Pintos Santiago, Jaime

Article

Transposition of the 2014 European Directives on public procurement by Spain

European journal of public procurement markets

Provided in Cooperation with:
ZBW OAS

Reference: Pintos Santiago, Jaime (2018). Transposition of the 2014 European Directives on public procurement by Spain. In: European journal of public procurement markets 1 S. 24 - 32. https://eupublicmarkets.com/wp-content/uploads/2021/07/3Transposition-of-the-2014-European-Directives-on-public-procurement-by-Spain.pdf.
doi:10.54611/GJTY3019.

This Version is available at:
http://hdl.handle.net/11159/8910

Transposition of the 2014 European Directives on public procurement by Spain

Jaime Pintos Santiago

Abstract:

The major changes introduced by the new Spanish Law 9/2017 transposing the EU Directives of 2014 to the Spanish legal framework are discussed in this paper as well as major challenges due to their new law. Special attention is given to the adoption of mandatory e-procurement, including e-tendering, to all public contracts.

Keywords:

Law 9/2017 on Contracts of the Spanish Public Sector; general provisions; public administration contracts; mandatory electronic tender.

1. Latest developments regarding the general configuration of public procurement

In Title I, regarding rationality and consistency of public procurement we find three key concepts (Article 28): the need, the suitability and the efficiency, with another important novelty : *"Public sector entities will program the public procurement activity that they will carry out in a financial year or multi-year periods and will announce their contracting plan in advance by means of a prior information notice provided for in article 134, that at least includes those contracts that will be subject to a harmonized regulation. "*

Regarding the contracts period, extension's terms and conditions change. This is shown in the mandatory contract extension for the contractor if it is warned with a notice of at least two months before the end of the term of the contract. About contract duration, it includes, with exceptions, a 5 year of successive service period including the possible extensions for supply and services contracts. Also establishes five years (except the time that is reasonable for the concessionaire to recover the investments), for the contracts of concession of works and services. Moreover, there are no changes in minor contracts and are contemplated periods of 40, 25- and 10-year terms for certain contracts for the concession of works or services. It also contemplates a period of subjective duration (depending on the needs of users) for service contracts related to services to people.

However, there is a very important novelty and is that when a contract expires and the new contract that guarantees the continuity of the performance by the contractor is not yet formalized as a result of incidents resulting from events unforeseeable for the contracting authority and there are reasons of public interest not to interrupt the service, the original contract may be extended until the execution of the new contract begins and in any case for a maximum period of nine months, without changing the other conditions of the contract, since the notice of invitation to tender for the new contract has been published at least three months before the date of termination of the original contract. What means that if these premises are not given, these contracts cannot be extended.

Article 30 introduces the new possibility under specific conditions, of using individual elements of the public administration body for a specific contract providing that the contract value with such collaborators does not exceed 60 percent of the total amount of the project.

Articles 31 to 33 transpose the new rules of the Directives concerning the " in house contracting" embracing both the "vertical " and the " horizontal" cases.

There are also new developments regarding the minimal content of the contract (Article 35) *"taking into account in the definition of the object, the social, environmental and innovation considerations."* It shall also refer, where appropriate, to the circumstances in which the amendment proceeds, as well as to the obligation of the contractor to comply throughout the period of execution of the contract with the rules and conditions set out in the collective agreement of application.

The issue of nullity disappears, although the reasons for nullity will continue to be enforced through the special appeal in procurement. In the same way, the regulation of the invalidity system of public sector contracts and of the special appeal on procurement continues to be in force. Picking up the cases of invalidity, the causes of nullity and annullability of Administrative Law, the ex officio review and the effects of the declaration of nullity and annullability in arts. 38 to 42. Establishing in article 43 for the causes of disability of Civil Law the doctrine of separation of acts for the purposes of the applicable law.

Significant changes are made in the special appeal (articles 44 et seq.). It is still optional and free, but it extends the scope of the special resource on procurement (REMC) to modified, illegal orders and rescues concessions (article 44). On the other hand, it is no longer linked to the SARA contracts, thus being linked to contractual rates and certain amounts (estimated value over 3,000,000 million euros for works and concessions, 100,000 euros for services and supplies). Also applicable in certain cases to framework agreements, dynamic purchasing systems and special administrative contracts and also to management charges where, because of their characteristics, it is not possible to determine their amount or, in another case, when the latter, given its duration total plus extensions, is equal to or higher than what is established for service contracts. The possibility of creating local and provincial courts (Article 46.4) is regulated, which will create a greater dispersion of the advisory doctrine that will lead to greater legal uncertainty (a provision already contemplated by the DA23 denoting the conscience of the legislator in this regard). The right to take legal action (Article 48) was also extended so that *"trade union organizations will be able to contest a decision amenable to an action, where by the actions or decisions that may be appealed can be reasonably inferred that they imply that during the execution of the contract the employer breaches the social or labor obligations with respect to the workers. In any case, the sectoral business organization representative of the affected interests shall be considered legitimate.* "

We find some new developments in the processing of the REMC. So, when the appeal is filed against a modification or against an assignment to own means, will be interposed from the day following that in which it was published in the contractor profile. In all other cases, from the day following the notification. However, where the appeal is based on one of the reasons for nullity provided for in Article 39 (2) (c), (d), (e) or (f), the period for bringing an action shall be as follows:

a) Thirty days from the publication of the contract's signature in the form provided for in this Law, including the reasons for not having published in a legal form the call for tenders or from notification to the candidates or tenderers the reasons for the rejection of his application or his proposal and the characteristics of the tender of the successful tenderer who were determining the award in his favor.

b) In the remaining cases of nullity, before six months have passed since the contract was signed.

It also highlights, unlike before, the possibility of filing an appeal in the places established in article 16.4 of Law 39/2015 of October 1, of the Common Administrative Procedure of Public Administrations. Once the appeal has been initiated, the procedure will be suspended if the act in question is awarded, except in the case of contracts based on a framework agreement or specific contracts within the framework of a dynamic purchasing system. After two months from the date of the filing of the appeal without notice of its decision, the interested party may consider it dismissed for the purpose of filing a litigation-administrative appeal.

2. Latest developments in public administration contracts

Article 115 regulates as one of the great developments of the Law the preliminary consultations of the market, to correctly prepare the bid and inform economic operators about the procurement plans of the corresponding body and the requirements that will require to attend to the procedure. To that end, contracting authorities may carry out market research and consult the economic operators active in the market to prepare the tender correctly and inform the economic operators concerned about their plans and the requirements they will require to attend the procedure. To this end, contracting authorities may rely on the advice of third parties, who may be experts or independent authorities, professional associations, or even, exceptionally, economic operators active in the market.

Minor contracts are subject to an important modification that seeks to increase the accuracy and straighten control in their use (article 118). Are considered to be minor contracts the ones with an estimated value of less than € 40,000, in the case of works contracts, or € 15,000 in the case of supply or service contracts. Now, in the minor contracts the processing of the file will require the report of the contracting authority motivating the necessity of the contract. Likewise, approval of the expense and incorporation of the corresponding invoice will be required, which must meet the requirements established by the implementing regulations of this Law. On the other hand, the file will have to justify that the object of the contract is not being altered in order to avoid the application of the general contracting rules and that the contractor has not signed any contracts less than individual or jointly exceed the indicated figures. The contracting body will be in charge and responsible for verifying compliance with said rule, although the assumptions framed in article 168.a) .2 will be excluded.

An important modification regarding the repetition of the actions is contemplated in article 124. The contracting authority will approve prior to the authorization of the expenditure or together with it, and always before the contract is tendered, or if it does not exist before being awarded, the specifications and technical prescriptions that will govern the performance of the service and define their qualities, social and environmental conditions, in accordance with the requirements established by this contract for this Law, and may only be modified subsequently by material error, de facto or arithmetic. In another case, the modification of the specifications will lead to the repetition of actions.

Regarding to one of the most problematic issues, the subrogation of staff, the new LCSP does provide light in the sense of clarifying this figure (article 130). Thus, it will be necessary to subrogate as an employer when a legal rule, collective agreement or collective bargaining agreement of general effectiveness, imposes on the successful tenderer the obligation to subrogate. If a Public Administration decides to provide directly a service that has been provided by an economic operator to date, it will be obliged to subrogate the personnel that provided it if it is also established by a legal norm, a collective agreement or a collective bargaining.

If, once the subrogation takes place, the labor costs are higher than those resulting from the information provided by the former contractor to the contracting authority, the contractor will have direct action against the former contractor. In addition, the specific administrative clauses will always include the obligation of the contractor to pay unpaid wages to the workers affected by subrogation, as well as social security contributions accrued, even if the contract is terminated and those are subrogated by the new contractor, but in no case does this obligation correspond to the latter. In this case, an obligation is established for the Administration, which is that once the non-payment of said wages has been proven, it will proceed with the withholding of the amounts due to the contractor to guarantee the payment of said wages, and the non-refund of the definitive guarantee as long as the credit of the latter is not credited.

On the other hand, the duty of confidentiality of the contracting authority (Article 133) and its dependent services may not be extended to the entire contents of the tender of the successful tenderer or to all the contents of the reports and documentation which, if applicable, directly or indirectly generates the contracting authority in the course of the tendering procedure, something which the administrative courts of contractual appeals have already recognized. It may only be extended to documents that have a restricted circulation and in no case to documents that are publicly accessible.

The notice of invitation to tender for the award of Public Administration contracts (article 135), except for procedures negotiated without advertising, shall be published in the contractor profile, deleting the references to the bulletins of the Autonomous Communities and local entities "*Therefore, it will no longer be necessary to publish in the Official Bulletins, except for contracts entered into by the General State Administration, or by entities related to it, which enjoy the nature of Public Administrations, notice of bidding also in the Boletín Oficial del Estado*"[1]. However, as an obligation under the Directives, where contracts are subject to harmonized regulation, the invitation to tender must also be published in the Official Journal of the European Union, and the contracting authorities must be able to prove the date of the notice of invitation to tender publishing.

Regarding the application of the award criteria, Article 146 contains many changes. Thus, when only one award criterion is used, it must be related to the costs, being the price or a criterion based on profitability, such as the cost of the life cycle, a true novelty in the Law.

Where a plurality of award criteria is used, in their determination, wherever possible, preference shall be given to those referring to characteristics of the subject of the contract which can be assessed by figures or percentages obtained through the mere application of formulas established in the specifications.

In the award procedures, open or restricted, concluded by the bodies of the Public Administrations, the evaluation of the criteria whose quantification depends on a value judgment will correspond, in the cases in which it proceeds by having attributed a weighting greater than that corresponding to the criteria automatically assessable to a committee composed of experts with appropriate qualifications, with a minimum of three members, who may belong to the services dependent on the contracting authority, but in no case may be attached to the body proposing the contract , which will be responsible for evaluating the bids; or entrust this to a specialized technical agency, duly identified in the specifications. In the other cases, the evaluation of the criteria whose quantification depends on a value judgment, as well as, in any case, the criteria evaluable using formulas, will be made by the contracting jury, if involved, or by the services depending on the contracting authority otherwise, for which purpose the technical reports that it deems necessary may be requested.

Also, the choice of formulas will have to be justified in the file. Unless the price is considered exclusively, the specification of the specific administrative clauses or the descriptive document must specify the relative weighting attributed to each of the valuation criteria, which may be expressed by fixing a range of values with an adequate maximum amplitude.

About the life cycle previously mentioned (Article 148). For the purposes of the LCSP, all the consecutive or interrelated phases that occur during its existence are included in life cycle of a product, work or service manufacturing or production: the research and development to be carried out, marketing and the conditions under which it takes place, transport, use and maintenance, the

[1] Véase BATET JIMÉNEZ, M.P. "Las novedades de la nueva Ley de Contratos del Sector Público", Moography in Editorial SEPIN, november 2017. Available in https://www.sepin.es/revistas-digitales/administrativo/revista.asp?cod=0010f50Vc0GA2MP00v0G-0041yi0E-01f0XU09P1S_1S_07k1Gd1zy07P1911Sv0JP0yf1Dd08L07v0X008V00B0Gx08f1S-0G%26

acquisition of the necessary raw materials and the generation of resources; all this until the elimination, the dismantling or the end of the use take place.

Another important modification or novelty is found in abnormally low offers (article 149). The specifications will include parameters for detecting abnormal offers related to the offer as a whole.

Unless otherwise stated in the bidding documents, where the only criterion of award is the price, the objective parameters that are established by regulation and that, in any case, will determine the threshold of abnormality by reference to the set of valid offers that are submitted, without prejudice to what is established in the following section.

a) When a plurality of award criteria is used, it will be established in the Bidding Documents that govern the contract, in which the objective parameters must be established that should allow to identify the cases in which an offer is considered abnormal, referred to the offer considered as a whole.

b) When companies that belong to the same group of companies have submitted bids, only the one that is lower will be used, in order to apply the regime for identifying bids that are presumed to be abnormal, regardless of whether they submit their bids in solitary or jointly with another company or companies outside the group and with which they concur in temporary union.

The tenderer will be required to provide a reasoned and detailed explanation of the prices, costs, etc. Specifically, justification may be asked for:

a) the savings allowed by the manufacturing process, the services provided or the method of construction,

b) the technical solutions adopted and the exceptionally favourable conditions available to it to supply the products, to provide the services or to carry out the works,

c) the innovation and originality of the proposed solutions, to supply the products, to render the services or to execute the works,

d) compliance with obligations that are applicable in environmental, social or labor matters, and subcontracting, where market prices are not justifiable or do not comply with the provisions of Article 201,

- the possibility of Governmental aid.

In the procedure the technical advice of the corresponding service must be requested.

In any case and as an important novelty offers will be rejected if:

- Violate the rules on subcontracting
- Fail to fulfil environmental, social or labour obligations, national or international (including sectoral agreements in force - see article 201-).
- If the justification fails to explain satisfactorily the low level of bid prices or costs, or if it is incomplete or is based on inappropriate technical, legal or economic assumptions or practices

The proposal of acceptance or rejection will be justified. An offer will never be accepted unless the proposal is duly justified. If a company that had been involved in a presumption of abnormality was the successful bidder, implementation monitoring mechanisms will be established to guarantee it without loss in quality.

Of special interest are the provisions of Article 159 relating to the simplified open procedure, since "All the documentation necessary for the presentation of the offer must be available by electronic means from the day of publication of the advertisement on that contractor profile." In this procedure,

the LCSP establishes that "the company that has obtained the best score will be required through electronic communication to constitute the definitive guarantee, as well as to provide the commitment referred to in Article 75.2 and the supporting documentation available to it in fact, of the means that he had committed to dedicate or assign to the execution of the contract in accordance with article 76.2; and all this within 7 business days from the date of dispatch of the communication.

Likewise, and in the case of works contracts of estimated value of less than 80,000 euros, and in contracts for supplies and services with an estimated value of less than 35,000 euros, except for those whose purpose is intellectual property services to which it will not apply this section, re-bets on the use of electronic media and allows a processing with preference in its use. Thus, in the simplified open procedure, the following procedure can be adopted:

- It will be guaranteed, by means of an electronic device, that the opening of the proposals is not done until the deadline for submission has ended, so no public act of opening of the proposals will be held.
- The bids presented, and the documentation related to the valuation of the bids will be openly accessible by computer without any restriction from the moment in which the award of the contract is notified.
- Finally, the company that has obtained the best score through electronic communication will be required to constitute the definitive guarantee.

A new procedure is introduced called the Innovation Partnership, with the idea of favoring the most innovative companies in the field of innovation and development. This procedure for innovation partnership is expressly provided for those cases in which it is necessary to carry out research and development activities regarding innovative works, services and products, for subsequent acquisition by the Administration. It is, therefore, a case in which the solutions available on the market do not meet the requirements of the contracting authority.

Regarding to this new procedure, the new Directive outlines a process in which, after a call for tenders, any entrepreneur may make a request for participation, after which the successful candidates may submit bids, transforming themselves in bidders in a framework of a negotiation process. This can be developed in successive phases and will culminate with the creation of the association for innovation. This innovation partnership will in turn be structured in successive stages but will no longer take place between the contracting authority and the tenderers, but between the contracting authority and one or more partners; and generally, will culminate with the acquisition of the resulting supplies, services or works.

It is, therefore, a procedure in which could be distinguished, schematically, four differentiated moments:

1. selection of candidates,
2. negotiation with tenderers,
3. partnerships,
4. and the acquisition of the resulting product.

To this scheme correspond the articles of the Law dedicated to the regulation of this new procedure.

A very important issue is the obligation established in Article 202, in line with the provisions of Article 1.3, to establish in the list of administrative clauses at least one special condition of execution of a social, ethical, environmental or innovation-related nature. Bearing in mind, moreover, that all special conditions of execution will be required of all subcontractors involved in the contracts execution.

About the Bureau of Procurement (article 326), the new text also gives us important data that are timidly moving towards the professionalization of public procurement. In no case may representatives of public offices, or any contingent staff, form part of the Bureau of Procurement or issue evaluation reports of the tenders (see additional provision 2). The temporary staff member may be a member of the Bureau of Procurement only when there are no sufficiently qualified career staff members, and this is evidenced in the file. Nor may the staff who have participated in the drafting of the technical documentation of the contract in question be part of the Bureau of Procurement.

In summary, there are many developments that the new text of the LCSP provides and are not included in these short lines: contract modification, new governance (Book IV) with the creation, for example, of an Independent Office of Regulation and Supervision of Procurement (Article 332), partnership for innovation, generalization of the responsible declaration, general suppression of internal contracting instructions for contracting authorities not Public Administration, etc. Although, we understand that the indicated ones are those that can be considered main for a first approach to this important new Law of Contracts of the Public Sector.

3. Mandatory electronic tendering

Nowadays, we are facing a legislative panorama marked by the so-called "Europe 2020 strategy", in which public procurement plays a key role, since it is one of the instruments based on the internal market that must be used to achieve smart, sustainable and inclusive growth, while ensuring a more rational use of public funds.

The Green Paper of the Commission already pointed out the great advantages of a more widespread use of e-procurement, the achievement of with greater accessibility and transparency (e-procurement can improve companies' access to public procurement through automation and centralization of the flow of information on concrete bidding opportunities); advantages over specific procedures (as opposed to paper-based systems, e-procurement can help contracting authorities and economic operators to reduce their administrative costs and to speed up procurement procedures); advantages in terms of achieving greater efficiency in procurement management (where there are procurement centres, recourse to electronic procedures can help to centralize more costly procurement administrative tasks and achieve savings of scale in terms of management); and potential for the integration of contracting markets in the EU (in an environment characterized by the use of paper support, the lack of information and the problems associated with the submission of tenders in relation to contracts to be awarded to a certain distance from the place of establishment of the company itself may limit the number of suppliers competing in certain tenders or discourage them altogether from participating in them. E- procurement has the advantage of shortening such distances, bridging the gap in information and encourage greater participation, by increasing the number of potential suppliers and the possible expansion of markets).

With this background, the objectives that inspire the regulation contained in the new law are, first, to achieve greater transparency in public procurement, and secondly to achieve a better value for money. The objectives are to achieve them through the mandatory introduction of electronic contracting, since the Preamble of Law 9/2017, of November 8, Public Sector Contracts states that *"it must necessarily refer to the decided commitment that the new legal text makes in favor of electronic procurement, establishing it as mandatory in the terms indicated therein, from its entry into force, thus anticipating the deadlines set at Community level.*

We are here with a first transcendent decision of the LCSP 2017 that compulsorily incorporates e-procurement on March 9, 2018, the date of entry into force of the LCSP, thus advancing the deadline established by the classic public procurement directive that arrived until 18 of October of 2018.

To this end, the new LCSP also creates an organizational structure that will be in charge of ensuring compliance with this obligation of implementation within the administrative activity of Public Administrations and other contracting authorities of the obligation to contract electronically.

The new Cooperation Committee on public procurement, created by the article 329 LCSP 2017 within the State Procurement Advisory Board, will be responsible for coordinating the promotion of e-procurement in the public and private sectors. to promote compliance with the mandates and objectives of the relevant Community directives.

In this sense, among its sections, which will oversee the preparation of the matters for consideration by the Plenary, there will be an Electronic Public Procurement Section, responsible for executing the competences of the Cooperation Committee in this matter and supervision of the operation of the Public Sector Procurement Platform.

Also, the National Public Procurement Strategy[2] will have among its objectives to generalize the use of electronic contracting in all phases of the procedure (section d) of section 2 of article 334 LCSP 2017).

As we have seen, there is no doubt about the date of entry into force of the application to the procedure for procurement the means of electronic bidding, on March 9, 2018.

In implementing the 2017 LCSP, the principle of interpretation in line with European Union law is called upon to develop, as has always been the case to date, a decisive role, in particular with regard to the many indeterminate legal institutions and concepts of Spanish legislation, and of course in a relevant way in the implementation of the obligations related to electronic public procurement.

At the same time, the Member States' control of the action is normally carried out by national courts and tribunals, which may even render national provisions contrary to Community rules inapplicable; and that such work as ordinary guarantors of European Union law of national courts and tribunals is not exhausted, as is clear from the case-law of the Court of Justice of the European Union, in the proceedings proper to the question referred for a preliminary ruling, continues to have an obligation on the national court to give domestic law the duty to apply, to the maximum extent possible, an interpretation consistent with the requirements of European Union law (see, in particular, the judgments of the Court of Justice of the European Union Van Munster, paragraph 34, and Engelbrecht, paragraph 39). In the event that such a consistent interpretation is not possible, the national court must fully apply European Union law and protect the rights which it confers on individuals by refraining from applying, where appropriate, any national provision to the extent that such an application would lead, in the circumstances of the case, to an outcome contrary to European Union law (see, in particular, Solred, paragraph 30, and Engelbrecht, paragraph 40). Nor should we forget the obligation on Member States to repeal national law which is incompatible with European Union law.

However, it is lawful to be in favour of the approach followed by the CJEU in that its own case-law shows that, as I have already stated, it is for the national court to give to domestic law that it must apply, to the maximum extent possible, an interpretation consistent with the requirements of European Union law, which must be extended to the acquis communautaire, including the case-law of the CJEU. And although the ECJ's stated doctrine refers to the criterion to be followed by the courts in its activity, it is understood, and it is already recognized that it is equally applicable

[2] The National Public Procurement Strategy is the binding legal instrument, approved by the Independent Office of Regulation and Supervision of Procurement, which will be based, with a time horizon of 4 years, in the analysis of procurement actions carried out by the entire public sector including all contracting authorities and contracting entities in the public, regional or local public sector, as well as those of other entities, bodies and entities belonging to them which are not in the nature of contracting authorities (Article 334 (1) LCSP 2017) .

'mutatis mutandis' to the administrative courts and other administrative bodies in charge to apply the rules.

Such a consequence is also imposed on contracting authority bodies which, although they are administrative in nature, have the status of "court" for the purposes of the possibility of raising a question before the CJEU[3]. The STJUE of 2 June 2005, Koppensteiner, Case C-15/04, requires the bodies responsible for resolving the special action to refrain from applying national rules which prevent it from complying with the obligations imposed by the directives. also affects, as I said, the contracting authorities in order to avoid the beginning of contradictory procedures or not to issue administrative acts contrary to the current legal system[4].

If such a consistent interpretation of the new procurement directives with regard to electronic procurement and other matters in European legislation was already admissible before the deadline for transposition of the Directives, as Professor GIMENO FELIU, JM, states: "There is a legal force of the new Public Procurement Directives from which it is derived, before the deadline for transposition of the Directives, that the interpretation of the national framework in force be interpreted in accordance with them, always with the aim of not performing an interpretation that could frustrate the purpose ". the more it will be after the mandatory transposition period has expired, by virtue of the direct effect, and even more so after the entry into force of the 2017 LCSP transposing precisely the Directives of the European Parliament and the Council 2014/23 / EU and 2014/24 / EU of 26 February 2014, as its own name indicates.

In conclusion, if the main rule of European Union law on public procurement, Directive 2014/24 / EU, known as the "Classical Directive", obliges all States and Administrations of the European Union to use electronic means in all public procurement procedures, ensuring that all communications and all exchanges of information are carried out using electronic means of communication, and in particular electronic submission of offers and requests (Article 23 (1)); in the application of the 2017 LCSP transposing the 2014 directives into Spanish law, this principle of interpretation must be taken into account in accordance with European Union law enshrined in the case law of the Court of Justice of the European Union,

This leads us inevitably to the fact that the obligations established by the new LCPS regarding e-procurement reach the need to use exclusively electronic means in relation to notifications and communications and the obligation to submit bids and requests to participate using electronic means , which leads us inexorably to end-to-end e-procurement for all types of contracts and contracting procedures, apart from the four and well-considered exceptions contained in the fifteenth additional provision of the LCSP, cases in which, for the sake of completeness of the above, the contracting authorities will be obliged to justify and justify in a specific report the reasons why it was considered necessary to use means other than electronic means, in the electronic administrative file.

[3] See article 267 TFUE and STJUE of October, 6 2015, *Consorci Sanitari del Maresme*, Subject C-203/174.

[4] See the study document which the administrative courts for public procurement appeal have published, presented and approved at the meeting in Madrid on 1 March 2016 entitled "The legal effects of public procurement directives against maturity of the deadline for transposition without a new law on public sector contracts ", p. 12. The full text of the document can be seen on the website of the Public Procurement Observatory, http://www.obcp.es, [date last consulted: 27-June-2018].