioned platforms, the real weight of subcontracting and thus the actual amount concerned which is actually subcontracted. In this sense, emphasis is placed on the fact that the lack of information prevents the supervision of obligations legally imposed on the Public Administrations in this area, such as whether the payment of the awardee to subcontractors and suppliers is verified in the contracts in which it is mandatory, in accordance with Article 217 of the LCSP.

#### 8. Module X "Control bodies in the field of public procurement".

Regarding the analysis of the results of the work, as internal control bodies, of the **Administrative Courts** in the resolution of the special appeal in public procurement (REC), the RECs corresponding to 2023 have been analysed, which amounted to 4,790, consolidating the areas of risk identified in previous ASR:

#### Risk areas identified through the REC



*OIReScon elaboration*

On the other hand, the number of appeals that have been inadmissible or shelved for a reason other than a ruling on the merits continues to be significant. This includes appeals that are out of time, those filed against acts that are not subject to appeal, those in which there is a lack of standing, those in which the object has disappeared or those in which there has been an acquiescence.

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*The high percentage of inadmissibility or archiving (30.06%) suggests that the special appeal figure is being abused to a certain extent and that bidders are still unaware of the characteristics of this figure.*

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As regards the analysis of the results of the **internal economic and financial internal control in the area of procurement (the Interventions)** , this is organised on the basis of the different territorial levels of administration.

At the Autonomous Community level, most of the objections reported by the Autonomous Regions, in economic terms, refer to the recognition of the obligation, reaching 79.57%. At the local level and also in economic terms, the expenditure commitment phase is the one in which most objections have been raised, with 41.59%.

With regard to the results of the analysis **of the external control bodies** (Court of Auditors and OCEX), the lack of justification of the nature and extent of the needs to be satisfied, the failure to comply with advertising obligations, the lack of sufficient justification of the TBB or estimated value of the contract (ECV) and the incorrect definition of the award criteria once again stand out.

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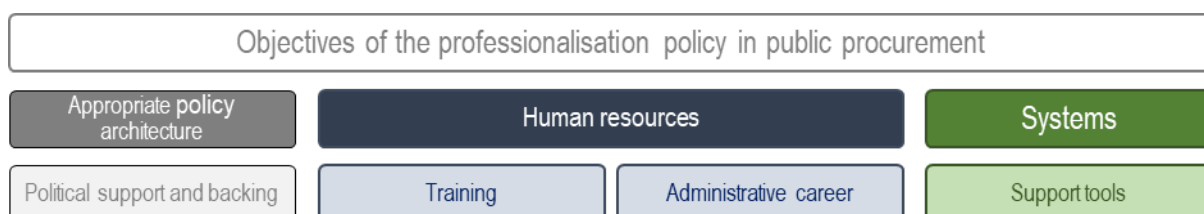
*Within the framework of ongoing financial control and the audits carried out, the dossier preparation phase has become the focus of the irregularities detected by the internal and external control bodies in the field of public procurement.*

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#### 9. Module XI "Professionalisation in public procurement":

According to the European Commission Recommendation of 3 October 2017 on professionalisation in public procurement ["Building an architecture for the professionalisation of public procurement"](#), an adequate strategy for professionalisation in public procurement is based on 3 axes: political support and backing, human resources and support systems and tools, as reflected in the following table:

#### **Policy objectives for the professionalisation of public procurement according to the European Commission Recommendation of 3 October 2017.**



*Elaboration OIReScon.*



Taking into account the above, the analysis of professionalisation in public procurement is carried out both from the perspective of human resources (training and career) and support systems and tools (use of e-tendering).

From the point of view of **human resources** there is a clear disproportion between the training aspect and the administrative career and working conditions aspect. Professionalisation in the field of public procurement in our country is almost exclusively considered as an aspect of training, without taking into account the other aspects involved in the exercise of the profession. In fact, in many Autonomous Communities and at the national level, the posts in the recruitment units are not specialised, being occupied by generalist bodies.

In terms of training activity, in 2023 there was a significant gap between the demand for training and the number of trainees admitted to the various training activities. This is particularly worrying in the area of specific training, which reflects the existence of a need for training in specific areas and aspects of public procurement that administrations should endeavour to address.

Focusing the analysis on aspects related to administrative careers in public procurement, only 3 Autonomous Communities out of the 18 consultations carried out refer to the existence of civil servant bodies or scales that prioritise public procurement in the form of access or training. And only 2 indicate that there is a reservation of managerial or pre-managerial posts to any corps or scale in the recruitment units. If we add to this the fact that about 40% of the posts in the RPTs of the procurement units still lack job descriptions, we can conclude that there is a lack of specialisation and poor career development in public procurement.

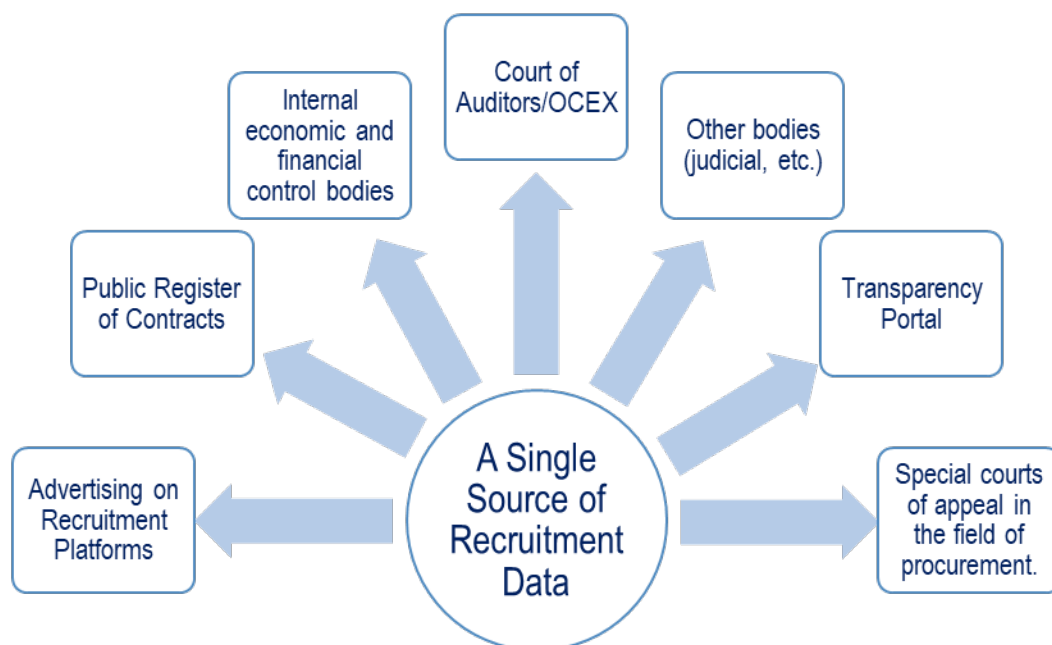
With regard to the **support systems and tools** axis, looking at the progression of the data for the years 2022 and 2023 confirms the consolidation of electronic contracting as the preferred means in tenders (86.55% of the total), reaching a high degree of compliance with the obligation established in the LCSP.

## II. Recommendations

Finally, and in view of the results expressed in this ASR, the OIReScon formulates a series of **recommendations** of which the following should be highlighted:

- It stresses the crucial importance of guiding the actions of all actors involved in the unification of public procurement data in **a single data source**, which would allow contracting authorities to send the information and documentation required by the rules on publicity and transparency, as well as those relating to accountability, to the internal and external control bodies at once. On the other hand, a single source of data will make information more accessible to citizens and minimise errors.

### The need for a single source of public procurement data



*OIReScon elaboration*

- It reiterates the need to articulate mechanisms for verification and validation of the information published, a key action to guarantee a minimum quality of the data offered by the Public Sector procurement platforms.

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***Data quality must be a priority.***

*Reliable and quality data increases transparency, reduces areas of risk, and offers hitherto unthinkable opportunities in public procurement, such as the application of AI.*

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In this respect, it is worth recalling the commitment made in the NPPS in Actions E.2.a) and E.2.b) under the Objective "Generalise the use of e-procurement at all stages of the procedure and establish a Common Procurement Data Strategy".

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*Data quality in public procurement is everyone's responsibility, both for procurement platforms (in terms of their configuration) and for contracting authorities (in terms of their proper publication).*

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- With regard to **publicity of the AIHEs**, the LCSP should include a deadline for publication of the AIHEs, whose *dies a quo* would be their date of formalisation, which would oblige them to be published on a date close to this. This is key, especially in view of a possible special appeal, since the date of formalisation of the AIHEs is essential for the purpose of determining the time limit for bringing an action.
- Regarding **the preparation of the procurement procedure, its tendering and its execution** it is recommended that special attention be paid to a number of points and issues in particular:
  - Advertising of the **procurement schedule** (definition of the object and need, choice of procedure, division into lots, cost structure and estimated duration of the service, among others).
  - In **the advertising** of the tender, formalisation and award notices, the information contained therein and respect for the minimum periods established in the LCSP.

- In the **drafting of the specifications governing the contracting process** (classification and solvency appropriate to the object of the contract, determination of abnormally low bids, conditions of admission, measures to favour SMEs, providing for insufficient or inadequate budgeting and adaptation to the market price, award criteria and special conditions of execution).
  - In the **motivation of the award decision** and of the evaluation reports.
  - In the **justification of exclusions** of bidders, especially in cases of tenders with allegedly abnormal values.
  - In the establishment of **specific measures to control the payment of subcontracted companies** in the contracts that correspond by law, as well as in the monitoring of compliance with this obligation.
  - In the reinforcement of **the justifications for contractual modifications**, making them public and transparent.
- Training in the detection and correction of irregular, collusive and fraudulent practices should be encouraged in order to consolidate the culture of **prevention in the fight against fraud**.
  - Finally, public authorities are urged to make a firm commitment to a **professionalisation strategy in public procurement** that addresses the objectives set out by the European Commission, from a training and administrative career perspective.

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*Professionalisation in public procurement means ensuring the existence of experienced, trained and motivated staff.*

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Independent Office for Regulation and Supervision of Procurement.