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Public Law Department

## THE 'TRANS LAW': A NEW BAN ON CONTRACTING AND AN INVOLUNTARY REPEAL

We were talking recently ([here](#), published in Spanish in El Pais newspaper) about how, Law 2/2023 of 20 February 2023, on the protection of persons reporting on regulatory and anti-corruption infringements, transposing the Whistleblower Directive, had incorporated into the list of causes determining the prohibition on contracting with the public sector, that of companies that had been sanctioned for one of the very serious infringements provided for therein, including the lack of an adequate whistleblowing channel.

Now, the path of incorporating as causes excluding from public sector tenders those who have been sanctioned for the behaviours that the legislator considers most reprehensible continues, so that what is known as the 'Trans Law' does likewise.

Indeed, this Law, which is technically Law 4/2023, of 28 February, for the genuine and effective equality of trans persons and guaranteeing LGTBI persons' rights, has added to the list of reasons for imposing a veto on companies to contract with the public sector those that: *"have been sanctioned for ... a serious or very serious infringement in terms of equal treatment and non-discrimination based on sexual orientation and identity, gender expression or sexual characteristics, when the prohibition is agreed in the terms provided for in Law for the genuine and effective equality of trans persons and guaranteeing LGTBI persons' rights."*

Without getting lost in the details, we will only say that the legislative technique used has been the usual one, that is, to incorporate an amendment to the Law on Public Sector Contracts [specifically in its art. 71.1(b)] via a final provision, in this case, provision seventeen.

It happens that, in so doing, the Trans Law, published on 1 March, has removed from the assessed list of sanctions that determine the prohibition on public sector contracting, the one that had just been provided for by Law 2/2023, published on 20 February.

Having consulted the Official State Gazette on the date of writing these lines, it can be verified that, at this time, the sanctions imposed on companies for not complying with the provisions regarding a whistleblowing channel, among other reasons, in view of the current literal wording of art. 71.1.(b) of the Law on Public Sector Contracts, do not give rise to a prohibition of contracting with the Public Sector.

We do not believe that the spirit of the legislator regarding the first of the laws above to see the light in the Official Gazette is so ephemeral. Rather, we believe that both laws followed parallel parliamentary procedures, and that it is likely that parliamentarians, lawyers of the Chambers, and other intervening advisers failed to

notice this undesired derogatory effect. Therefore, repairing it and "rescuing" the legal text that - it must be understood - is at the origin of the will of the legislator should be undertaken as soon as possible.