

# Expanded abstract

## The new reserve of public contracts for social, cultural and health services in Spain to work cooperatives, labor companies and non-profit associations

### Objectives

The current legal framework of public procurement procedures has given the powers of the contracting authorities to reserve contracts for the management of certain public services, of a cultural, social and health nature, to non-profit entities or with more democratic and distributive structures. This legal novelty has its origin in the European Union, which with the approval of the Directive of the European Parliament and Council 2014/24/EU, of February 26, 2014, on public procurement, aims to guarantee the continuity of public services through organizations that are owned by their staff or in which staff actively participate in management, enabling public powers to support the Social Economy through the acquisition of goods or services.

The reserve of public contracts to Social Economy companies is an opportunity for public sector entities to incorporate and promote social, environmental and innovation policies (Blanco, 2018) in order to move towards a more sustainable and inclusive economy, as outlined through the 2030 Agenda of Sustainable Development Goals (Mozas, 2019).

The Spanish Law 9/2017, of November 8, 2017, on public procurement (hereinafter LCSP), which transposes into the Spanish legal system the European Directives, enables two types of reserve of public contracts: a general reservation of any type of public contract, regulated by the 4th Additional Provision of the LCSP, to special centers for the insertion of the disabled people and social insertion companies, and another reserve regulated by the 48th Additional Provision of the LCSP, only for service contracts of a social, cultural and health nature to entities that comply with different principles of economic democracy. One of them is that they are non-profit making or distribute their benefits among the workers, or they do so according to participation criteria, and the other that the ownership and/or management of said entities is owned by the workers, users or other stakeholders. The lack of specificity by the Spanish legislator on the legal personality of the entities and companies to which this reservation is preferably addressed has raised doubts among the contracting authorities on how to prove compliance with these principles, which has led them to make mistakes or refuse to carry out this type of initiative because of the legal uncertainty it raises.

This article aims to clarify the legal possibilities offered by the reservation of contracts made possible by 48th Additional Provision of the LCSP both to contracting authorities and to economic operators, in order to corroborate the type of Social Economy entities to which it

could benefit this reserve, such as work cooperatives, labor companies and non-profit associations. Thus, this study is innovative and practical when carrying out a reservation of public contracts based on 48th Additional Provision of the LCSP, helping the public entities to have greater security and legal certainty to favor the concurrence of entities of the Social Economy in these processes.

The main conclusion has been to give the recommendation to the public entities that decide to process a contracting file through this reserve of contracts, aimed at companies and non-profit entities and/or with greater economic democracy in their management and property, is that they should include in instructions for tenderers, within the conditions of aptitude or solvency to have the right to participate in said procedures, that the tenderers must prove compliance with all the criteria and principles indicated in the second section of 48th Additional Provision of the LCSP. To facilitate access to Social Economy entities, they should also indicate that in the case of being work cooperatives, labor companies or non-profit associations, taking into account the applicable legislation, the principles of democracy economy should be considered fulfilled, defined in subsections b) and c) of 48th Additional Provision of the LCSP; to prove it, they should only be required to present a certificate or registration resolution in the corresponding public registry.

The main limitation of the article is that other types of legal entities included in the Social Economy have not been analyzed according to the Spanish Law of Social Economy that, likewise, could comply with the principles of economic participation and democracy required for this reserve based on the applicable legislation. Among the main benefits of the proposal is the specification of the entities to which this reserve is preferably directed, enhancing their participation, and responding to European and international commitments to support the Social Economy as a way to contribute to Sustainable Development and 2030 Agenda. To continue with the development of this research, it would be appropriate to carry out a legal analysis on the fulfillment of said requirements by other types of Social Economy entities, as well as to identify the types of public contracts in which the LCSP may apply the reservation of contracts according to 48th Additional Provision of the LCSP that could be served by the Social Economy entities based on the productive sectors in which it mainly operates.