

# IAS 2023

## EXECUTIVE SUMMARY



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THE INDEPENDENT OFFICE FOR THE REGULATION AND SUPERVISION OF PROCUREMENT  
[OFICINA INDEPENDIENTE DE REGULACIÓN Y SUPERVISIÓN DE LA CONTRATACIÓN]



The purpose of the Independent Office for the Regulation and Supervision of Procurement (OIReScon by its acronym in Spanish) is to ensure the correct implementation of the law and, in particular, to promote competition and combat illegal activity in relation to public procurement, in accordance with the provisions of article 332 of Law 9/2017 of 08 November on Public Sector Contracts.

This report, number fifth, was approved by the OIReScon board at a meeting held on 22 December 2023 in accordance with article 332.9 of Law 9/2017 of 08 November.

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**ABBREVIATIONS / ACRONYMS**

<b>Abbreviation / Acronym</b>	<b>Entity / Unit / Name</b>
AGE	General State Administration
CNAE	National Classification of Economic Activities
CNMC	National Markets and Competition Commission
CPM	Preliminary Market Consultation
CPV	Common Public Procurement Vocabulary
EMP	In-house Procurement
ENCP	National Public Procurement Strategy
IAS	Annual Supervision Report
LCSP	Law 9/2017 of 8 November on Public Sector Contracts, by which the Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU of 26 February 26 are transposed into the Spanish legal system. 2014
OIReScon	Independent Office for the Regulation and Supervision of Procurement
PBL	Base Bid Budget
PLACSP	Public Sector Procurement Platform
<b>Pyme/s</b>	Small and medium businesses
SARA	Subject to harmonised regulation
VEC	Estimated Contract Value

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## **Executive summary of the Annual Supervision Report on Public Procurement in Spain. December 2023.**

The Independent Office for the Regulation and Supervision of Procurement (OIReScon) approved the IAS (Annual Supervision Report) on Public Procurement in Spain (IAS 2023) on 22 December 2023, thereby complying with the provisions of article 332.9 of Law 9/2017 of 08 November on Public Sector Contracts, by which the Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU of 26 February 2014 (LCSP) are transposed into the Spanish legal system. This report will be sent to the European Commission.

This annual report includes, in compliance with the aforementioned article, the main conclusions on the monitoring and supervisory activity carried out by the competent Administrations, a list of the main breaches of compliance detected by the external and internal monitoring bodies in matters of public procurement, information on the prevention, detection and appropriate notification of cases of fraud, corruption, and conflict of interests, as well as any issues of collusion detected. Moreover, it includes information on the most frequent sources of the incorrect implementation of the law and legal uncertainties, detected by means of the analysis of the activity of the advisory bodies, as well as through supervisory activity carried out directly by OIReScon.

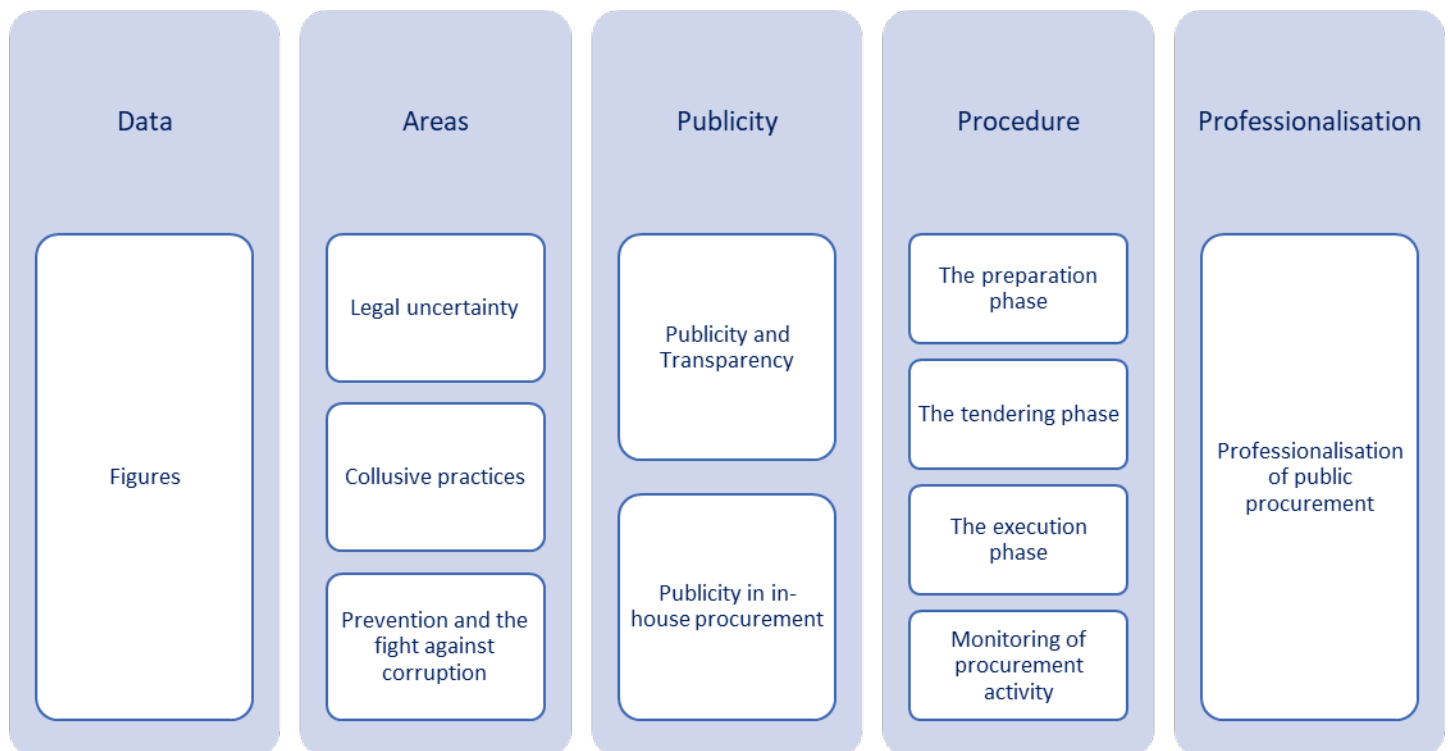
The IAS illustrates the most important figures and data on public procurement in 2022, the monitoring of advisory activity in public procurement, in order to highlight the issues that have raised the most doubts regarding the interpretation of the regulations; irregularities reported involving fraud, corruption and collusive practices in public procurement; the supervision of the principle of publicity and transparency required by the LCSP; the supervision of the phases of the tendering procedure; the results of the activities carried out by the monitoring bodies and the professionalisation of public procurement.

The structure is split into in Modules in order to make the content easier to access and to interpret:

- I. Public procurement figures for 2022.
- II. Legal uncertainty in public procurement. Advisory activity.
- III. Collusive practices in public procurement.
- IV. Prevention and the fight against corruption in public procurement.
- V. Monitoring of the principle of publicity and transparency in public procurement.
- VI. Publicity in in-house procurement
- VII. The contract preparation phase.

- VIII. The contract tendering phase.
- IX. The contract execution phase. Contract amendments and subcontracting.
- X. Public procurement monitoring bodies.
- XI. The professionalisation of public procurement.

**Illustration 1. Structure of the Public Procurement Annual Supervision Report (IAS)**



Source: OIReScon in-house material

An analysis of each Module gave rise to the following

**I. Conclusions:**

1. Module I “Public procurement figures for 2022<sup>1</sup>:

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<sup>1</sup> According to data from procurement platforms and not including the hiring of minors.

### Public procurement figures for 2022

Volume of Public Procurement in Spain 2022		
Public Sector	183,277 tenders	100,692.19 million euros
State Public Sector	41,749 tenders	26,636.26 million euros
Regional Public Sector	49,774 tenders	40,673.55 million euros
Local Public Sector	91,754 tenders	33,382.37 million euros

*Source: Data from procurement platforms in the Public Sector as a whole (public PLACSP data). OIReScon in-house material*

In terms of numbers of tenders, 50.06% of all procurement in the Public Sector involves Local Entities, although in economic terms the Autonomous Public Sector has the greatest percentage weight (40.39%).

77.11% of Public Sector procurement is managed in accordance with the open or simplified open procedure. The average processing time for the open procedure is 156.04 days (5.2 months) and the median time is 121 days (4 months), while the simplified procedure has an average processing time of 98.97 days (3.2 months) and a median time of 71 days (2.3 months).

In terms of tendering, in the open procedure the average and median number of bidders is 3.81 and 2 respectively, with the Autonomous Public Sector registering a higher average number of bidders in the open procedure (4.53 bidders).

Regarding the reduction in the economic cost arising from the amount for which the tender is finally awarded compared to the base bid budget (PBL), the simplified open procedure registers the biggest reduction, with 13.99%, while the reduction in the open and restricted procedures is 13.14% and 12.80% respectively on average.

As was the case in the 2019, 2020, 2021 and 2022 annual reports, there is still no aggregate data on minor public sector procurement, and the systematised analysis thereof is not possible.

## 2. Module II “Legal uncertainty in public procurement”

The “contract execution and performance” category registered the most consultations in 2022, the highest percentage increase in consultations and the most consultations in the last three years.

### **Matters addressed in consultation activity in 2022**

Excluded businesses and contracts  
 Others  
 Procedure  
 Contract execution and performance  
 Type of contract  
 Capacity and solvency  
 Content of specifications

*Source: OIReScon in-house material*

The activity of advisory bodies in matters related to the Recovery, Transformation and Resilience Plan (PRTR) continued in 2022, both in terms of consultations and documents of a different nature such as instructions.

## 3. Module III “Collusive practices in public procurement”:

The analysis conducted by this Office based on the information received by entities dedicated to the promotion of competition (National Commission on Markets and Competition and similar autonomous entities) confirms the consolidation of the trend detected in the previous year consisting of a change in administrative culture.

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*The change in trend in the Administration has been confirmed, shifting from more corrective and penalising behaviour to a culture of prevention.*

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Regarding the economic sectors that have been more prone to collusive practices according to the National Classification of Economic Activities (CNAE), the most noteworthy are: “Civil Engineering”, “Other Land-Based Passenger Transport”, “General Public Administration Activities” and “Building Construction”.



On the other hand, the type of contract most affected by collusive practices in 2022 will be works and not services as was the case in the previous annual report (IAS).

4. Module IV “Prevention and the fight against corruption in public procurement”:

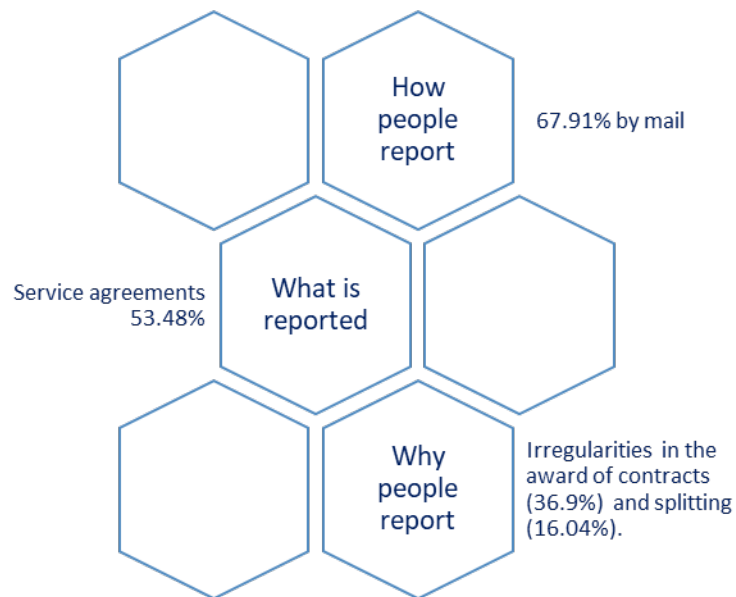
The initiative of the Network of Anti-Fraud Offices and Agencies<sup>2</sup>, of which OIReScon is a member, is the source of information for this analysis and oversight. In this regard, it should be pointed out that 10.73% of the notifications and complaints received in 2022 by the Anti-Fraud and Corruption Offices and Agencies involved public procurement, thereby illustrating the importance thereof.

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

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<sup>2</sup> In addition to OIReScon, it 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, the Municipal Office against Fraud and Corruption of the Madrid City Council, the Ethics and Good Governance Mailbox of the Barcelona City Council, the Transparency Agency of the Metropolitan Area of Barcelona, the Corruption Prevention Section of the Consello de Contas of the Autonomous Community of Galicia, the Audiencia de Cuentas of the Canary Islands, and the Anti-Fraud Coordination Service for financial interests of the European Union of the General Comptroller of the State Administration.

### Reports of fraud in public procurement in 2022



*Source: data from the Anti-Fraud Agencies and Offices and OIReScon in-house material.*

Finally, important actions have been planned with regard to preventing and combatting corruption in the 2023-2026 National Public Procurement Strategy (ENCP) consisting of supervisory activity and the ex-ante and ex-post oversight of the legality of public procurement. Despite this, the need to approve a **National Anti-Fraud Strategy** geared to the coordinated action of every agent involved in the fight against fraud and corruption is of paramount importance.

#### 5. Module V “Supervision of the principle of publicity and transparency in public procurement”:

The indicators specified in the 2020, 2021 and 2022 annual reports have been used in the supervision of this section, concluding that public sector procurement platforms as a whole are of a high standard of quality and effectiveness, and meet most of the requirements established by the LCSP. However, certain aspects with room for improvement continue to exist.

There is no control or verification of the information published by each procurement body, nor any quantitative or qualitative uniformity of the information

to be published in open data by PLACSP and the regional platforms, which has a direct effect on the quality of the information provided.

In this regard, even though there have been important changes and advances in various procurement platforms, the most noteworthy of which include the improvements and changes made to PLACSP, there is still information that is not recorded or, when it is, is hard to access and identify. Hence, shortcomings have been detected mainly in terms of publicity in procurement activity programming and the contract execution phase.

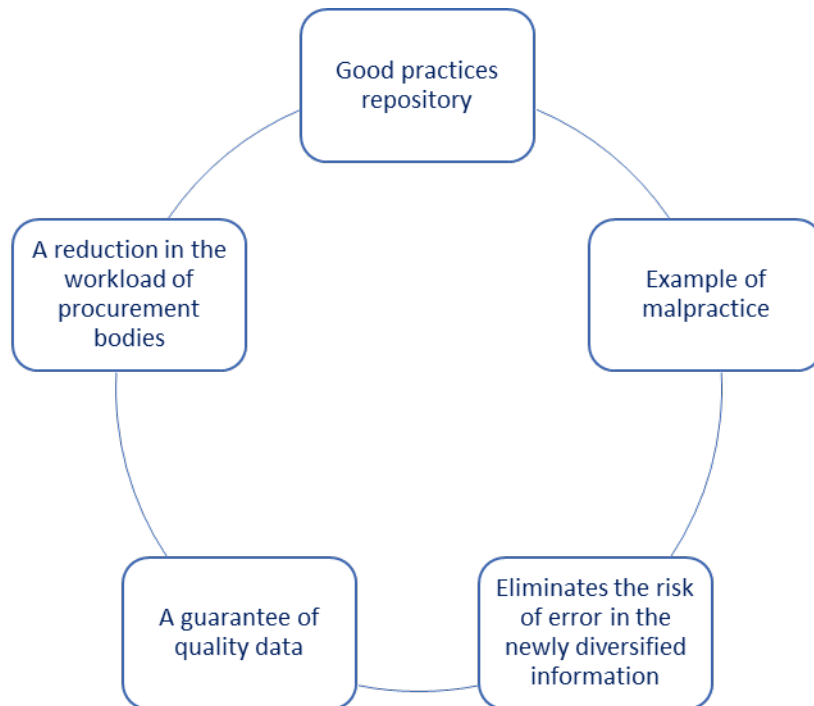
In addition, the lack of uniformity of the data or its format makes the joint analysis and exploitation thereof difficult, with a direct effect on the purposes that publicity and transparency in public procurement pursue.

Notwithstanding the foregoing, PLACSP has implemented a new set of data and expanded the existing data, and regional procurement platforms are now designed, to a greater extent, to enable the export of their data in open and reusable formats (mostly in CSV or Excel format). Moreover, new automatic verification rules have been identified on platforms regarding the information recorded on them.

As such, there seems to be a greater awareness regarding the importance of publishing and of publishing with quality. Nevertheless, there is still no data available in open and reusable format from every procurement platform in the public sector as a whole.

This situation allows us to conclude that there is a need for a **single source of procurement data** (understood as a single source of information with which the requirements related to publicity and the submission of information can be met), thereby enabling procurement bodies to comply with their obligations and, in addition, providing complete, quality information on public procurement, thereby offering the advantages summarised in the following graph:

**Advantages of a single source of data in public procurement**



*Source: OIReScon in-house material*

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

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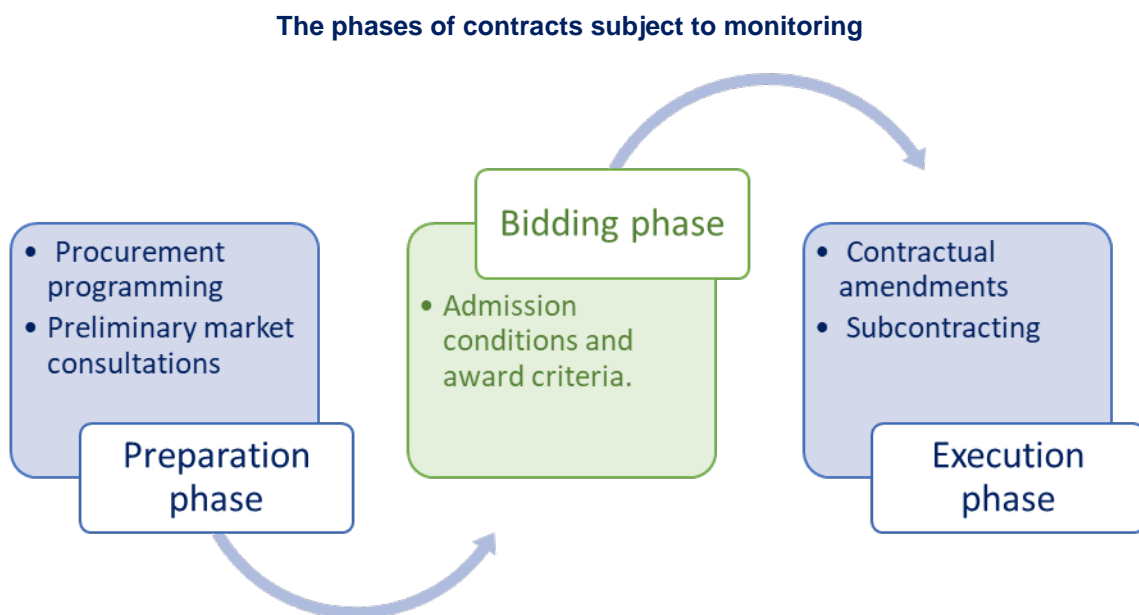
This need has become urgent and pressing in view of the challenge posed by the management of European Next Generation funds and the implementation of the Recovery, Transformation and Resilience Plan.

6. Module VI “Supervision of publicity in In-house procurement (EMP)”:

Given the traditional lack publicity in in-house procurement in our legal system (or its predecessor entrusted with the management thereof), this Office regards the fact it has been able to detect and identify in-house procurement on practically every public sector procurement platform as highly positive, having identified 3,875 in-house procurement processes published in 2022 compared to 2,107 in 2021.

In terms of publicity, a high percentage of compliance with all the requirements set forth in the LCSP has been ascertained, except in the case of the in-house fees, where non-compliance stands at 51.82%. As regards the additional publicity required for in-house procurement of more than EUR 50,000 concerning the publication of their execution, non-compliance of 7.87% has been ascertained.

7. Modules VII, VIII and IX “The preparation, tendering and contract execution phases”.



*Source: OIReScon in-house material*

The **contract preparation phase** continues to register non-compliance with the publication of contract activity schedules, rising to alarming levels (96.94%), and in reports on the conclusions or results of preliminary market consultations (50.16%).

Furthermore, as regards the **contract tendering phase**, the upward trend in the implementation of measures to adapt the solvency requirements in the specifications to the subject-matter of each contract continues. In view of the data, the adaptation of economic solvency in service contracts<sup>2</sup> has a direct and positive impact on bidding.

Furthermore, with respect to award criteria, a predominance of price over other factors is clear to see, giving rise to the recommendation to assess the adequacy and justification of these criteria. In the same way, the need to take into account

both criteria capable of being evaluated through value judgment and those evaluated through formulas is evident, in order to obtain the best quality-price ratio.

Moreover, non-compliance can be seen in the cost structure that should be included in the Tender Specifications, in accordance with article 100.2 of the LCSP, regarding the breakdown of said costs (18.81% in service contracts and 21.27% in supply contracts). Furthermore, there is a high degree of non-compliance (49.21% in services and 59.55% in supplies) with respect to the obligation established in the aforementioned article 100.2 of the LCSP, on the configuration of the base bid budget (PBL) based on the direct and indirect costs and other possible expenses calculated for the determination thereof.

The lack of documentary reflection in the **contract execution phase** on public sector procurement platforms should be highlighted, as this prevents adequate monitoring.

In addition, in light of the data accessed through the aforementioned platforms, it is impossible to ascertain the real weight of subcontracting and, therefore, the amount actually subcontracted. In this regard, it should be emphasised that the lack of information prevents the supervision of the obligations imposed on Public Administrations, such as whether payment by the successful bidder to subcontractors and suppliers is verified in contracts in which this is mandatory in accordance with article 217 of the LCSP.

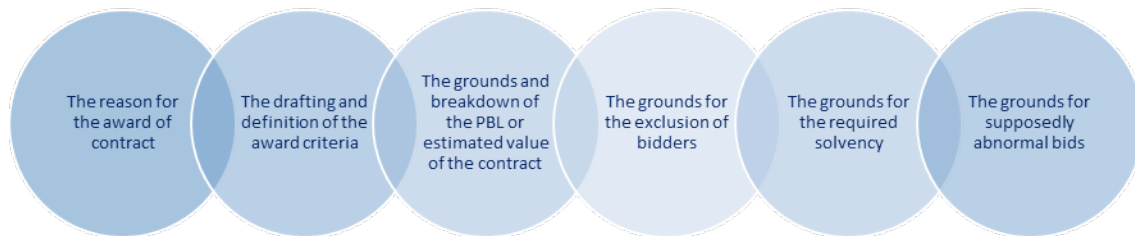
## 8. Module X “Monitoring bodies in public procurement”

Regarding the analysis of the results of the work, as internal monitoring bodies, of the **Administrative Courts** in the resolution of special public procurement appeals (REC), 4,757 RECs were analysed in 2022, consolidating the areas of risk identified in previous annual reports.

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<sup>2</sup> 1,322 contracts have been analysed this year: 1,098 service contracts whose CPV begins with the digits 80 (education and training services) and 224 supply contracts whose CPV begins with the digits 37 (musical instruments, sporting goods, games, toys, handicraft goods, art materials and accessories).

### Areas of risk identified by special public procurement appeals (REC)



*Source: OIReScon in-house material*

On the other hand, the number of appeals that have been deemed inadmissible or dismissed for a reason other than decisions on the substance of the case continues to be significant, such as appeals that have been time-barred, those filed against acts that cannot be appealed against, those in which the object of interest of the appeal disappears unexpectedly or in which the appeal has been accepted.

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*The high percentage of inadmissibility (25.57%) suggests a certain misuse of the figure of special appeal or an erroneous approach on the part of the appellant.*

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Regarding the analysis of the results of the **internal economic and financial supervision in matters of procurement (the Interventions)**, it is organised based on the different regional levels of administration.

The results of the actions carried out by the General Comptroller of State Administration Department (IGAE), the General Comptroller of Defence (INTERGENDEF) and the General Comptroller of Social Security (IGSS) show the need for instructions on the programming of procurement activity (there are no instructions in this regard at 76.20% of the Ministries), also illustrating the lack of a procedure to verify compliance with the programming goals. Moreover, a high percentage of organisations do not have procurement programming.

At the regional level, the majority of the objections reported by the Autonomous Communities relate to the approval of the costs, registering 82.71%. At the local level and in economic terms, the cost commitment phase is where the most objections have been raised, with 41.98%.

As regards the results of the analysis of the **external monitoring bodies** (Court of Auditors and External Monitoring Bodies, OCEX): the lack of justification regarding the nature and extent of the needs to be met, the non-compliance with publicity obligations, the lack of sufficient justification of the PBL or the estimated value of the contract and the incorrect definition of the award criteria should be highlighted once again.

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*The process preparation phase once again comprises the bulk of the irregularities detected by the internal and external monitoring bodies in matters of public procurement.*

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#### 9. Module XI “The professionalisation of public procurement”:

In accordance with the Recommendation of the European Commission of 03 October 2017 regarding the professionalisation of public procurement **“Creating an architecture for the professionalisation of public procurement”**, an appropriate professionalisation strategy in public procurement has been created based on 3 main pillars: political support and backing, human resources and support systems and tools, as illustrated in the table below:

#### Goals of the public procurement professionalisation policy according to the Recommendation of the European Commission of 03 October 2017



*Source: OIReScon in-house material.*



Taking the foregoing into account, the analysis of professionalisation in public procurement reveals a clear disproportion between the areas of training and administrative careers and working conditions.

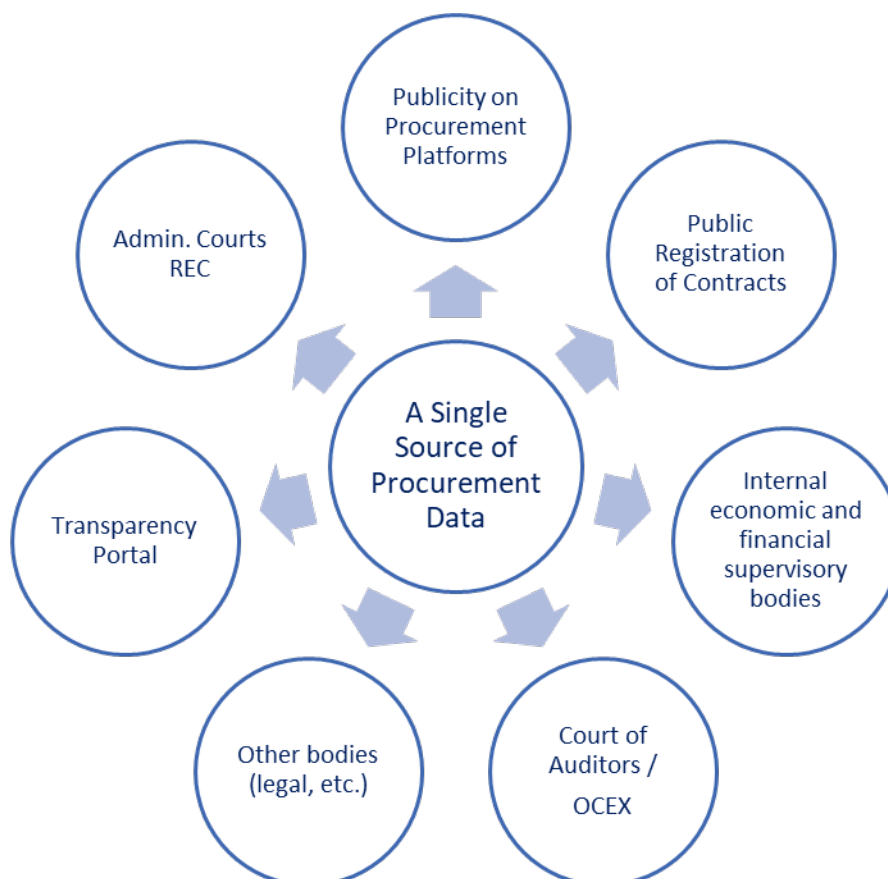
With regard to training activities in public procurement, 62.75% of the demand for training in public procurement in 2022 was met, most of which was conducted online. However, there are still no specific public procurement itineraries or programmes geared to sound and creditable specialisation in the area.

## II. Recommendations

Finally, and in view of the results published in this annual report, OIReScon has drawn up a series of **recommendations**, the most noteworthy of which are the following:

- We underline the paramount importance of guiding the actions of every agent involved in placing public procurement data into a single source, thereby enabling the procurement bodies to send the internal and external supervisory bodies the information and documentation required pursuant to the regulations on publicity and transparency, as well as information related to accountability. Furthermore, a single source of data will make information more accessible to citizens, in addition to minimising errors.

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



Source: OIReScon in-house material

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- In addition, the need to implement mechanisms for the verification and validation of the information published should be reiterated, a key means of guaranteeing the minimum quality of the data provided by the procurement platforms throughout the Public Sector.
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*The quality of data must be a priority.*

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

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In this sense, it is worth remembering the commitment acquired in the ENCP in actions E.2.a) and E.2.b) within the framework of the goal “To generalise the use of electronic procurement in every phase of the procedure and to establish a “Common Procurement Data Strategy”.

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*The quality of data in public procurement is the responsibility of everyone, both procurement platforms (with regard to the configuration thereof) and the contracting bodies (with regard to appropriate publication).*

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- Regarding the **publicity of in-house procurement**, the LCSP should include a deadline for the publication of in-house procurement processes whose *dies a quo* is their date of execution, which would require them be publicised on a date close to this date. In this regard, we should not forget that the execution of in-house procurement processes is now subject to special procurement appeals (REC), so the execution date is now essential for the purposes of determining the period for filing an appeal.
- With regard to the **preparation of the procurement procedure, the tendering process and the execution** thereof, we recommended that particular attention be paid to a number of points and issues, more specifically:
  - The publicity of the **procurement schedule** (definition of the subject-matter and need, choice of procedure, division into batches, cost structure and estimated length of the process, among others).

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*The publicity of the schedule is essential and plays a major role in the execution of Next Generation Funds, besides being mandatory.*

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- The **publicity** of tender announcements, execution and awards, the information contained therein and compliance with the deadlines established in the LCSP.

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*It would be a good idea to assess the merits of a legislative amendment including subcontracting as information that must be publicised.*

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- **The drafting of the specifications governing the procurement process** (classification and solvency appropriate to the subject-matter of the contract, the determination of abnormally low bids, eligibility conditions, measures to favour in-house procurement, insufficient or inadequate budgeting and conformity with market prices, award criteria and special execution conditions).
  - The **reasons for the decision to award** and the evaluation reports.
  - The **grounds for the exclusion** of bidders, especially in the event of bids with abnormal values.
  - The implementation of **specific measures to monitor payment to subcontracted companies** in legally stipulated contracts, as well as to ensure this obligation is met.
  - The reinforcement of the **grounds for contractual amendments**, doing so in a public and transparent manner.
- The public authorities are urged to make a decisive commitment to a **strategy of professionalisation in public procurement** designed to address the goals set by the European Commission, from a training and administrative career perspective.

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*The professionalisation of public procurement involves guaranteeing the existence of experienced, well-trained and motivated personnel.*

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The Independent Office for the Regulation and Monitoring of Procurement.