

COLECCIÓN
DERECHO RURAL

ADMINISTRATIVE RURAL PROOFING FOR TERRITORIES WITH DEMOGRAPHIC CHALLENGES

Autores:

**Marcos M. Fernando Pablo
Daniel Terrón Santos
José Luis Domínguez Álvarez
Nora Libertad Rodríguez Peña
Alicia Rodríguez Sánchez
Pilar Talavera Cordero**

Prólogo:

Fernando Carbajo Cascón



eBook en www.colex.es

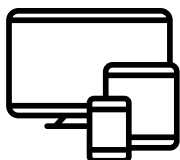




¡Gracias por confiar en Colex!

La obra que acaba de adquirir incluye de forma gratuita la versión electrónica. Acceda a nuestra página web para aprovechar todas las funcionalidades de las que dispone en nuestro lector.

Funcionalidades eBook



**Acceso desde
cualquier dispositivo**



**Idéntica visualización
a la edición de papel**



Navegación intuitiva



Tamaño del texto adaptable

Síguenos en:



**COLECCIÓN
DERECHO RURAL**

2

ADMINISTRATIVE RURAL PROOFING FOR TERRITORIES WITH DEMOGRAPHIC CHALLENGES

La presente obra, forma parte de los resultados del Proyecto de I+D+i
titulado «Agricultura climática: marco regulatorio para la transición»
(TED2021-129553B-I00), liderado por el
Prof. Dr. Marcos M. Fernando Pablo



COLECCIÓN DERECHO RURAL

Director:

JOSÉ LUIS DOMÍNGUEZ ÁLVAREZ
Profesor de Derecho Administrativo de la Universidad de Salamanca.

Subdirector:

MARCOS M. FERNANDO PABLO
Catedrático de Derecho Administrativo de la Universidad de Salamanca.

Consejo editorial:

MARÍA ROSARIO ALONSO IBÁÑEZ
Catedrática de Derecho Administrativo de la Universidad de Oviedo.

SANTIAGO A. BELLO PAREDES
Catedrático de Derecho Administrativo de la Universidad de Burgos.

ENRIQUE CABERO MORÁN
Presidente del Consejo Económico y Social de Castilla y León.

ELOÍSA CARBONELL PORRAS
Catedrática de Derecho Administrativo de la Universidad de Jaén.

JAVIER ESPARCIA PÉREZ
Catedrático de Análisis Geográfico Regional de la Universidad de Valencia.

ÁNGELA FIGUERUELO BURRIEZA
Catedrática de Derecho Constitucional de la Universidad de Salamanca.

FERNANDO GARCÍA-MORENO RODRÍGUEZ
Profesor Titular de Derecho Administrativo de la Universidad de Burgos.

LUIS ALFONSO HORTELANO MÍNGUEZ
Profesor Contratado Doctor del Área de Análisis Geográfico Regional de la Universidad de Salamanca.

JUANA LÓPEZ PAGÁN
Directora General de Políticas contra la Despoblación del Gobierno de España.

FERNANDO LÓPEZ RAMÓN
Catedrático de Derecho Administrativo de la Universidad de Zaragoza.

LUIS MÍGUEZ MACHO
Catedrático de Derecho Administrativo de la Universidad de Santiago de Compostela.

MERCEDES MOLINA IBÁÑEZ
Catedrática de Geografía Humana de la Universidad Complutense de Madrid.

GABRIEL MORENO GONZÁLEZ
Profesor Titular de Derecho Constitucional de la Universidad de Extremadura.

MARÍA PARDO ÁLVAREZ
Profesora Titular de Derecho Administrativo de la Universidad de Valladolid.

MARTA DEL POZO PÉREZ
Profesora Titular de Derecho Procesal de la Universidad de Salamanca.

RICARDO RIVERO ORTEGA
Catedrático de Derecho Administrativo de la Universidad de Salamanca.

NORA LIBERTAD RODRÍGUEZ PEÑA
Profesora de Derecho Financiero y Tributario de la Universidad de Salamanca.

AGUSTÍN SÁNCHEZ DE VEGA
Presidente del Consejo Consultivo de Castilla y León.

DIANA SANTIAGO IGLESIAS
Profesora Titular de Derecho Administrativo de la Universidad de Santiago de Compostela.

FRANCISCO JAVIER SANZ LARRUGA
Catedrático de Derecho Administrativo de la Universidad de A Coruña.

SUSANA DE LA SIERRA MORÓN
Profesora Titular de Derecho Administrativo de la Universidad de Castilla-La Mancha.

SILVIA SORIANO MORENO
Profesora de Derecho Constitucional en la Universidad de Extremadura.

PILAR TALAVERA CORDERO
Investigadora de Derecho Administrativo de la Universidad de Salamanca.

SUZANA TAVARES DA SILVA
Profesora de Derecho Público de la Universidade de Coímbra.

DANIEL TERRÓN SANTOS
Profesor Titular de Derecho Administrativo de la Universidad de Salamanca.

FRANCISCO VELASCO CABALLERO
Catedrático de Derecho Administrativo de la Universidad Autónoma de Madrid.

2

ADMINISTRATIVE RURAL PROOFING FOR TERRITORIES WITH DEMOGRAPHIC CHALLENGES

Autores:

**Marcos M. Fernando Pablo
Daniel Terrón Santos
José Luis Domínguez Álvarez
Nora Libertad Rodríguez Peña
Alicia Rodríguez Sánchez
Pilar Talavera Cordero**

Prólogo:

Fernando Carbajo Cascón

COLEX 2024

Copyright © 2024

Queda prohibida, salvo excepción prevista en la ley, cualquier forma de reproducción, distribución, comunicación pública y transformación de esta obra sin contar con autorización de los titulares de propiedad intelectual. La infracción de los derechos mencionados puede ser constitutiva de delito contra la propiedad intelectual (arts. 270 y sigs. del Código Penal). El Centro Español de Derechos Reprográficos (www.cedro.org) garantiza el respeto de los citados derechos.

Editorial Colex S.L. vela por la exactitud de los textos legales publicados. No obstante, advierte que la única normativa oficial se encuentra publicada en el BOE o Boletín Oficial correspondiente, siendo esta la única legalmente válida, y declinando cualquier responsabilidad por daños que puedan causarse debido a inexactitudes e incorrecciones en los mismos.

Editorial Colex S.L. habilitará a través de la web www.colex.es un servicio online para acceder a las eventuales correcciones de erratas de cualquier libro perteneciente a nuestra editorial.

© Marcos M. Fernando Pablo, © Daniel Terrón Santos, © José Luis Domínguez Álvarez, © Nora Libertad Rodríguez Peña, © Alicia Rodríguez Sánchez, © Pilar Talavera Cordero, © Fernando Carbajo Cascón

© Editorial Colex, S.L.
Calle Costa Rica, número 5, 3.º B (local comercial)
A Coruña, C.P. 15004
info@colex.es
www.colex.es

SUMMARY

PROLOGUE

Fernando Carbajo Cascón

PAGE. 13

CHAPTER I

LEGISLATIVE AND INSTITUTIONAL REFORMS TO ADDRESS THE DEMOGRAPHIC AND TERRITORIAL CHALLENGE: A GLOBAL PERSPECTIVE

José Luis Domínguez Álvarez

PAGE. 17

I.	THE DEMOGRAPHIC AND TERRITORIAL CHALLENGE: TRACES OF A PUBLIC POLICY UNDER CONSTRUCTION AND AN INCIPIENT OBJECT OF NORMATIVE REGULATION	18
1.	CLARIFYING THE CONTOURS OF A GENUINE PUBLIC POLICY ON THE DEMOGRAPHIC AND TERRITORIAL CHALLENGE	19
2.	TOWARDS THE DESIGN OF LEGISLATION IN A RURAL KEY: THE BIG ELEPHANT IN THE ROOM	27
II.	RETHINKING LAWMAKING AND BETTER REGULATION FOR LEGAL CERTAINTY: THE IMPORTANCE OF REGULATORY IMPACT ANALYSIS	35
1.	THE FORERUNNER COMMITMENT OF THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT	37
2.	THE EUROPEAN UNION'S DECISIVE ACTION IN THE FIELD OF "BETTER REGULATION"	44
3.	THE TRAUMATIC EVOLUTION OF THE PHENOMENON OF REGULATORY QUALITY IN THE SPANISH LEGAL SYSTEM	48

III. ADVANTAGES AND OPPORTUNITIES OF INCLUDING THE DEMOGRAPHIC AND TERRITORIAL DIMENSION IN THE REGULATORY IMPACT ASSESSMENT REPORT	57
IV. SOME REFLECTIONS ON THE RECENT EMERGENCE OF THE RURAL GUARANTEE SCHEME.....	58
V. CONCLUSIONS.....	60
VI. BIBLIOGRAPHY	61

CHAPTER II

GENERAL LAWS AND TERRITORIAL GOVERNMENT IN RURAL AREAS: THE KINGDOM OF SPAIN

Marcos M. Fernando Pablo

PAGE. 69

I. A LONG-TERM VISION FOR RURAL AREAS	69
II. PRICE AND VALUE: TERRITORY IN SPAIN	71
III. THE INEQUALITY HIDDEN IN THE GENERALITY OF THE LAW	75
1. GENERIC PROMOTION AND RESTRICTION	75
2. THE EXAMPLE OF POSITIVE TAX DISCRIMINATION AND OTHER REFERENCES.....	78
IV. TERRITORIAL GOVERNANCE FOR RURAL AREAS.....	80
1. CONSENSUS.....	80
2. THE SUPPORT MAP, PRE-DETERMINED "C" AREAS AND OPERATING AID AS AN INSTRUMENT FOR RURAL GOVERNANCE.....	81
3. EUROPEAN FUNDS AND THEIR PROGRAMMING. FUNCTIONAL AREAS AND PILOT PROJECTS: IS THERE ANYTHING NEW OUT THERE?.....	87
3.1. An initial assessment: the loss of the territorial perspective	87
3.2. Cohesion. The ERDF multi-regional programme. Integrated Territorial Strategies, functional areas and functional urban areas ..	88
3.3. EAFRD and LEADER rural development: About the ITIS	91
3.3.1. Investments	91
3.3.2. Cooperation. LEADER and Integrated Territorial Investments (ITIs)	94

V. CONCLUSIONS.....	97
VI. BIBLIOGRAPHY	98

CHAPTER III

DEMOGRAPHIC CHALLENGE AND RENEWABLE ENERGIES: IS SPAIN AN EXAMPLE FOR EUROPE?

Daniel Terrón Santos

PAGE 101

I. INTRODUCTION.....	101
1. SUSTAINABLE RURAL DEVELOPMENT.....	101
2. REGULATION OF RENEWABLE ENERGY APPLICABLE TO RURAL AREAS ..	104
II. REGULATION OF RENEWABLE ENERGIES AND THE IMPACT OF THEIR PROMOTION IN RURAL AREAS	107
1. REGULATION AND POSSIBLE WAYS OF STREAMLINING	109
1.1. The framework of Royal Decree-Law 6/2022 of 29 March adopting urgent measures in the framework of the national plan of response to the economic and social consequences of the war in Ukraine ...	110
1.2. The zoning issue	116
1.3. Some data	118
2. IMPACT OF RENEWABLE ENERGIES IN RURAL AREAS.....	120
2.1. Environmental impacts of renewable energy sources	121
2.2. Economic impact of renewable energies	122
2.3. Is renewable energy sustainable?	124
3. IMPROVEMENTS IN RENEWABLE ENERGY LEGISLATION TO FIGHT DEPOPULATION.....	125
III. SOCIAL LICENCE TO OPERATE	127
1. WHAT IS THE SOCIAL LICENCE TO OPERATE?.....	128
1.1. Obtaining and granting a social licence	130
2. ENERGY SAVING PLAN AND 4TH RENEWABLE AUCTION	134
IV. CONCLUSIONS.....	135
V. BIBLIOGRAPHY	137

CHAPTER IV

A RURAL PROOFING MECHANISM TO ENHANCE SPECIAL FINANCIAL AND TAXATION POLICIES IN AREAS WITH DEMOGRAPHIC SINGULARITIES: THE CASE OF CASTILE AND LEON

Nora Libertad Rodríguez Peña

PAGE 141

I. INTRODUCTION: TERRITORIAL SINGULARITIES AS A DETERMINING FACTOR IN THE ADOPTION OF DIFFERENTIATED FINANCIAL AND TAXATION POLICIES	142
II. THE DEMOGRAPHIC AND TERRITORIAL CHALLENGE IN SPAIN AS A DESTABILISING FACTOR OF THE WELFARE STATE: SPECIAL REFERENCE TO THE PARTICULARITIES OF CASTILE AND LEON.....	144
III. APPLICATION OF RURAL PROOFING TO CASTILE AND LEON TAX LEGISLATION AND TO SPANISH REGIONAL FINANCING	149
1. TAX BENEFITS IN PERSONAL INCOME TAX TO ENCOURAGE THE SETTLEMENT OF YOUNG PEOPLE IN RURAL AREAS	154
1.1. Deductions in the regional tranche aimed at facilitating access to permanent housing for young people in rural areas of Castile-Leon...	157
1.2. Deductions in the regional tax bracket aimed at promoting the birth rate in rural areas and facilitating the reconciliation of work and family life in young families	160
1.3. Income tax deferral of aid for the incorporation of young farmers and/or stockbreeders	161
2. TAX BENEFITS IN ISyD AND THEIR IMPACT ON AGRICULTURAL FARMS ..	163
2.1. Inheritance tax.....	164
2.2. Gift Tax	165
3. TAX BENEFITS IN THE ITPyAJD IN KEY LEGAL BUSINESSES IN RURAL ENVIRONMENTS	165
3.1. Transfer tax	165
3.2. Stamp Duty (Impuesto sobre Actos Jurídicos Documentados) ...	166
4. THE PROBLEM OF REGIONAL FUNDING: THE SCANT OR NON-EXISTENT ASSESSMENT OF THE DEMOGRAPHIC CHALLENGE IN THE DISTRIBUTION OF PUBLIC FUNDS	167
IV. FINAL REFLECTIONS.....	169
V. BIBLIOGRAPHY.....	171

CHAPTER V

**SECURITY MANAGEMENT IN RURAL AREAS WITH DEMOGRAPHIC
CHALLENGES: ANALYSIS OF PUBLIC CRIME PREVENTION POLICIES
FROM THE PERSPECTIVE OF FORMAL SOCIAL CONTROL**

Alicia Rodríguez Sánchez

PAGE 175

I. INTRODUCTION	175
II. SPECIAL SECURITY PROTECTION AND GUARANTEE OF PREVENTION.	176
1. DETERMINATIONS OF THE SECURITY CONCEPT.	177
2. WHERE DOES SECURITY FOR SOCIETY COME FROM? SECURITY AS A RIGHT.	178
III. PREVENTION AS A POLICY IN FAVOUR OF SECURITY THROUGH FORMAL SOCIAL CONTROL	178
IV. RURAL SECURITY ON THE PUBLIC AUTHORITIES' ROADMAP.	180
V. FORMAL SOCIAL CONTROL OF THE POLICE IN RURAL AREAS AS A GUARANTOR OF SECURITY	185
1. ARE SPARSELY POPULATED AREAS SAFE? CURRENT SECURITY MANAGEMENT	186
2. EXAMPLES AND GOOD PRACTICES TO CONSIDER.	188
VI. CONCLUDING REFLECTIONS. THE LACK OF DATA AN INSURMOUNTABLE GAP FOR EFFECTIVE CONCLUSIONS	188
VII. BIBLIOGRAPHY	189
VIII. ANNEX.	192

CHAPTER VI

AGRI-FOOD SECTOR AND RURAL ENVIRONMENT

Pilar Talavera Cordero

PAGE 193

I. INTRODUCTION	193
II. THE AGRI-FOOD SECTOR AND THE EU.	195
1. EU AGRI-FOOD AND ENVIRONMENTAL POLICIES.	196
1.1. Biodiversity Strategy	196
1.2. The "Farm to Fork" Strategy.	197

SUMMARY

III. THE COMMON AGRICULTURAL POLICY (CAP)	199
1. PILLAR I	200
2. PILLAR II: Special focus on the “LEADER” Program.	202
IV. FOOD CHAIN LAW	204
1. THE SITUATION OF PRIMARY PRODUCERS IN THE FOOD CHAIN	204
2. DIRECTIVE (EU) 2019/633 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, DATED 17 APRIL 2019, ON UNFAIR TRADING PRACTICES IN BUSINESS TO-BUSINESS RELATIONS IN THE AGRICULTURAL AND FOOD SUPPLY CHAIN	205
3. SPANISH FOOD CHAIN LAW.	207
3.1. General Provisions.	208
3.2. The Food Contract	209
3.3. The price	210
V. SHORT SUPPLY CHAINS	211
1. EUROPEAN REGULATIONS	212
2. SPANISH LEGISLATION	212
3. REGIONAL LEGISLATION.	213
3.1. Sales Modalities	214
3.2. Types and Quantities of Products.	214
3.3. Administrative and Health Requirements.	214
3.4. Promotion Measures.	214
VI. CONCLUSION	215
VII. BIBLIOGRAPHY	216

PROLOGUE

Is with real pleasure and honor that I present this work written in co-authorship by several co-workers of the Faculty of Law of Salamanca University that, for several years and with a marked and laudable interdisciplinary character, they have been studying in depth the problem of the so-called "rurality", proposing from very different angles and with a clear vocation of offer future practical legal solutions adapted to the reality of the environment.

It is common to notice how in the political and media scene there is much talk about the problem of rurality and demographic challenge but little is proposed, beyond the classic solution of the public subsidy, that is clearly necessary but insufficient from a medium- and long-term perspective.

It is fair to treat equal to the equal and unequal to the unequal, so that a favorable unequal treatment made by the legislator for municipalities, population, entrepreneurs, professionals and consumers in rural areas, finds a legitimate justification in objectives of general interest: the efficient use of rural areas to promote demographic recovery and repopulate, with a long-term vision that puts value on the territory and its inhabitants.

The Professor of Administrative Law, Phd. Prof. Marcos M. Fernando Pablo, is responsible for the initial and introductory chapter of this book with an examination of the general laws and government of the territory of the rural areas in the Kingdom of Spain, where it aims to provide a long-term vision for rural areas in which the value of the territory is enhanced through positive tax and public aid discrimination, particularly in the programming and distribution of European rural development funds, committed to territorial cohesion and cooperation.

Phd. Prof. José Luis Domínguez Álvarez, Junior Phd. Assistant Professor of Administrative Law but already recognized specialist in the field of rurality, analyses in the second chapter legislative and institutional reforms to address the demographic and territorial challenge from a global perspective, making proposals for the design of new legislation with a rural focus that

reflects realistic and effective public policies for regulatory improvement in addressing the demographic and territorial challenge, including, among other proposals, this dual dimension in the policy impact analysis report and making some reflections on the so-called Rural Guarantee Mechanism.

The question of the demographic challenge and renewable energies is analyzed in the third chapter by Phd. Prof. Daniel Terrón Santos, Professor of Administrative Law with a long and solid experience in this area. Professor Terrón stresses in the need for sustainable rural development based on a specific regulation of renewable energies for rural areas, from the perspective of the Spanish and European Union. This is a fundamental topic for rural recovery but also for the challenge of energy transition, addressing issues as complex and of obvious practical significance as “zoning” in the installation of clean energy production equipment, its environmental and economic impact on rural areas and its sustainability, proposing improvements in renewable energy legislation to combat depopulation, including the so-called “social licence”, which could serve to involve rural communities more in licensing management for the installation of solar and wind power plants.

In chapter four, Phd. Prof. of Tax and Financial law, Nora Libertad Rodríguez Peña, studies in detail the possibilities of implementing a Rural Guarantee Mechanism (“rural proofing”) to promote financial and tax policies in areas with demographic singularities, analysing in particular the case of Castile and León. It examines territorial particularities as a determining factor in the adoption of differentiated national and regional financial and tax policies that contribute to alleviating the welfare deficit in rural areas; tax benefits to encourage the settlement of young people in rural areas and the conservation and development of farms, among other problems.

The management of security in rural territories with demographic challenges, with special emphasis on public policies of crime prevention from the formal social control, is analyzed in the fifth chapter by Phd. Prof. Alicia Rodríguez Sánchez. Based on a prior reflection of the concept or notion of security as a fundamental right for society, the management of security in sparsely populated areas and its limited presence on the agenda of public authorities is analyzed. A question that has been little explored but of great interest and practical dimension, since the abandonment of preventive security in sparsely populated areas can contribute negatively to the settlement of young people and to the attraction of new settlers.

In the sixth and final chapter of the book, Phd Researcher Pilar Talavera Cordero addresses another basic issue of extraordinary importance: the interaction between the rural environment and the agri-food sector. Nobody is unaware of the intimate link between the agri-food production sector and the rural environment, the primary sector being the main, and sometimes only, source of sustenance in many rural areas. The care of the agricultural sector is basic for the whole population and must be in close relationship

with the care of the environment and the rural communities that support it. After reviewing agri-food and environmental policies in the European Union and, in particular, strategies to promote biodiversity and organic products through the already famous slogan "From farm to table", the study focus on the Common Agricultural Policy, with particular attention to the LEADER Programme, and Law 12/2013 of August 2nd, on measures to improve the functioning of the food chain (amended by Law 16/2021 of December 14th for the incorporation of the important Directive (EU) 2019/633 of the European Parliament and of the Council of April 17th 2019, on unfair commercial practices in business relations in the agricultural and food supply chain). This regulation is extremely important to combat the imbalances in the food chain, which have been playing against rural communities for decades and has atomized an important productive sector, putting at risk the livelihood of many small farmers and, in this way, the food supply of our population.

* * *

All this work, which is not small, is the fruit of the profound research and dissemination work carried out by a committed group of professors in the Faculty of Law of Salamanca University which I currently have the honour of leading from my position as Dean.

Salamanca University has been a centre of study, reflection, promotion and dissemination of knowledge for more than eight centuries, and has been carrying out its teaching, research and transfer function with particular intensity in recent years, strengthening its national and international reference position. University must always be attached to the problems of society and market from a triple perspective: scientific, technological and humanist.

In Law Schools, researchers spend their time not only in teaching, but also -and a lot- in studying the apparent and underlying reality to propose and offer objective and rational solutions to those who have the task of making decisions, from the legislative chambers, from the centers of government or from the courts of justice. Law is indeed a comprehensive science of social, economic and technological reality, oriented to the solution of practical problems, which requires good jurists willing to read and study tirelessly and listen carefully; passing on the foundations of knowledge to his disciples so that, together, generation after generation, professors can take small steps in the construction of a better and more stable society, capable of adapting to the constant political, social and economic transformations.

The Faculty of Law of Salamanca University is a good example of what I say, currently immersed in a process of generational renewal twisted around committed and responsible research with society and in which, increasingly, collaboration between different research groups is appreciated, taking advantage of their synergies to raise much needed funds to maintain a silent and sometimes unappreciated work, but essential in the process of

construction and interpretation of norms, which are, at the end of the day, the foundations of social and economic structures and processes.

I have been saying publicly for years that the role of Dean, in addition to ordering and governing the day-to-day teaching activity, as well as the maintenance and proper functioning of the facilities, encourages and promotes the research of all colleagues, facilitating academic and scientific meetings with researchers from other universities and collaboration with social and economic interest groups.

This work is a magnificent example of University research committed to society that reflects the transversality of Law to address problems from an increasingly necessary interdisciplinary perspective. I would therefore like to thank the co-authors of this work for asking me to write this short prologue, already in the final stage of my term at the head of the Faculty of Law.

In Salamanca, May 14th, 2024.

Fernando Carbajo Cascón

Phd. Professor of Commercial Law
Dean of Faculty of Law
Salamanca University

CHAPTER I

LEGISLATIVE AND INSTITUTIONAL REFORMS TO ADDRESS THE DEMOGRAPHIC AND TERRITORIAL CHALLENGE: A GLOBAL PERSPECTIVE¹

JOSÉ LUIS DOMÍNGUEZ ÁLVAREZ

*Professor of Administrative Law
University of Salamanca*

SUMMARY: I. THE DEMOGRAPHIC AND TERRITORIAL CHALLENGE: TRACES OF A PUBLIC POLICY UNDER CONSTRUCTION AND AN INCIPIENT OBJECT OF NORMATIVE REGULATION. 1. *Clarifying the contours of a genuine public policy of demographic and territorial challenge.* 2. *Towards the design of legislation in a rural key: the big elephant in the room.* II. RETHINKING LEGISLATIVE TECHNIQUE AND BETTER REGULATION FOR LEGAL CERTAINTY: THE IMPORTANCE OF REGULATORY IMPACT ANALYSIS. 1. *The forerunner commitment of the Organisation for Economic Cooperation and Development.* 2. *The decisive action of the European Union in the field of "better regulation."* 3. *The traumatic evolution of the phenomenon of regulatory quality in the Spanish legal system.* III. ADVANTAGES AND OPPORTUNITIES OF INCLUDING THE DEMOGRAPHIC AND TERRITORIAL DIMENSION IN THE REGULATORY IMPACT ASSESSMENT REPORT. IV. SOME REFLECTIONS ON THE RECENT IRRUPTION OF THE RURAL GUARANTEE MECHANISM. IV. CONCLUSIONS. VI. BIBLIOGRAPHY.

¹ This work is part of the R&D&I project "Depopulation in Spain: from demographic challenge to territorial challenge" (PID2020-114554RB-I00), directed by Prof. Dr. Javier Esparcia Pérez and the R&D&I project "Climate agriculture: regulatory framework for the transition" (TED2021-129553B-I00), directed by Prof. Dr. Marcos M. Fernando Pablo.

I. THE DEMOGRAPHIC AND TERRITORIAL CHALLENGE: TRACES OF A PUBLIC POLICY UNDER CONSTRUCTION AND AN INCIPIENT OBJECT OF NORMATIVE REGULATION

Seven years is certainly not a short time to make an assessment of the different milestones responsible for shaping public policy on the demographic challenge and territorial cohesion. Indeed, since the publication in the Official State Gazette of Royal Decree 40/2017, of 27 January, which created the Government Commissioner for the Demographic Challenge² and regulates its operating regime, which, despite experiencing an initial phase of paralysis and institutional inaction, later became a real wake-up call to highlight the territorial imbalances and the neglect to which the public authorities had subjected rural communities³, there have been a number of achievements

-
- 2 Its purpose was to proceed with the preparation and development of a national strategy to face the demographic challenge and those tasks that contribute to responding to the problems of progressive population ageing, territorial depopulation and the effects of the floating population, as a result of the Conference of Presidents held on 17 January 2017, a meeting at which it was expressly agreed to promote specific measures to address demographic challenges, entrusting the Government of the Nation, with the collaboration of the different Public Administrations, to draw up a national strategy to face the demographic challenge of a global and transversal nature, which designs a joint and forward-looking response to alleviate the problems of the progressive ageing of the population, territorial depopulation and the effects of the floating population.
 - 3 As Bello (2023: 132) recalls, "in 2015, the Senate approved the Study Committee for the adoption of measures in relation to rural depopulation in Spain, constituted within the Local Entities Commission (543/000007)". Among the recommendations adopted with the unanimous vote of all the parliamentary groups that took part in this report were: (i) to delimit and differentiate sparsely populated areas or territories using as an identifying criterion those municipalities that have lost population since 1950 and have a density of less than 10 inhabitants per km²; (ii) that the various state, regional, provincial and local administrations establish the necessary political actions to guarantee the permanence of the population in the rural world and especially of young women in these municipalities as the backbone of demographic development in rural areas, seeking family, work and social conciliation; (iii) to obtain for these municipalities the greatest possible distribution of economic funds from both the State Administration and the European Union, using positive discriminatory parameters that allow for an increase in this aid in relation to those municipalities with a larger population; (iv) adopt as many provisions as are necessary to achieve greater coordination between all the public administrations involved in the rural world in order to join forces, access the various European fund programmes (EU Plan 2014-2020), their application with the LEADER methodology and establish measures involving positive legal discrimination to generate employment and economic activity in the rural world; (v) public administrations should undertake to provide the inhabitants of these villages with the basic services that guarantee their permanence (health, education, help for the elderly, food) so that their inhabitants can deal with the problems that arise in the depopulated areas where they live; (vi) ask the local, provincial, regional, national and European administrations to adopt fiscal, social and financial measures, establishing

and legal-administrative advances that bring us closer to a fairer, more egalitarian and cohesive model of socio-territorial development⁴.

1. CLARIFYING THE CONTOURS OF A GENUINE PUBLIC POLICY ON THE DEMOGRAPHIC AND TERRITORIAL CHALLENGE

Certainly, in recent times the different public administrations have made countless efforts to promote different planning instruments of varying rank and scope, whether in the form of agendas, guidelines, strategies, reports or plans, with the aim of articulating an orchestrated response to tackle the demographic and territorial challenge in a clear attempt to stem the population drain and the progressive emptying of large regions of the peninsular geography. At the same time, although to a lesser extent, various territories have launched the enactment of autonomous laws of a sectoral nature proclaimed for the same purpose (DOMÍNGUEZ, 2020: 93-119).

Indeed, after a long and tortuous journey, the demographic and territorial challenge has finally permeated the roadmap of public authorities to the point of becoming an essential element of administrative action with the aim of alleviating the traditional situation of institutional neglect to which, until not so long ago, with honourable exceptions, rural communities had been subjected.

the necessary economic incentives to support entrepreneurs and companies that wish to settle permanently in these rural areas, as well as the people, professionals, civil servants and companies that are based in these rural areas and thus prevent their depopulation; (vii) improve communications between territories to facilitate transport and create a transversal and structured communications system within rural territories; (viii) ensure new information technologies in rural centres with full access to the Internet and complete mobile phone coverage as a means of consolidating the population; (ix) maintaining employment and productivity by promoting the population's own natural resources, which will make it possible to activate rural tourism, boosting the hotel and catering sector and rural houses, as well as supporting entrepreneurship in livestock (encouraging the incorporation of new livestock farmers), agriculture, forestry, the environment, agri-food in these rural areas and the rehabilitation of natural spaces as a generator of resources; and (x) to seek greater coordination of all the administrations and institutions involved in the fight against rural depopulation, respecting their areas of competence, supporting and prioritising public investment that generates employment in the rural world.

- 4 In the words of the Spanish Federation of Municipalities and Provinces, there are "four figures that can explain the demographic challenges that must be faced in a multidimensional and multisecular way: low density, ageing, falling birth rates and continued population loss. The data only underline the urgency of implementing decisive State policies that move from words to deeds, with a rigorous approach of practical measures and incorporating the fight against depopulation as a principle to be taken into account in all plans and lines of action of public administrations" (SPANISH FEDERATION OF MUNICIPALITIES AND PROVINCES, 2017: 5).

This has been possible, in large part, due to the energetic irruption of the demographic and territorial component within the General State Administration⁵, a fact that has led to a substantial change in the degree of sensitivity and in the way of perceiving the phenomenon of rurality, turning rural communities into the epicentre of coordinated and ordered institutional action without precedent⁶. Thus, on 29 March 2019, the Council of Ministers approved an important Agreement on the General Guidelines of the National Strategy for the Demographic Challenge, drawn up by the Government Commissioner for the Demographic Challenge, attached to the Ministry of Territorial Policy and Public Function.

These guidelines propose a Strategy of a global and cross-cutting nature, from a multidisciplinary perspective and with the participation of all departments through the work of an inter-ministerial group, incorporating the demographic perspective in the analysis of the different sectoral actions. The guidelines focus the Strategy on the three demographic issues agreed at the IV Conference of Presidents⁷: (i) depopulation; (ii) ageing; and (iii) the effects of the floating population. It also includes a diagnosis of the main population variables in Spain, previously presented to the Autonomous Communities.

In this way, all the ministries incorporate more than 80 measures into the Strategy Guidelines, referring to young people, women, attention to the rural population, entrepreneurs, tourism, implementation of the Administration in the territory or economic activity, which are grouped around seven cross-cutting objectives: (a) guarantee full territorial connectivity, with adequate

5 This radical transformation in the attention paid to the interests of rural communities by public authorities, and especially by public administrations, has been completed with the recent appointment by the Council of Ministers of Mr. Francesc Xavier Boya Alós, at the proposal of the Ministry for Ecological Transition and the Demographic Challenge (MITECO), as Secretary General for the Demographic Challenge.

6 Despite the existence of praiseworthy precedents, such as the adoption of Law 25/1982 of 30 June 1982 on mountain agriculture or the celebrated and current Law 45/2007 of 13 December 2007 on the sustainable development of the rural environment, to date the General State Administration had not proceeded to delimit the contours of a demographic and territorial challenge policy of its own.

7 In this regard, it should be recalled that the President of the Government and the Presidents of the Autonomous Communities and Cities with a Statute of Autonomy agreed at the VI Conference of Presidents, held on 17 January 2017, to address the demographic changes affecting Spain, and specifically agreed on the following issues: (i) to promote specific measures to address the demographic challenges; (ii) to draw up and develop, on the part of the Spanish Government, and with the collaboration of the Autonomous Communities, the Cities with Statute of Autonomy and the Local Entities, a National Strategy to address the Demographic Challenge, of a global and cross-cutting nature, which designs a joint and forward-looking response to alleviate the problems of progressive population ageing, territorial depopulation and the effects of the floating population; and (iii) to defend before the European Union authorities the need for the Union's policies to take into account and respond to demographic challenges, which in most aspects are common to all Member States, among other important issues.

broadband internet and mobile telephony coverage throughout the territory, in accordance with the European Digital Agenda 2020; (b) ensure appropriate provision of basic services to the entire population in conditions of equity, adapted to the characteristics of each territory; (c) incorporate the demographic impact and perspective in the drafting of laws, plans and investment programmes, favouring territorial redistribution in favour of greater social cohesion; (d) make progress in regulatory and administrative simplification for small municipalities, in order to facilitate the management of local councils; (e) eliminate stereotypes and enhance the image and reputation of the territories most affected by demographic risks; (f) improve mechanisms for greater public-private collaboration, strengthening the incorporation of demographic factors in the social responsibility of the private sector, to turn all territories, without exclusions, into scenarios of opportunities; and (g) align the lines of action and the aims of the Strategy with the fulfilment of the Sustainable Development Goals and the 2030 Agenda.

With regard to the priority lines of action (DOMÍNGUEZ, 2021: 70-73), the Guidelines contemplate, firstly, a set of actions aimed at tackling the depopulation of rural areas, including guaranteeing the functionality of territories affected by depopulation and low density; improving competitiveness and facilitating the development of new economic activities and the promotion of entrepreneurship; as well as favouring the settlement and fixation of population in rural areas (MINISTRY OF TERRITORIAL POLICY AND PUBLIC FUNCTION, 2019: 38-41).

Secondly, the General Guidelines of the National Strategy for the Demographic Challenge outline a series of priority initiatives aimed at responding to the demographic challenge and tackling the imbalances in the population pyramid⁸. In this regard, it is committed to: (i) strengthening the coordination of actions relating to the elderly, active ageing and care for dependency throughout the territory; (ii) supporting the promotion of socio-economic development projects for young people that guarantee intergenerational change; (iii) facilitating the development of projects that guarantee women's effective freedom of residence in the territory; (iv) guarantee conditions that favour the raising of daughters and sons, and that facilitate bringing the birth rate into line with the European Union average; (v) ensure equal opportunities and non-discrimination of children by area of residence; (vi) work, in coordination with the European Union, to channel regular and orderly migration, and its roots throughout the territory; (vii) as well as to facilitate the return of Spaniards living abroad who wish to return to Spain.

8 A general diagnosis is not enough when attempting to tackle a problem of such a historical dimension, and it is therefore necessary to delimit the intensity of the phenomenon in the different provinces and territories affected, in order to better gauge their current position and adjust the type of policies to be implemented (BANDRÉS and AZÓN, 2021).

With all this, the Guidelines have made it possible to tackle the different dimensions of the demographic and territorial challenge, laying the foundations for a genuine State Policy in this area, by including the rural question in a cross-cutting manner in government action, promoting the commitment and coordinated action of all public administrations and strengthening public-private collaboration. All of this with the firm intention of designing innovative solutions aimed at advancing the structural transformation of the country, guaranteeing equal opportunities and social and territorial cohesion for all people, regardless of their place of residence (DOMÍNGUEZ, 2022: 115).

The Recovery Plan for Europe⁹ approved by the European Institutions to help repair the economic and social damage caused by the COVID-19 pandemic is the largest stimulus package ever financed through the EU budget at 1.8 billion euros¹⁰. It also represents an unprecedented opportunity to revitalise sparsely populated rural areas.

As we all know, in order to implement and plan the significant volume of investment resulting from this milestone in the process of European integration, on 7 October 2020 the Spanish Government presented the “Spain Can” Recovery, Transformation and Resilience Plan¹¹ (hereinafter PNRR), which is based on four priority axes, such as ecological transition¹², digital transformation, the promotion of gender equality and the promotion of social and territorial cohesion¹³. To this end, the Plan contains 212 investments

9 The Next Generation EU instrument is further divided into two main mechanisms: the European Recovery and Resilience Mechanism, which, through loans and grants, aims to support reforms and investments planned by Member States in their recovery and resilience plans, and the Recovery Assistance for Europe's Cohesion and Territories (REACT-EU) which extends the measures already put in place in response to SARS-CoV-2 through the Operational Programmes of the European Regional Development Fund (ERDF); the European Social Fund (ESF), the Fund for European Aid to the Most Deprived Persons (FEAD).

10 The additional items foreseen in the long-term budget, the European Union's Multiannual Financial Framework 2021-2027, together with the temporary Next Generation EU instrument of EUR 750 billion, will help to rebuild a post-COVID-19 Europe, enabling a steady progress towards a greener, more digital and resilient Europe.

11 On 16 June 2021, the European Commission staged the approval of the Recovery, Transformation and Resilience Plan presented by Spain, which represents a total amount of 69.5 billion euros in direct transfers, which can be extended to more than 140,000 in credits, if necessary, until 2026.

12 In this regard, it should be noted that the “Spain Can” Recovery, Transformation and Resilience Plan is not only inspired by and based on the United Nations 2030 Agenda for Sustainable Development, but also includes among its guidelines a specific section under the nomenclature “Green Spain”, with the aim of mitigating the enormous social and economic costs, both for domestic economies and for companies and public budgets (health and geostrategic risks) arising from the environmental crisis associated with climate change and the loss of biodiversity.

13 These axes were specified in several objectives such as: digitalisation of more than

and reforms divided into ten major “lever or tractor” policies¹⁴ of structural reform, aligned with the general priorities of the NGEU, with the aim of having a direct impact on those productive sectors with the greatest capacity to transform the Spanish economic and social fabric.

The first of these ten major driving policies is the promotion of territorial structuring and cohesion, under the label *“Urban and rural agenda, fight against depopulation and development of agriculture”*¹⁵, which incorporates a set of specific measures for rural areas with major demographic challenges, with the aim of promoting social and territorial innovation and facilitating the development of new professional projects, population fixation, attracting talent, the provision of services, as well as the sustainable use of endogenous resources.

In order to achieve these ambitious objectives, the PNRTTR establishes three distinct components that will drive the investments to be implemented in the coming years, such as:

- a) *Shock plan for sustainable, safe and connected mobility in urban and metropolitan environments.* The main objective of this component is to promote the decarbonisation of urban mobility, the improvement of air quality and quality of life in cities. To this end, the deployment of a shock plan is envisaged with measures aimed at the very fabric of the city and its infrastructures, as well as the promotion and optimisation of urban and metropolitan transport, without forgetting the promotion of the electrification of mobility and the improvement of air quality.
- b) *Housing Rehabilitation and Urban Regeneration Plan.* The main objectives of this component are to promote the rehabilitation of the building stock in Spain¹⁶, *in line with the European Renovation*

one million SMEs, training of more than 2.6 million people in digital skills, extension of broadband to 100 % of the population, effective deployment of 5G, promotion of 165 sustainable tourist destinations, rehabilitation of more than one million homes, reaching a fleet of 250,000 electric vehicles, deployment of more than 100,000 recharging points and completion of the Atlantic and Mediterranean rail corridors.

- 14 These ten policy levers are: (i) urban and rural agenda and fight against depopulation and development of agriculture; (ii) resilient infrastructures and ecosystems; (iii) just and inclusive energy transition; (iv) an Administration for the 21st century; (v) modernisation and digitisation of our business ecosystem; (vi) science and innovation pact and strengthening the National Health System; (vii) education and knowledge, lifelong learning and skills development; (viii) new care economy and employment policies; (ix) boosting the culture and sports industry; and (x) modernising the tax system for inclusive and sustainable growth.
- 15 14,407 million, or 20.7 per cent of the funds managed through the Recovery, Transformation and Resilience Plan “Spain Can” (PRESIDENCY OF THE GOVERNMENT, 2020a: 118).
- 16 As a specific objective, it seeks to achieve significantly higher energy refurbishment rates than the current ones, which will allow to bring forward the fulfilment of the refurbishment objectives set out in the National Integrated Energy and Climate Plan (PNIEC) and in the

*Wave*¹⁷, as well as to increase the stock of social rental housing in energy-efficient buildings, contributing to the activation of this sector and the generation of employment and activity in the short term. To this end, the Spanish Urban Agenda will be implemented, boosting social rental housing and promoting urban rehabilitation and regeneration activity as a key element in the reactivation of the construction and real estate sector, which will enable progress to be made in meeting European and national commitments in terms of energy and climate, and digitisation¹⁸.

- c) Environmental and digital transformation of the agri-food and fisheries system. Aware that the agri-food¹⁹ and fisheries sectors play a fundamental role in the efficient management of natural resources, in line with and as a complement to the new Common Agricultural Policy 2023-2027 (CAP), the Plan envisages a set of reforms to improve the management of irrigation and livestock farming and the revaluation of agricultural land, promoting digitalisation²⁰ and green value chains throughout the production, distribution, consumption and reuse cycle. Likewise, in line with the new European fisheries policy, the development of the blue economy and reforms aimed at the sustainable exploitation of fishing grounds, the protection of biodiversity and the wealth of marine areas are also envisaged.

Long-term Strategy for Energy Refurbishment in the Building Sector in Spain (ERESEE).

- 17 In 2020 the European Commission published a new strategy to boost renovation called “*A Renovation Wave for Europe - Greening our buildings, creating jobs, improving lives*”. This strategy aims to double annual energy renovation rates over the next 10 years. In addition to reducing emissions, these renovations will improve people’s quality of life and help create a multitude of additional green jobs in the construction sector.
- 18 In addition, a package specifically aimed at actions in municipalities and towns of less than 5,000 inhabitants is included, contributing to tackling the Demographic Challenge through urban and rural regeneration.
- 19 To this end, the Ministry of Agriculture, Fisheries and Food has recently launched the II Action Plan of the Digitalisation Strategy for the agri-food sector and the rural environment (2021-2023), through which 21 actions are being implemented with an amount of 64 million euros, aimed primarily at reducing the digital divide, the opening up and use of data and support for the agri-food business sector, especially SMEs (MINISTRY OF AGRICULTURE, FISHERIES AND FOOD, 2021: 20).
- 20 To this end, the General State Administration plans to promote a driving project in the agri-food sector that will include, among other actions, production with a focus on production and logistics efficiency, improved customer relations and the promotion of a Transforming Industry 4.0. Likewise, a commitment will be made to improving traceability, food safety and quality and consumer information, as well as the measurement and control of environmental impacts through the use of technology, data interoperability, and the promotion of entrepreneurship in the territory (PRESIDENCY OF THE GOVERNMENT, 2020b: 59).

However, it should be noted that, given the importance of the social and territorial structuring of the State in the new public policy programming cycle²¹, investments aimed at revitalising rurality are not limited solely to the components mentioned above, and therefore permeate all of the driving forces of the PNRTR. To this end, the Plan of Measures against the Demographic Challenge “Towns with a Future” (MINISTRY FOR ECOLOGICAL Transition and the Demographic Challenge, 2021: 76), adopted on 16 March 2021 by the Delegate Commission for the Demographic Challenge, a planning instrument through which 130 strategic active policies to combat depopulation are to be promoted, grouped into 10 major axes²², involving an investment of 10.10 billion euros aimed at rural areas and small municipalities, with the aim of reinforcing the commitment of public administrations to the necessary guarantee of social and territorial cohesion, within the framework of the National Strategy for the Demographic Challenge.

The Plan is oriented towards a broad set of objectives to promote equal opportunities and territorial structuring, through the economic diversification of the most disadvantaged areas. These objectives include: (i) stimulating innovation; (ii) full digital connectivity; (iii) strengthening rural and urban links; (iv) enhancing the value of the territory and its endogenous growth potential; (v) the adequate provision of basic services; and (vi) incorporating the demographic perspective into the government’s decision-making process.

With the aim of achieving all these ambitious objectives, the PMRD articulates a shock plan for social facilities, a plan for housing rehabilitation and urban regeneration, a shock plan for the care economy and the reinforcement of equality and inclusion policies, a pact for science and innovation and the reinforcement of the capacities of the national health system, as well as the modernisation of public administrations (ECONOMIC AND SOCIAL COUNCIL, 2021: 101). It also includes a series of important provisions on other key issues for the promotion of territorial cohesion, such as the extension of ultrafast broadband to those areas that currently do not have it, the promotion of the deployment of 5G networks or digital inclusion actions by strengthening digital training in areas of demographic decline (DOMÍNGUEZ AND TOMÉ, 2022: 411-443).

21 The Plan contributes to the fourth pillar of the Recovery and Resilience Mechanism, the promotion of social and territorial cohesion, thanks to the coherent impact of all components through in particular the reduction of the digital divide and the modernisation of public instruments for the redistribution of household income.

22 These 10 main lines of action correspond to: (i) boosting the ecological transition; (ii) digital transition and full territorial connectivity; (iii) development and innovation in the territory; (iv) boosting sustainable tourism; (v) equal rights and opportunities for women and young people; (vi) fostering entrepreneurship and business activity; (vii) strengthening public services and boosting decentralisation; (viii) social welfare and care economy; (ix) promoting culture; and (x) regulatory and institutional reforms to address the demographic challenge.

Similarly, there are plans to promote public services in rural areas, such as municipal justice offices, and to improve security in these areas. There are also plans to bring vocational training closer to the centres at risk of depopulation as part of the modernisation of vocational training envisaged in the Plan, actions to conserve and restore the natural and cultural heritage in areas with a demographic deficit, a boost to sustainable forest management and the deployment of the bioeconomy, and, finally, a Just Transition Strategy. The aim is to promote employment and the creation of activity in the territories affected by the energy transition, so that people and regions can make the most of the opportunities of this transition.

Although it is true that we will have to wait to see exactly what effects the implementation of this set of public policies is having on the dynamisation of local economies and the revitalisation of the targeted rural territories, it should be noted that there is already a series of tangible evidence that invites optimism²³. Certainly, recent efforts by the General State Administration have not only made it possible to shape a genuine State Policy on the demographic and territorial challenge, placing the problems of rural communities at the centre of the political and governmental agenda, but have also brought with them the application of a cross-cutting approach, combining the demographic challenge with a new long-term vision of rural areas, far from the short-termism, intermittency and dispersion that had characterised the actions of public authorities towards rural areas to date. They have also made it possible to make visible the economic, environmental and heritage potential of rural

23 Other authors, on the other hand, do not share the same opinion, believing that “the Spanish government’s strategy against depopulation makes a series of mistakes in its approach, which is eminently quantitative, sectoral, top-down and functional, and ignores the will of the people as to where and how to live, which should be the key. The main objective is to increase the population, which is impossible. The measures are presented in an alluvial manner, cut and paste from ministries without reasoning how they would integrate a coherent and interdepartmental strategy, with added value. Moreover, relevant issues such as housing, mobility, as well as immigration and new residents, are omitted (...) the objectives are not clear within a functional and organic approach to the territories, very conventional but not very relevant. No attention is paid to informal associations and institutions, which activate rural social capital, nor to personal aspirations unrelated to income and consumption [...] The measures lack strategic sense, without analytical or institutional frameworks that articulate them with a certain sense, stated in a declarative way, omitting some of the most relevant challenges such as housing, the immigrant population, and rural mobility in supramunicipal functional areas. Although there are innovations in governance to cooperate horizontally and vertically, including with social agents and civil society, a very important contribution, it does not value the know-how in the management of programmes that have energised the peripheral rural areas, such as LEADER, and insists on sectoral approaches from above. Very costly investments in hard factors are proposed, the cult of infrastructures continues, as always transport and now telematics, evaluated with biases, instead of the intangibles that have to do with talent, tolerance and creativity, which are more relevant in an emerging post-material creative capitalism of a more humane and caring sustainable society” (SÁEZ, 2021: 7).

communities, deconstructing pernicious stereotypes and transforming the collective imaginary of the phenomenon of rurality.

2. TOWARDS THE DESIGN OF LEGISLATION IN A RURAL KEY: THE BIG ELEPHANT IN THE ROOM

A similar evolution has taken place in the production of legislation. In recent years, not only have the contours of an authentic multilevel demographic and territorial challenge policy been designed, but also the unreasonableness in which our legislator had incurred on numerous occasions, subjecting rural territories to an excessive regulatory hypertrophy based on the most absolute ignorance of the reality of rural communities, has been highlighted. Some recent examples of this *malpractice can be* found in Law 7/2023, of 28 March, on the protection of animal rights and welfare²⁴, Royal Decree-Law 20/2022, of 27 December, on measures in response to the economic and social consequences of the war in Ukraine and support for the reconstruction of the island of La Palma and other situations of vulnerability²⁵, or Royal Decree-

24 In the end, however, after long and intense parliamentary debates, the most controversial passages of the regulation were blurred and nuanced, which were seen in many cases as a real threat to rural lifestyles. In this respect, it is worth remembering that according to art. 1.3.e) of the aforementioned regulation, "animals used in specific activities (sports animals recognised by the Higher Sports Council, falconry birds, shepherd and livestock guardian dogs) as well as those used in professional activities (dedicated to a specific activity or task carried out jointly with their handler in a professional or working environment, such as rescue dogs, pets used in assisted interventions or animals of the Security Forces and Corps or the Armed Forces). Also excluded are hunting dogs, rehalas and auxiliary hunting animals. All of them are regulated and will be protected by the corresponding European, State and Autonomous Community regulations in force, and which are applicable to them outside this law".

25 More problematic is the adoption of this regulatory milestone, which makes the environmental impact assessment of these projects more flexible by establishing a specific simplified procedure for the authorisation of renewable energies through the determination of environmental impact (VALENCIA, 2022: 60).

This regulation constitutes, to a certain extent, an amendment to the totality of a large part of the norms of environmental law constructed over the last four decades, an effect that has been virulently responded to by a large part of rural communities. In this sense, Alonso (2023: 129) points out that "[t]he development of this renewable energy model and the magnitude of many of these projects, considered as macro-plants (fundamentally photovoltaic and wind), are perceived by many municipalities as a threat due to the negative effects they consider they entail: intense occupation and use of the territory, with special invasion of large portions of rural land, alteration of the landscape and orography, visual and landscape impacts, excessive proximity to the centre of the population, affectation of historical heritage, etc. In addition to this, there are the possible environmental impacts that these installations may generate: effects on natural, fauna, landscape and agricultural values that may be caused both by the infrastructures themselves (panels and wind turbines) and by the distribution lines and substations attached to them. Finally, economic and social motivations are also emphasised: the scarce pecuniary benefit they obtain, as

Law 6/2022 of 29 March adopting urgent measures within the framework of the National Plan of response to the economic and social consequences of the war in Ukraine²⁶.

Despite all this, in parallel, significant steps have been taken towards the design of regulatory instruments, whether general or sectoral, that consider the convenience of including the demographic and territorial dimension in the legislative initiative²⁷. Thus, we are witnessing the enactment of the first sectoral regulatory instruments of an autonomous nature that openly advocate the articulation of a regulatory corpus in favour of rural communities, through the incorporation of the evaluation of the territorial effects on the environment and rural societies exerted by the legal system and the articulation of public policies.

Thus, on 2 February 2021, the Galician Parliament became the precursor and instigator of this trend and/or legislative movement²⁸, by approving Law 5/2021, on the Demographic Impulse of Galicia (LIDG)²⁹, the first law passed in Spain on this issue. Thus, in its long explanatory memorandum, the

they generally do not provide new jobs — the manufacture of the infrastructures (towers and transformers) is not done on site, and maintenance is not carried out by local workers, but by specialised personnel who do not settle in the locality —, the abandonment of fertile and productive land that sustains the traditional agricultural and livestock activity of many villages, the loss of the tourist business, etc. This situation is leading, in many cases, to municipal opposition, giving rise to inter-administrative tensions and legal conflicts”.

- 26 In this regard, it should be recalled that art. 6.2 of the aforementioned regulation states that wind projects with an installed capacity equal to or less than 75 MW and photovoltaic solar energy projects with an installed capacity equal to or less than 150 MW will not be subject to an environmental assessment under the terms regulated in Law 21/2013, of 9 December, insofar as the environmental impact report so determines. This gives rise to “a new procedure for determining environmental impact applicable to wind and solar renewable energy projects that meet certain requirements whose processing is extremely abbreviated and can be completed in less than four months”. (LOZANO, 2022: 55).
- 27 In the words of SANZ LARRUGA, J., “Instrumentos de evaluación y participación para la cohesión territorial y ante el reto demográfico”, in *Revista Española de Función Consultiva*, no. 33, 2020, pp. 70-71. 70-71; “these regional laws coincide in offering a very broad range of measures for demographic dynamisation and the fight against rural depopulation [...] they coincide in incorporating into their respective regulatory texts the so-called “demographic perspective” which takes the form of a transversal public policy instrument which is the “demographic impact analysis” and whose purpose is to identify the effects and results (positive and negative) of the regulations or public policies which have their origin in the territorial impact analysis, promoted in the European Union”.
- 28 This wave of regional regulatory milestones in the face of the demographic challenge has only just begun, as can be seen in the recent approval of the Draft Law on the Demographic Challenge of the Principality of Asturias, the launch of the Draft Law of Cantabria on the Fight against Depopulation and the Demographic Challenge, and the initiation of the work leading to the design of the Law on Population and Territory of Castile and Leon.
- 29 The law has a total of 109 articles and is structured in a preliminary title, two titles, two additional provisions, a derogatory provision and eight final provisions.

importance of considering the demographic perspective in the design and development of all public policies is highlighted (Tornos, 2021: 65). This idea is also reflected in art. 7 of the law, which states that:

“The public administrations of Galicia shall incorporate the demographic perspective in the production of regulations and in the preparation, implementation and monitoring of all policies and all actions carried out in the exercise of their powers. In the preparation of the general budgets of the Autonomous Community of Galicia, indicators will be taken into consideration that make it possible to integrate the demographic perspective into budgetary policies in a cross-cutting manner (...).”

For its part, Article 8 stipulates the obligation, within the framework of the procedures for drafting bills and decrees, as well as sectoral planning documents processed by the Autonomous Administration, to transfer the projected text, together with an analysis of its demographic impact, to the management body with competence in matters of demographic dynamisation, granting it a period of ten working days for the formulation, where appropriate, of the observations it deems appropriate in this matter.

In addition, the regulation emphasises the principles of transversality, collaboration and cooperation between the different public administrations of Galicia and the participation of citizens and social partners, which must guide the planning and development of all public policies on demographic issues. It also establishes the criteria for action by the public administrations of Galicia and regulates the administrative organisation deemed necessary to make the legislative instrument effective. To this end, it provides for the creation of the Commission for Demographic Boosting (art. 20), as a body for the collaboration and cooperation of the Galician public administrations in matters of demographic boosting, and the Technical Commission for Demographic Boosting (art. 21), as a body of the Autonomous Administration for the coordination of autonomous policies in demographic matters.

Likewise, on 12 July 2021, the Official State Gazette published Law 2/2021, of 7 May, on Economic, Social and Tax Measures against Depopulation and for the Development of the Rural Environment in Castile-La Mancha³⁰. The

30 The law consists of seventy-seven articles distributed in seven titles, five additional provisions, one derogatory provision and thirteen final provisions. On the other hand, Law 1/2021 on Urban Simplification and Administrative Measures (SUMA Law) was passed on 12 February 2021, which plans the economic and employment reactivation scenario and the development of small municipalities.

In Alique's opinion (2020: 242), the law “aims to go beyond the traditional views of rural development, centred on the “second pillar” of the CAP, assuming that the objective of cohesion of these rural territories involves interactions with diverse activities and services, which, together with agriculture and forestry, serve to promote rural development in the region. This Law has a multisectoral and cross-cutting nature in the actions to continue guaranteeing social cohesion, territorial structuring and our model of coexistence.

regulation has a multisectoral and cross-cutting nature in its actions and guarantees for the citizens of rural areas (BLASCO, 2021: 121), paying special attention to the fight against depopulation and with the aim of ensuring that the demographic challenge is present, both in the derived planning and in the sectoral regulations, with the primary purpose of providing basic public services adapted to the needs of the population, enabling effective equality of opportunities for its inhabitants, and the economic and social cohesion of the rural environment.

In this respect, it includes a series of observations on the obligatory nature of the demographic impact report, both in the procedures for drafting bills and regulatory provisions, as well as in the design and articulation of budgetary policies³¹. Thus, in accordance with art. 8, the following provisions are established:

“1. In the procedures for drafting bills and the regulatory provisions that develop them, as well as in the preparation of plans and programmes processed by the Regional Administration, a demographic impact report must be included, taking into account the gender perspective, which analyses the possible effects on rural areas with depopulation problems and establishes measures to adapt it to the reality of the rural environment and to combat depopulation.

2. When drawing up regional budgets, account shall be taken of indicators that make it possible to integrate the demographic impact and the fight against depopulation into budgetary policies.

3. The budget memorandum shall identify the expenditure on active policies to combat depopulation set out in the Regional Strategy to Combat Depopulation and in the Regional Strategy for Rural Development.

4. The body responsible for the demographic challenge shall provide guidelines, criteria and methodologies to facilitate the preparation of the report provided for in paragraph 1.”

At the same time, art. 24 of the aforementioned regulation introduces an important reference to the necessary rationalisation of the regulatory corpus, since it makes a specific call to the Regional Administration to promote:

“in collaboration with all public administrations, regulatory and administrative simplification initiatives, in order to facilitate the development of public and private projects and initiatives that contribute to the economic and social revitalisation

Furthermore, it is a clear commitment to people by guaranteeing territorial equality in access to opportunities and basic services for the entire population of the region, regardless of where they live”.

31 In this regard, we should not lose sight of the Resolution of the Vice-Presidency of the Junta de Comunidades de Castile-La Mancha, dated 24 February 2022, which establishes guidelines, criteria and methodologies for the preparation of the report on demographic impact in the draft regulations, plans and programmes of the Administration of the Junta de Comunidades de Castile-La Mancha (RAMOS, 2020: 58).

of rural areas, in particular those that are sparsely populated and at risk of depopulation.”

The Act also develops a new approach to the zoning of rural areas in Castile-La Mancha and includes two important tools as planning instruments to address the development of the different types of rural areas: the Regional Strategy to Combat Depopulation (ERD), recently published³², which will specify objectives and actions to be implemented in the rural areas most affected by depopulation, and the Regional Strategy for Rural Development (ERDR).

For its part, the Autonomous Community of Extremadura, on the basis of the previous “Strategic Plan to Support the Rural Environment (2016-2020)”, has just given the green light to its “Regional Strategy for Intervention in the Demographic and Territorial Challenge of Extremadura”³³, as well as to its Law 3/2022, of 17 March, on measures to face the demographic and territorial challenge of Extremadura³⁴.

32 Approved by the Agreement of 14 December 2021, of the Governing Council, approving the Regional Strategy against Depopulation in Castile-La Mancha 2021-2031. The general objective of the Strategy is to “favour the settlement and fixation of population, facilitating the development of new economic activities and the promotion of entrepreneurship, and guaranteeing equal rights and opportunities for people living in rural areas affected by depopulation”. Additionally, four strategic objectives (ensuring access to basic public services; fostering economic cohesion; advancing social cohesion; and promoting territorial cohesion) and four cross-cutting lines of action are envisaged: (i) ecological transition; (ii) digital transition; (iii) gender equality; and (iv) inclusive development (GOBIERNO DE CASTILE-LA MANCHA, 2021: 46-52).

33 The document contains 286 measures that aim to ensure a level playing field, without discrimination between rural and urban areas, in terms of the opportunities they offer and access to the services they provide.

34 The regulation contained in this law is dictated under the protection of a plurality of competences held by the Autonomous Community of Extremadura. Thus, and without wishing to be exhaustive, according to the Statute of Autonomy, Extremadura has exclusive competence in matters of promoting economic and social development within the objectives of national economic policy (Article 9.1.7), organisation of the Autonomous Community Treasury (Article 9.1.8), agriculture, livestock and pasture and agri-food industries (Article 9.1.12), creation and regulation of designations of origin and other quality designations (Article 9.1.13), hunting and hunting farms, river and lake fishing and aquaculture (Article 9.1.14), industry (Article 9.1.15), internal trade within the unity of the market (Article 9.1.16) organisation, functioning and regime of cooperatives and similar entities and promotion of the social economy (Article 9.1.17), tourism (Article 9.1.19), regime of new information and communication society technologies (Article 9.1.23), health and public health (Article 9.1.24), social action, promotion and protection of the elderly and the prevention, care and social integration of groups affected by any type of disability, dependency or any other circumstances determining social exclusion and economic benefits of social assistance other than social security (Article 9.1. 27), gender equality policies (Article 9.1..1.29), family protection and family mediation instruments (art. 9.1.30), town planning and housing (art. 9.1.31), spatial planning (art. 9.1.32), sustainable development of the rural environment and special treatment of mountain areas (art. 9.1.34),

This regulation, made up of 103 articles, aims to carry out a holistic analysis of the demographic and territorial problem from the different sectoral spheres, with the aim of mitigating and reversing the negative effects of demographic change in the Autonomous Community, promoting systemic and coordinated action by sectoral policies, and regulating the instruments necessary for the implementation of the Strategy for the Demographic and Territorial Challenge of Extremadura.

To this end, not only is the incorporation of the demographic and territorial perspective *“in the preparation, implementation and monitoring of the policies under its competence, ensuring, as far as possible, a balance in the application of measures and investments in those regions where depopulation is more accentuated”* (art. 5.1). Similarly, demographic and territorial issues will permeate the actions aimed at drawing up the General Budgets of the Autonomous Community of Extremadura, by taking into consideration indicators that enable the demographic and territorial perspective to be integrated into budgetary policies (art. 5.2). It is also envisaged that:

“In the procedures for drafting bills, decrees and sectoral planning documents processed by the Regional Government of Extremadura, the management centre that initiates the file shall include an analysis of their demographic and territorial impact, within the framework of the provisions of the Strategy for the Demographic and Territorial Challenge of Extremadura”³⁵ (art. 6.1).

The latest of the Autonomous Communities to join this wave of planning instruments and sectoral legislation on demographic issues is Aragon³⁶. This

public works and infrastructure of regional interest (art. 9.1.38); Railways, highways and roads whose itinerary is entirely within the territory of the Autonomous Community and in the same area land and river transport, transport, logistics and distribution centres located in Extremadura and airports, heliports, marinas and other transport infrastructures that are not of general interest; sport (art. 9.1.46); culture and historical and cultural heritage of interest to the Autonomous Community (art. 9.1.47). Furthermore, the Autonomous Community assumes powers of normative development and execution in matters of the legal regime of public sector contracting (art. 10.1), the environment, forests and livestock trails (art. 10.2), and education (art. 10.4), and powers of execution over active employment policies (by virtue of article 11.7).

35 The immediately following section refers to the regulatory procedure for both the establishment of the criteria and the methodology for the elaboration of the analysis foreseen in Art. 6.1.

36 Aragon has been characterised as one of the territories most committed to the design of innovative solutions to tackle the phenomenon of depopulation in rural territories. Among these tools we find the “Special Directive on Demographic Policy and against Depopulation”, approved by Decree 165/2017 of 31 October of the Government of Aragon. The document is divided into 15 thematic axes, contains 70 objectives that establish the priorities for action and guide the Guideline; 122 strategies, which are the set of generic actions that are designed to achieve these objectives, and establishes up to 184 measures, which are specific proposals.

territory has recently adopted Law 13/2023, of 30 March, on the revitalisation of the rural environment in Aragon, a legal milestone which contains several important references to the issue at hand.

Thus, firstly, it places as a priority objective of the legislation the promotion of *“processes of administrative rationalisation, in coordination with the local entities, which contemplate measures for the simplification and progressive automation of procedures and eradicate obstacles to the development of public and private projects and initiatives that contribute to the reactivation of the rural environment”* [art. 4.d)].

However, its central importance lies not only in recognising the oppressive power exerted by the unnecessary over-regulation of rural communities. Rather, its virtue lies in being the first Spanish legal text to openly recognise the desirability of establishing a genuine “Rural Guarantee Mechanism”, which is envisaged in the following terms (art. 5):

“The rural guarantee mechanism is configured as the guiding principle of action by virtue of which the Administration of the Autonomous Community will promote and review all sectoral and socio-economic development policies, by observing the perspective of demographic change and the fight against depopulation, the analysis of their real and potential impacts and their effects on the rural environment, and will promote positive discrimination measures in rural areas that are determined in accordance with the delimitation criteria established in Title II of this law.

2. The strategic subsidy plans and the regulatory bases for subsidies from the departments of the Administration of the Autonomous Community, within the framework of Law 5/2015, of 25 March, on Subsidies of Aragon, shall incorporate positive discrimination criteria to promote actions for revitalisation, development and the fight against depopulation in rural areas, provided that the measures are compatible with the object and purpose of the subsidies.

3. The Government of Aragon, in the exercise of its executive action and legislative initiative, shall take into account the aims and measures regulated in this Act and the axes, objectives and measures established in the Special Directive on demographic policy and against depopulation.

4. The Delegated Commission for Territorial Policy and the Observatory for Demographic and Population Dynamisation, in the exercise of their powers, guarantee compliance with the rural guarantee mechanism with the monitoring actions that are established, in accordance with the provisions of Articles 89 and 90.

5. The Observatory for demographic and population dynamisation will provide guidelines, criteria and methodologies to facilitate the preparation of the demographic impact analysis³⁷.”

37 In this respect, it should be emphasised that the Government’s Delegate Commission for Territorial Policy is the body responsible for coordinating the sectoral policies for revitalising the rural environment and combating depopulation regulated in this Act, and in addition to those attributed to it by land-use planning legislation, it is responsible for establishing the necessary measures for incorporating the rural guarantee mechanism (art. 89). For its part,

At the same time, beyond this transcendental advance, the regulation goes on to include a series of provisions on the necessary inclusion of the demographic and territorial perspective in all those regulatory provisions with an impact on the rural environment, which *“must be aligned with the objectives, principles and measures contained in this law, with the department responsible for territorial planning being responsible for reporting on compliance with this precept. Draft legislation with an impact on the rural environment shall be reported on by the Territorial Planning Council of Aragon, with the Observatory for Demographic and Population Dynamisation acting as a technical report.”*

In order to make this premise effective, the regulation under study contemplates the need to include in the planning activity of the Autonomous Administration an analysis carried out by the promoting department on the impact and assessment of the different effects and results that the initiative in question may have on rural areas³⁸. All this makes Law 13/2023, of 30 March, on the revitalisation of the rural environment of Aragon one of the most innovative and transcendental legal instruments adopted in the Kingdom of Spain to date, reinforcing the leading role of the Aragonese territory as a standard-bearer in the search for new tangible solutions to the demographic and territorial challenge.

This situation contrasts with the state of affairs at national level, where the inclusion of the demographic and territorial dimension in legislative production continues to be a pending issue to be addressed and one of the major strategic objectives contemplated in the public policy of the demographic challenge still to be achieved³⁹, a trend only altered with the

the Aragonese Observatory for demographic and population dynamisation is configured as the advisory body of the public administrations of the Autonomous Community of Aragon for the incorporation of the demographic and population perspective in global, sectoral and local policies. It will also carry out tasks of monitoring the effects of these policies in relation to the demographic challenge and the rural environment (art. 90).

38 This analysis, which will complement the territorial coherence report provided for in the regional land-use planning legislation, will specify the following aspects: (a) impact on the income of the public administrations concerned (municipalities and counties); (b) impact on the income of individuals residing in the territory through the acquisition of land, rents, etc.; (c) impact on access to telecommunications systems (fibre optics, mobile telephony, etc.); (d) impact on access to public services and mobility in the territory concerned (transport infrastructures and services); (e) impact on the creation of jobs in the territory, distinguishing between permanent and temporary jobs and those that can be carried out remotely from those that require physical presence in the territory concerned; (f) impact on the quality of the landscape, the territorial heritage of the territory concerned and the environmental services it provides (biodiversity, absorption of CO₂, aquifer recharge, etc.); (g) impact on the contribution to mitigating climate change through the generation of renewable energy, etc.

39 An example of procrastination is the specific case of the Basic Statute for Municipalities of Smaller Population, which contemplated undertaking an important reform of Law 7/1985,

adoption of Law 27/2022, of 20 December, on the institutionalisation of the evaluation of public policies in the General State Administration, whose sixth additional provision provides a direct mandate to the Executive to promote the implementation of a genuine Rural Guarantee Mechanism, *“ensuring the participation of stakeholders in its design and application.”*

II. RETHINKING LAWMAKING AND BETTER REGULATION FOR LEGAL CERTAINTY: THE IMPORTANCE OF REGULATORY IMPACT ANALYSIS

Despite the substantial increase in studies, reflections and commentaries on the importance of regulatory technique, the stubborn reality shows that the rigour and quality of regulations are “conspicuous by their absence”⁴⁰.

of 2 April 1985, Regulating the Bases of Local Government, to strengthen the democratic functioning and modernisation of Local Governments, with measures aimed at promoting the digitalisation of local public services, improving citizen participation and establishing a basic regulation for municipalities of smaller population or at risk of depopulation. Regarding this issue, the study by Carbonell (2021: 59-60) stands out, reflecting that “the 2020 Regulatory Plan, approved by the Council of Ministers on 8 September, foresees the modification of Law 7/1985, of 2 April, regulating the Bases of Local Regime (hereinafter, LBRL) for the recovery of local autonomy with a twofold objective: on the one hand, “for the design of public policies and reform of specific issues relating to the procedure for drawing up local regulations and the exercise of the representative function of elected officials”; on the other hand, “with the aim of establishing a Basic Statute for Small Municipalities in order to fix the population to the territory, maintain the democratic quality of the municipality, thus complying with the clause of the democratic State, and guarantee the living conditions of citizens regardless of the territory in which they reside, through the provision of quality public services””.

- 40 An analysis of the causes behind the hypertrophy and impoverishment of regulatory quality can be found in ORTÍ (2016: 65), who identifies as relevant causes of the growth in the number and complexity of regulations: the extension of the scope of State intervention with the progressive increase in social demands and the various interests to be protected in the development of contemporary society; the multiplication of centres of regulatory production, and the need to deal with the rapid transformations of a dynamic and complex reality. But the causes of legislative inflation have also included the use of legislative production as an end in itself or the socially ingrained idea that a good parliament or government is only as good as it produces a large number of laws. For its part, the impoverishment of regulatory quality has to do with the formal aspects (the composition and drafting of the legal norm) but above all affects the material aspect, i.e. the ability to achieve the objectives set effectively. These shortcomings, together with the overproduction and overlapping of legislation, lead to legal uncertainty, difficulties in implementation and enforcement, non-compliance and increased litigation. Not only are the costs of compliance with the law increased, but also the economic and social repercussions of rules that were not properly designed, whose application produces unexpected effects, disproportionate administrative burdens, effects on competition, loss of competitiveness and/or restrictions on the rights of citizens, workers and consumers.

The general awareness of the degradation of normative production and the empirical verification of the problems that this generates motivated the appearance of the science of legislation in the sixties of the last century⁴¹, whose purpose is none other than to analyse the form and content of legal norms in order to extract criteria that make it possible to achieve rational legislation (FIGUEROA, 1995: 15).

In this way, the normative technique makes it possible to work in favour of quality in the drafting of rules and their congruent articulation and integration into the legal system (RODRÍGUEZ-ARANA, 2007: 257). This idea is intimately and closely related to the premise that the individual rule *“does not constitute an isolated and incommunicado element in the world of Law, but is integrated into a specific legal system, within which, and in accordance with the general principles which inform and sustain it, the antinomies and normative gaps, real or apparent, which result from its articles must be resolved”*, a reasoning which was already set out, decades ago, by our High Court (STC 150/1990, 4 October, FJ 8).

Understood in this way, the purpose of normative technique is to formulate guidelines for building a legal system that is well-structured in its principles and made up of correctly formulated rules, i.e. a body of rules that scrupulously complies with the principle of legal certainty. Originally, “it was the art of drafting each legal precept (the old “art of lawmaking” understood as a personal quality based on sensitivity, intuition and skill acquired through experience) but today it also has to solve more complex problems created by a system of sources in which multiple holders of regulatory powers concur⁴².”

41 In Spain, interest in the study of legislative technique was highlighted when the Organisation and Methods Section of the General Technical Secretariat of the Presidency of the Government began the task of undertaking the standardisation of the model dossiers for the processing of provisions submitted to the deliberation of the Council of Ministers (Marcen, 1959: 47-53). However, it was not until the publication of the Grupo de Estudios de Técnica Legislativa (1986: 318) that legislative technique took off in our country, giving rise to a doctrinal movement that would result in important studies and publications: Muñoz (1986); SAINZ and DA SILVA (1989); GARCÍA DE ENTERRÍA (1999); Jimena (2003), MARTÍNEZ, FERNÁNDEZ SUÁREZ (2007), ETC.

Several decades after this first approximation to the legislative technique, its incorporation into the daily practice of the public authorities continues to be a chimera, thus preventing the exponential increase in legislation from being curbed, hindering the effectiveness of legislative production and increasing the generalised impoverishment of the legal system.

42 SAINZ (1995: 59) adds that “the normative technique aims to achieve the coherence of an open and rapidly evolving legal system which, nevertheless, must preserve its unity (Articles 91, 96 147 and Disp. Ad. 1.ª CE) and comply with the postulates of «global effectiveness» and «completeness» by virtue of which it is possible to demand the inexcusable duty to resolve, in any case, «abiding by the established system of sources” (Articles 1.7 CC, 361 LEC and 357 CP). Such unity is, however, difficult to achieve when the legal system is configured as a system open to internal and external rules (broad recognition of the principle of autonomy and assumption of European Community law) and subject to accelerated mutation (which must, however, maintain its continuity over

In order to answer these and other questions, it is necessary to adopt a genuine regulatory policy, in line with the experiences implemented in the countries of our closest environment⁴³, which allows for the development of effective and efficient regulations that stimulate economic growth and favour social welfare⁴⁴, given their strategic potential for the promotion of sustainable development, economic growth and competitiveness, also in rural territories with demographic challenges. These are some of the reasons behind the take-off, for more than two decades, of the better regulation policy within the “Organisation for Economic Cooperation and Development (SÁNCHEZ, 2006) and the European Union itself” (CASADO, 2017: 42).

In Spain, on the other hand, this issue has been developed more recently and has received a very significant boost in recent years, following the approval of Law 39/2015, of 1 October, on Common Administrative Procedure for Public Administrations, which includes a Title, VI, aimed at regulating legislative initiative and the power to issue regulations and other provisions.

1. THE FORERUNNER COMMITMENT OF THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Within the OECD, the concern to promote regulatory reform or regulatory reform manifested itself early on⁴⁵, closely linked at first to public sector

time). The aim is therefore to identify the problems that the implementation of such a complex legal system poses and to formulate guidelines for their solution. Its aim is, therefore, to achieve the highest possible degree of legal certainty (STC 46/1990)”.

43 The concern for improving the quality, rationality and effectiveness of legal systems has increased the interest of governments and scholars in legislative technique both in countries that already had a tradition, mainly the United States and the United Kingdom, and later Austria, Germany, Switzerland and Italy, and in almost all countries in Europe and America (BASELGA, 2009: 249). However, this concern is not new, as is attested to by such prominent precedents as Montesquieu (2004).

44 In the words of ÁLVAREZ (2017: 26) ““better regulation” must be understood as a cross-cutting and indispensable public policy that must function as a premise for the development of any public intervention to guarantee the achievement of its main objectives at the minimum cost. In Spain, significant efforts have been made in recent decades to implement a culture of regulatory improvement and to include in the legal system the main instruments and principles for its application. However, there are still outstanding challenges that can only be tackled efficiently if a high political commitment is maintained”.

45 Thus, in 1989 we witnessed the publication of the OECD’s first programmatic document in this area, under the title “Directory of Regulatory Review and Reform Organisations in OECD Member Countries”. In the words of GÓMEZ (2012: 37), “this is the first document in which we begin to talk about improving regulation as a general requirement anchored to the notion of good governance and whose purpose should not be to simply reduce the

reform processes. However, it should be stressed that the history of regulatory reform is not that of a coherent government strategy, but rather that of a tool that emerged as a reaction mechanism to changing objectives and requirements in different countries, industries and political contexts⁴⁶.

Thus, on 9 March 1995, we witnessed the adoption of the “Recommendation of the Council for Improving the Quality of Government Regulation” [C(95)21/Final], which constitutes the first international declaration of basic principles

number of rules, but to approve the necessary ones, bearing in mind that they had to be proportionate to their purpose, as clear, efficient, accessible and transparent objectives. It therefore concluded that investing resources in better regulation produced benefits both for the functioning of the economy as a whole and for citizens”.

- 46 Indeed, after the rapid growth in the scope and escalation of regulatory interventions experienced during most of the 20th century, changes in the economic environment began to clearly reveal the hidden costs of outdated, poor quality and ever-expanding regulatory structures. However, while the problems caused by poor quality regulation became increasingly evident, reform was constantly delayed or blocked. For many years, the complexity of reform and uncertainty about expected outcomes blocked progress. This was partly due to policy fragmentation in the government structure. Governments lacked the coordination and planning capacities needed to make progress in developing horizontal policy and reform packages. Governments also paid too little attention to reviewing, updating and eliminating unnecessary or harmful regulations. Many of the present regulations date from periods before the 20th century when economic and social conditions were very different from what they are today. Also, pre-existing incentive structures within the bureaucratic apparatus did not encourage the effective and responsible use of regulatory reform policy. Too often, incentives favoured verbal rather than general interests, short-term rather than long-term perspectives, and the use of traditional controls rather than innovative approaches. Vested interests were able to block necessary reform, even when the benefits to society at large were far greater (albeit diffuse) than the concentrated (and highly visible) costs to the interest group. In addition, it is worth noting that most public servants were not trained to assess the hidden costs of regulation or to ensure that regulatory powers were used rationally and consistently. In short, a complex set of factors drove what is now called “regulatory inflation”. The emergence of deregulation and regulatory reform in the 1970s were some of the first attempts to address this question of the nature of regulation and its limits as a policy tool. But the need to better understand regulation was not at the centre of the reform agenda at the time. Early efforts at “deregulation” were driven by the economic downturn and were based on the view that overly extensive regulation was hampering the economy by strangling innovation and entrepreneurship. However, these early attempts at “deregulation” were, at best, only partially successful. But as the process continued, deregulation gave way in the 1980s and 1990s first to regulatory reform, then to regulatory management and, more recently, to the development of a regulatory policy agenda. This shift involved a move away from questions of what regulation should be eliminated and towards how regulatory structures could be improved in terms of design and operation. Over time, the key elements of regulatory quality management emerged from the experiences of reformers. Thus, attempts to promote regulatory quality focused first on identifying important areas of poor quality regulation, advocating specific regulatory reforms and eliminating burdensome regulations. It was gradually realised that *ad hoc* approaches to reform were insufficient and that meeting the challenges posed by this important task required coordinated action on many fronts (ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, 2002: 2-3).

aimed at promoting the quality of regulation. This text is based on the idea that regulatory policy is one of the most important governmental tools in the OECD countries to achieve high quality regulation, which is the essential prerequisite to guarantee not only the effectiveness of government action, but also to promote economic growth and the efficient use of economic resources, to eliminate barriers to competition within national economies and to strengthen regulatory cooperation in relevant areas such as the environment, crime, migration, consumer protection, investment or trade. Having said this, the document then goes on to set out a series of recommendations for OECD countries to adopt effective measures to ensure the quality and transparency of their respective regulations, such as: (i) examine the quality and performance of the administrative and policy processes for the development, implementation, evaluation and review of standards, using as a guide the principles set out in the Reference Checklist for Regulatory Decision-Making contained in its Annex⁴⁷; (ii) develop, in

47 This Annex contains the *OECD Reference Checklist for Regulatory Decision-making*, which “responds to the need to develop and implement better regulations. It contains ten questions about regulatory decisions that can be applied at all levels of decision and policy-making. These questions reflect principles of good decision-making that are used in OECD countries to improve the effectiveness and efficiency of government regulation by upgrading the legal and factual basis for regulations, clarifying options, assisting officials in reaching better decisions, establishing more orderly and predictable decision processes, identifying existing regulations that are outdated or unnecessary, and making government actions more transparent. The Checklist, however, cannot stand alone, it must be applied within a broader regulatory management system that includes elements such as information collection and analysis, consultation processes, and systematic evaluation of existing regulations:

Question No.1: Is the Problem Correctly Defined? The problem to be solved should be precisely stated, giving clear evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities).

Question No. 2: Is Government Action Justified? Government intervention should be based on clear evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.

Question No. 3: Is Regulation the Best Form of Government Action? Regulators should carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy instruments, considering relevant issues such as costs, benefits, distributional effects, and administrative requirements.

Question No. 4: Is there a Legal Basis for Regulation? Regulatory processes should be structured so that all regulatory decisions rigorously respect the rule of law; that is, responsibility should be explicit for ensuring that all regulations are authorised by higher-level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality, and applicable procedural requirements.

Question No. 5: What is the Appropriate Level (or Levels) of Government for this Action? Regulators should choose the most appropriate level of government to take action, or, if multiple levels are involved, should design effective systems of coordination between levels of government.

Question No. 6: Do the Benefits of Regulation Justify the Costs? Regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives and should make the estimates available in accessible format to decision-

accordance with existing legal principles and traditions, administrative and management systems that incorporate the principles of good decision-making into the regulatory framework; (iii) integrate decision-making principles for efficient, flexible and transparent regulation into regulatory policy processes at all levels of government; and (iv) pay special attention to regulatory quality and transparency with respect to regulations that may have impacts on other countries, or affect international trade, investment or other aspects of international relations⁴⁸.

Shortly afterwards, the “OECD Report on Regulatory Reform” [C/MIN(97)10] was published, containing new recommendations for 1997 and an analysis of the different regulations adopted by the different member countries⁴⁹. This document once again highlights the advantages, opportunities and potential of adopting a regulatory reform policy, and advocates the design of new recommendations, such as: (i) the systematic review of regulations to ensure that they continue to fulfil the objectives for which they were initially approved, in an efficient and effective manner; (ii) ensuring transparency, non-discrimination and effectiveness in regulatory processes; or (iii) eliminating unnecessary regulatory barriers to trade and investment.

A decade later, the OECD proceeded to analyse the application of these recommendations in the different member states, which led to the revision, redefinition and extension of the guiding principles for the quality of regulation mentioned above, through the approval, in 2005, of the “Guiding Principles for Regulatory Quality and Development” [C(2005)52]⁵⁰. This document

makers. The costs of government action should be justified by its benefits before action is taken.

Question No. 7: Is the Distribution of Effects across Society Transparent? To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups.

Question No. 8: Is the Regulation Clear, Consistent, Comprehensible, and Accessible to Users? Regulators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible.

Question No. 9: Have All Interested Parties had the Opportunity to Present their Views? Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interest groups, or other levels of government.

Question No. 10: How will Compliance be Achieved? Regulators should assess the incentives and institutions through which the regulation will take effect and should design responsive implementation strategies that make the best use of them”.

48 These issues constitute the embryo of the subsequent Regulatory Impact Analysis (RIA) and are the first reflection of the guiding principles that inform quality regulation (GÓMEZ, 2012: 38).

49 To this must be added, a year later, the “Recommendation of the Council concerning Effective Action Against Hard Core Cartels” [C98)35/FINAL].

50 It is intended to give renewed impetus to the adoption of regulatory reforms in OECD

reformulates the three existing principles (improving the quality of regulation and the efficiency of the regulatory system, exploring alternative intervention instruments and improving the effectiveness and legitimacy of the regulatory system) and incorporates four new principles, namely: (i) adoption of reform programmes; (ii) implementation of regulatory impact analysis of both a prospective and retrospective nature; (iii) improvement of transparency; and (iv) improvement of the application and enforcement of competition policy⁵¹.

In 2012 we saw the adoption of the “Council Recommendation on Regulatory Policy and Governance”, a document which, although it is true that it recognises the relevance of previous instruments (mainly the 1995 Recommendation and the 2005 Principles), determines in turn the convenience of extending its coverage, taking as a reference the additional studies developed⁵² and the extensive work carried out by the Regulatory Policy Committee. These are the reasons behind the adoption of new recommendations addressed to member countries, which are more comprehensive and specific than in previous documents: (i) commit at the highest political level to an explicit full governance policy for regulatory quality; (ii) adhere to the principles of open government, considering transparency and participation in the regulatory process in order to ensure that regulation serves the public interest and is informed by the legitimate needs of those it concerns and affects; (iii) establish mechanisms and institutions to actively monitor the procedures and objectives of regulatory policy, support and implement it, and consequently foster regulatory quality; (iv) integrate the Regulatory Impact Assessment (RIA) into the regulatory policy process, and to ensure that the

member countries (FORTES, 2016: 347).

51 To achieve these objectives, in 2005 the *OECD* also published the “*OECD Work on Regulatory Tools*”, a guide that includes the five key tools or instruments for analysing regulatory reform, such as: regulatory impact analysis, administrative simplification, improving regulatory transparency and communication with social agents, analysis of regulatory alternatives, and the study of compliance and implementation by private operators of approved regulations.

Alongside these essential instruments, on 22 October 2009, the *OECD* Council established the *Regulatory Policy Committee (RPC)*, with the objective of advising member and non-member countries to build and strengthen their capacity for regulatory quality and reform. This creates a new institutional tool to assist members and partners to promote innovative, evidence-based and strategic policy outcomes by supporting governments’ efforts to design and adopt effective regulatory frameworks. It does this by examining the performance of individual governments and regulatory agencies and the proposals put forward to improve regulatory reform. By informing, overseeing and directing this work, the CPM gives strategic direction to the Organisation’s overall perspective on regulatory policy and how it can contribute to achieving the Organisation’s broader objectives. More information is available at: <https://bit.ly/3ASjdwe>

52 Most notably, the “Regulatory Policy and Governance Report: Supporting Economic Growth and Serving the Public Interest”, which summarises 10 years of the Organisation’s work on regulatory reform, proposes a review and update of the collective thinking on regulatory policy and governance.

regulatory process is transparent and participatory, in order to ensure that regulation serves the public interest and is informed by the legitimate needs of those it concerns and affects; (v) establish mechanisms and institutions to actively monitor the procedures and objectives of regulatory policy, support and implement it, and consequently foster regulatory quality; (iv) integrate Regulatory Impact Assessment (RIA) into the early stages of the policy design process to formulate new regulatory projects⁵³; (v) systematically review the inventory of significant regulation based on clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations are up-to-date, cost-justified, cost-effective and consistent, and meet policy objectives; (vi) publish regular reports on the performance of regulatory policy and reform programmes, as well as on the public authorities responsible for implementing regulations⁵⁴; (vii) develop a consistent policy that addresses

53 Regulatory Impact Assessment, also known as Impact Analysis, is both a tool and a decision-making process to inform policy makers about whether and how to regulate to achieve public policy goals. Improving the evidence base for regulation through ex ante (prospective) impact assessment of new regulations is one of the most important tools available to governments. The purpose is to improve the design of regulations by supporting policy makers to identify and consider the most efficient and effective regulatory approaches, including non-regulatory alternatives, before they make their decisions. One method for doing this is to analyse the evidence on the costs and benefits of regulation and alternative means of achieving public policy goals, and identify the approach that is likely to yield the greatest net benefit to society. A well-designed RIA can help foster policy coherence by making the trade-offs inherent in regulatory proposals transparent, identifying who is likely to benefit from the distributional effects of regulation and who will bear the costs, and how reducing risk in one area may generate risks in other areas of government policy. A comprehensive RIA also incorporates an assessment of economic, social and environmental effects. RIA can improve the use of evidence in policy making, identify an appropriate response to particular problems, and reduce the incidence of regulatory failures arising from regulation when it is not needed, or arising from a lack of regulation when it seems clear that regulation is required.

However, the effective use of impact assessment requires resources and expertise and is often hampered and/or poorly implemented due to resistance from political opposition and bureaucratic hurdles. RIA is sometimes mistakenly seen as a substitute for policy making, when in fact it seeks to facilitate and strengthen the policy making process by helping to assess whether regulations are necessary and will be effective. With the right approach, RIA can be integrated into policy development, rather than being a procedural stumbling block. OECD experience shows that supporting a well-founded regulatory oversight function helps to integrate impact assessment into the policy and rule-making process, and to raise the quality of assessments. Impact assessment processes should be closely linked to the overall consultation processes for the development of new regulations through, for example, roadmaps that provide a timely account of possible regulatory initiatives, with corresponding consultation and impact assessment, and the use of an RIA for the consultation stage. As far as possible, the results of consultations, together with individual contributions, should be made publicly available (including online, where appropriate) to ensure a high level of transparency and reduce the risks of regulatory capture.

54 These reports should also include information on how regulatory tools such as Regulatory Impact Assessment, public consultation and reviews of existing regulations are working

the role and functions of regulatory agencies in order to build confidence that regulatory decisions are made on the basis of objective, impartial and consistent criteria, free from conflict of interest, bias and undue influence; (viii) ensure the effectiveness of systems to review the legality and procedural fairness of regulations and decisions made by regulatory sanctioning bodies; (ix) apply, where appropriate, risk assessment, risk management and risk communication strategies to the design and implementation of regulations to ensure that they are targeted and effective; (x) promote, where appropriate, regulatory coherence through co-ordination mechanisms between supranational, national and sub-national levels of government. Identify cross-cutting regulatory issues at all levels of government to promote coherence between regulatory approaches and avoid duplication or conflict of regulations; (xi) promote capacity building and regulatory management performance at sub-national levels of government; and (xii) take into account, when developing regulatory measures, all relevant international standards and frameworks for co-operation in the same area and, where appropriate, the likely effects on third parties outside their jurisdiction⁵⁵.

The importance of these recommendations lies not only in the fact that they facilitate the development of shared practices that serve as a reference when designing the necessary framework in those States that seek to promote better regulatory governance⁵⁶. At the same time, these documents have

in practice. The OECD also periodically publishes studies on the situation, evolution, challenges, weaknesses and strengths of countries in relation to the different issues analysed by the organisation. In the area of regulatory reform, two of these studies are worth mentioning, which reflect the institutional framework and the situation in Spain in November 2017, the period in which the compilation of data provided by the countries was completed (*Organisation for Economic Co-operation and Development*, 2018; 2019 and 2021).

55 In addition to the above, two new documents have recently been adopted, namely the Council Recommendation on agile regulatory governance to harness innovation (2021) and the Council Recommendation on international regulatory cooperation to address global challenges (2022).

56 This idea is also reflected in the report "Spain: from administrative reform to continuous improvement" in which, in addition to insisting on the idea of including regulatory impact assessment in the initial stages of the process of designing public policies and formulating regulatory proposals, the OECD recommends identifying the objectives of public policy, assessing whether the regulation is necessary, how it can be more effective and efficient in achieving these objectives, and considering alternatives and advantages of different approaches to identify the most appropriate one.

A line of argument that the European Commission will decide to explore, as evidenced by the publication of a *Better Regulation Package* on 19 May 2015, which reflects the current situation and prospects for better regulation policy in the European Union and includes a series of tools to continue advancing in this area, including the *Measuring Regulatory Performance Programme*, which provides advice to Member States on regulatory policy through two channels: (i) the creation of indicators (iREG) that provide information on the situation and profile of the Member States in this area; and (ii) the demonstration of how better regulation leads to benefits for the economy and citizens.

had a decisive influence on the action undertaken in the field of regulatory improvement by other organisations, as in the specific case of the European Union, and have left their mark on the processes of modernisation and adaptation of some national legislations, as in the case of the Kingdom of Spain and the aforementioned Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.

2. THE EUROPEAN UNION'S DECISIVE ACTION IN THE FIELD OF "BETTER REGULATION"

The concern for better regulation in the European Union has been present since 1985, being conceived as an indispensable element for the achievement of the common market. However, it was not until the 1990s that this issue took on a systematic dimension, with several Community initiatives⁵⁷.

Thus, 1996 saw the launch of the *"Simpler Legislation for the Internal Market"* (SLIM) initiative, which made it possible to undertake the revision of 17 areas of Community legislation during the first years of operation⁵⁸. Subsequently, the Council of Ministers of Public Administration of the European Union adopted the Strasbourg Resolution on improving the quality

57 The starting point for regulatory reform was the Edinburgh European Summit in December 1992. This was followed shortly afterwards by the Interinstitutional Agreement of 20 December 1994 on an accelerated working method for the official codification of legislative texts. As early as 1995, on the occasion of the Intergovernmental Conference, a declaration attached to the Treaty of Amsterdam, the Declaration on the quality of drafting of Community legislation, was adopted, calling on the European Parliament, the Council and the Commission to establish by common agreement guidelines for improving the quality of drafting of Community legislation and to apply these guidelines when considering proposals or draft Community legislation, adopting the internal organisational measures they deem necessary for its proper implementation; and to make every effort to speed up the codification of legislative texts (BETANCOR, 2009: 153).

58 In this respect, GÓMEZ (2012: 40) states that the turning point in this process was marked by the Lisbon Council (2001) which, based on the awareness of the need for more coordinated action between the EU and the Member States to improve the quality of the "regulatory chain", established the mandate to "create an Action Plan in favour of a strategy for a more orderly action aimed at simplifying the regulatory framework". This mandate will later be confirmed by the Stockholm, Laeken and Barcelona European Councils and will give rise to the first official European Union document dealing strictly with the problems of regulatory reform: the Commission's White Paper on European Governance of 25 July 2001.

Among the most outstanding passages of this White Paper are those that refer to the basic principles that, at the European level, should guide good governance: (i) openness; (ii) participation; (iii) accountability; (iv) effectiveness; and (v) coherence. It also includes a roadmap of reforms to be carried out in various fields of action, such as increasing the participation of social actors in the drafting and implementation of European policies, improving the quality and implementation of Community policies, strengthening the link between European governance and the Union's place on the international scene, and the need to review the role played by the different European institutions (EUROPEAN COMMISSION, 2001).

of standards⁵⁹, which led to the creation of the Mandelkern Expert Group on Better Regulation⁶⁰, whose purpose is none other than to develop a coherent approach to better regulation and to present its proposals to the ministers, including the definition of a common methodology for the evaluation of the quality of standards.

On the basis of the Mandelkern Report, dated 13 November 2001, the European Union will begin to build a genuine policy of improving the quality of regulation, which resulted in several Community initiatives (CASADO, 2017: 47). The first of these is the Action Plan "Simplifying and improving the regulatory environment"⁶¹, which sets out the actions to be undertaken by the Commission (including the preparation of impact assessments for its main policy and legislative initiatives), the European Parliament and the Council and the Member States, in favour of a strategy for more coordinated action to simplify the regulatory environment, in accordance with the mandate given by the Lisbon European Council and confirmed in Stockholm, Laeken and Barcelona.

Secondly, the Interinstitutional Agreement between the European Parliament, the Council and the Commission on Better Lawmaking, in which the three institutions agree to improve the quality of legislation by promoting a series of initiatives and procedures, such as: (i) improving the overall coordination of the legislative process; (ii) enhancing transparency and accessibility of information for citizens at all stages of legislative work; (iii) ensuring that the choice of legislative instruments adopted is explained

59 In this connection, account should be taken of the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation and the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts.

60 The Group was set up in December 2000 with the participation of 16 experts representing each of the 15 EU countries and the Commission. Since its formation, the group has been known by the name of its chairman, Mr Mandelkern, the French representative and honorary section president of the Council of State. Among the objectives to be explored were: (i) the systematic use of impact studies; (ii) transparency in the consultation process prior to the drafting of texts; (iii) the simplification of adopted texts; and (iv) the wider use of codification.

61 In this respect, it is worth recalling that the European Commission (2002: 3) states that "the improvement and simplification of the regulatory environment is intended, always bearing in mind the interests of citizens, to produce Community legislation that is better adapted to the problems raised, to the challenge of enlargement and to technical and local realities. A less complex drafting would facilitate its implementation by Member States and stakeholders, as well as its readability and accessibility by citizens. Combined with efforts to improve legislative procedures and institutional practices, such action should enable businesses and administrations to save time and reduce costs. The ultimate objective is to preserve a high level of legal certainty in a Union on the threshold of further enlargement, to enhance the dynamism of economic and social actors and thus to contribute to strengthening the credibility of the Community in the eyes of its citizens. There is no question of deregulation or of restricting the Community's capacity to act".

and justified; (iv) promoting the use of alternative methods of regulation; (v) exploring the potential and benefits of co-regulation and self-regulation; (vi) ensuring that the quality of legislation is promoted, i.e. that it is clear, simple and effective; (vii) monitoring that Member States transpose Community law correctly, promptly and on time; and (viii) updating, reducing and simplifying existing Community legislation.

For its part, in the Communication from the Commission to the Council and the European Parliament of 16 March 2005 on Better Regulation for Growth and Jobs in the European Union⁶², the Commission recommended that all Member States establish better regulation strategies⁶³ and, in particular, national impact assessment systems to identify the economic, social and environmental consequences of regulation, as well as support structures adapted to their national circumstances⁶⁴.

Next, the Communication entitled "Smart Regulation in the European Union"⁶⁵, of 8 October 2010, sets out the need to move towards smart regulation, consisting of the design of new legislation, through which "different stakeholder views and evidence gathered through extensive consultation are linked and subjected to a process of impact assessment and comprehensive simplification of legislation to determine whether the quality of the proposals is effective" (GALLO AND PINILLA, 2020: 221).

62 It stresses that better regulation is essential to promote competitiveness both at EU level and in the Member States; it identifies the need to strengthen the means for better regulation in the EU (impact assessment, screening of pending legislative proposals and simplification of existing legislation); promotes better regulation in the Member States, recommending the establishment of national impact assessment systems to identify economic, social and environmental impacts, and the simplification of national legislation; and provides for the creation of a group of high-level national regulatory experts to advise the Commission (EUROPEAN COMMISSION, 2005: 3-11).

63 For its part, the EUROPEAN COMMISSION (2009: 6) contains a set of measures designed to improve the quality of legislation in relation to the circumstances prevailing at the onset of the economic crisis. According to this text, the Commission was to present 33 regulatory simplification initiatives,

64 It is also worth highlighting the creation in 2006 of the European Network for Regulatory Improvement, composed of 21 institutions from the different Member States, whose main objectives are to improve and disseminate current knowledge on regulatory issues, as well as the degree and mode of implementation of assessment procedures in the Member States.

65 The Commission considers that better regulation is needed, but that there is a need to move towards smart regulation, with the aim of designing and producing regulation that respects the principles of subsidiarity and proportionality and is of the highest possible quality, an objective to be pursued throughout the policy-making cycle, from the conception of a piece of legislation to its review. To make this smart regulation policy effective, it complements and reformulates measures already envisaged (e.g. simplification of legislation and reduction of administrative burdens and impact assessment) and adds others that give more importance than before to the evaluation of the functioning and effectiveness of legislation (EUROPEAN COMMISSION, 2010: 4).

However, the European Union, far from stopping at the development of merely programmatic documents, has noticed and allocated significant resources that can contribute to improving its approach, which has allowed it to continue the tireless work of promoting and encouraging better regulation undertaken by the European integration project now more than three decades ago. As recently as May 2015, the European Commission adopted the first Integrated Guidelines on Better Regulation⁶⁶, which constitute a number of tools to guide the work of Commission staff throughout the policy cycle and have renewed guidelines on how to assess the correct application of the general principles of European law.

On 13 April 2016, on the occasion of a new Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Regulation⁶⁷, the three Institutions recognised their shared responsibility to adopt high-quality legislative instruments and to ensure that EU legislation focuses on those areas where it brings the greatest *added value* for European citizens, is as efficient and effective as possible in achieving the common objectives of EU policies, is as simple and clear as possible, avoids over-regulation and administrative burdens for citizens, administrations and businesses, especially small and medium-sized enterprises (SMEs), and is designed to facilitate its transposition and practical application and to strengthen the competitiveness and sustainability of the EU economy. The document covers all aspects of better regulation, subsidiarity and proportionality, transparency of the legislative procedure, the use of delegated acts and the annual and multi-annual programming of policy priorities.

All of this brought with it a renewed prominence of the general principles of European law and, in particular, of the principles of subsidiarity and proportionality, which are essential elements of the European Commission's "Better Lawmaking" programme⁶⁸, which is articulated around the three

66 Guidelines that have recently been revised (EUROPEAN COMMISSION, 2019 and 2021).

67 A year earlier, in 2015, the Commission established the Regulatory Scrutiny Committee (RSC), an independent group of Commission officials and external experts, which will play a leading role in analysing impact assessments and other studies in the light of the "one plus one minus" principle, strategic foresight and proper consideration of the various consequences of the coronavirus crisis. The Committee publishes annual reports outlining the activities carried out to fulfil its mission.

68 See European Commission (2018: 3-4) which emphasises that "the principle of subsidiarity is at the heart of the Union's actions [...] In practice, subsidiarity is about identifying the best level of governance to design and implement policies. The Union should intervene only where necessary and where it would yield clear and unambiguous benefits over and above measures taken at national, regional or local level. The potential added value of EU action and the cost of inaction (often referred to as the "cost of non-Europe") are closely related concepts [...] Subsidiarity means leaving room for the most appropriate level of governance to assume its responsibility to act. Member States are also free to act when

fundamental processes of assessment, impact assessment and consultation of interested parties. In short, the implementation of all these tools has made it possible to correct the *convoluted* formula for adopting regulatory instruments by the European legislator⁶⁹, enabling the presentation of more proportionate legislative proposals and contributing to a more effective application of European Union law. In parallel, all these measures are complemented by a more strategic approach to the implementation and enforcement of European law, in particular by helping Member States to implement EU law correctly.

3. THE TRAUMATIC EVOLUTION OF THE PHENOMENON OF REGULATORY QUALITY IN THE SPANISH LEGAL SYSTEM

In spite of the numerous efforts undertaken at the international and European level with the aim of promoting the quality of regulation, the phenomenon of regulatory reform appeared on the national scene much later. However, at the end of the 20th century, the first administrative simplification initiatives began to appear⁷⁰.

the Union fails to do so, and action at all levels of governance may be necessary for a given policy. In general, the Commission's evaluations will consider the European dimension of the problems and impacts of each new initiative [...] The principle of proportionality requires that the content and form of Union action should not go beyond what is necessary to achieve the objectives pursued. Protocol No. 2 sets out in more detail the proportionality requirements for draft legislation [...] It is a matter of carefully matching the intensity of the proposed measure to what it is intended to achieve. Proportionality is the cornerstone of the Commission's Better Regulation policy and its Better Regulation agenda. The Court of Justice is the ultimate arbiter of proportionality and can overturn acts which it considers to have breached the principle. Given the importance of the correct application of these two principles and the close relationship with national parliaments, the Commission publishes an annual report on these two issues".

69 Concur with MÍGUEZ (2019: 10) who states that "the European Union, which has often been criticised for its excessive, obscure, regulatory and backward-looking legislation, has joined this trend in an attempt to correct its own way of legislating. The first precedent was the Council Resolution of 8 June 1993 on the quality of drafting of Community legislation, followed by the Commission Communication of 5 June 2002, containing the Action Plan "Simplifying and improving the regulatory environment" [COM(2002) 278 final] and, more recently, the new Communication of 19 May 2015 on Better Regulation for Better Results - An EU Agenda [COM(2015) 215 final] and the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Regulation. Significantly, however, these are non-regulatory instruments, addressed to the EU institutions and bureaucracy themselves and without binding legal force".

70 As a result, the Council of Ministers approved, at its meeting of 26 January 1990, the Evaluation Questionnaire that must necessarily accompany the draft legislation submitted to the Council of Ministers. In turn, at the meeting of the Council of Ministers of 18 October

However, it was not until the adoption of Royal Decree 1418/2006, of 1 December, approving the Statute of the State Agency for the Evaluation of Public Policies and the Quality of Services (AEVAL) that a decisive step was taken in favour of regulatory improvement⁷¹, with the institutionalisation of a system of *ex post* evaluation of regulations⁷².

1991, the Guidelines on the form and structure of Preliminary Draft Bills were approved, which have been followed in time by the current Guidelines on Regulatory Technique, approved by Agreement of the Council of Ministers on 22 July 2005 (SANTAOLALLA, 2006: 41-92).

An example of this is Royal Decree 670/1999, 23 April 1999, of the Interministerial Commission for Administrative Simplification, and the approval of different administrative simplification plans, which serve as a guide to regulatory reform and the search for greater quality in regulation.

- 71 See GARDE (2007: 11-12) who argues that the creation of the Evaluation Agency is part of a broader process of modernisation and innovation of public administrations, sharing goals with other initiatives belonging to the same political orientation: modernisation plan, reform of the public employment statute, commitment to e-government, improvement of regulation through simplification, analysis of its impact and creation of a new type of public body (agencies for the improvement of public services). The process of modernising public administration is also on the agendas of international organisations and is very specifically included in the European Union's Lisbon Strategy. The purpose of the evaluation function is to contribute to achieving better governance of public administration that is more transparent, accountable, efficient and effective. Evaluation contributes to: improving the transparency of the civil service; the accountability of those responsible for policies and programmes based on knowledge of the results and effects of public interventions; boosting the productivity of public administrations and the economy as a whole by making critical use of the lessons learned from the policies implemented, eliminating or introducing new programmes in priority areas and areas of greater competitiveness; and favouring the rationality of public spending, budgetary stability and the fight against waste.

Despite its capital importance for the improvement of the functioning of the public sector and the quality of the democratic system, the Ninth Additional Provision of Royal Decree 769/2017, of 28 July, which develops the basic organic structure of the Ministry of Finance and Public Function and modifies Royal Decree 424/2016, of 11 November, which establishes the basic organic structure of the ministerial departments, contemplated the dissolution of the AEVAL.

However, its recovery is currently being debated. In this regard, the Agreement of the Council of Ministers of 19 April 2022 led to the approval of the Draft Bill for the Institutionalisation of Public Policy Evaluation in the General State Administration, which foresees, among other measures, the creation of a State Agency for Public Policy Evaluation, in compliance with the commitments established in component 11 of the Recovery, Transformation and Resilience Plan "Spain Can", relating to the modernisation of public administrations.

- 72 As rightly pointed out by MARTÍN-RETORTILLO (1998: 7), international authors and institutions detect three different phases in the assessment of regulatory quality in the most advanced countries. The first would correspond to the mere simplification of the existing *stock*. The second would consist of the individual improvement of future regulations to be approved. Finally, the third stage would involve the development of institutional arrangements to achieve an improvement of the entire regulatory system, creating a cross-cutting entity capable of guaranteeing this objective.

This was followed by the adoption of the “Action Plan for the Reduction of Administrative Burdens” of 20 June 2008, the purpose of which was to transfer the European Strategy for Administrative Simplification to the national level, with the aim of improving legal provisions and designing better regulations, strengthening compliance and efficiency and minimising costs for the economy, considering the Spanish business structure, with small companies, the complexity and lack of analysis of the impact of the new regulations and the complex model of territorial decentralisation and distribution of powers among the different public administrations (GOVERNMENT OF SPAIN, 2008: 5-6).

Secondly, there is Royal Decree 1083/2009, of 3 July, which regulates the Regulatory Impact Analysis Report (MAIN)⁷³, the purpose of which, as is clear from the Preamble itself, is none other than *“to ensure that when a*

73 The purpose of the Regulatory Impact Analysis Report is to ensure that, at the time of drafting and approving a project, all the necessary information is available to estimate the impact that the regulation will have on its addressees and agents. The rules that make up our legal system must be simple, their content must be easily understandable by those to whom they are addressed.

On 27 October 2017, the Council of Ministers approved Royal Decree 931/2017, which regulates the Regulatory Impact Analysis Report and repeals the previous text from 2009. The purpose of the new Royal Decree is to develop the provisions contained in the new wording given to article 26.3 of Law 50/1997, of 27 November, of the Government by Law 40/2015, of 1 October, on the Legal Regime of the Public Sector, with regard to the regulatory impact analysis report that must accompany preliminary draft laws and draft royal decree-laws, legislative royal decrees and regulatory standards. This provision reads as follows: “The competent executive centre shall draw up a Regulatory Impact Analysis Report, which must contain the following sections: a) timeliness of the proposal and regulatory alternatives studied, which must include a justification of the need for the new rule as opposed to the alternative of not approving any regulation; b) content and legal analysis, with reference to national and European Union law, which shall include a detailed list of the rules that will be repealed as a result of the entry into force of the rule; (d) economic and budgetary impact, which shall assess the consequences of its application on the sectors, groups or agents affected by the rule, including the effect on competition, market unity and competitiveness and its compatibility with the legislation in force at any given time on these matters. This analysis will include carrying out the SME test in accordance with the practice of the European Commission; e) it will also identify the administrative burdens entailed by the proposal, quantify the cost of compliance for the Administration and for those obliged to bear them, with particular reference to the impact on small and medium-sized enterprises; f) gender impact, which will analyse and assess the results that may follow from the approval of the regulation from the perspective of the elimination of inequalities and its contribution to the achievement of the objectives of equal opportunities and treatment between women and men, based on the indicators of the initial situation, forecast results and forecast impact; g) a summary of the main contributions received in the public consultation process; h) climate change impact, which should be assessed in terms of mitigation and adaptation to climate change. The Regulatory Impact Analysis Report shall include any other information that may be relevant at the discretion of the proposing body”. It is thus adapted to the new administrative laws and to the recommendations and best practices of the OECD and the European Union. The text also includes a mandate of 6 months for the adaptation of the current Methodological Guide for the preparation of the MAIN.

project is being drafted and approved, the necessary information is available to estimate the impact that the regulation will have on its recipients and agents. To this end, it is essential to give reasons for the need and timeliness of the planned regulation, to assess the different existing alternatives for achieving the aims sought and to analyse in detail the legal and economic consequences, especially on competition, that will be derived for the agents affected, as well as its incidence from the budgetary point of view, its impact on gender, and on the constitutional order of distribution of competences.”

The virtuousness of this major regulatory milestone lies in the fact that it recasts in a single document, the regulatory impact analysis report, all those reports, studies and reports that until now had to accompany preliminary draft laws and draft regulations⁷⁴. From now on, the MAIN will contain the following sections (art. 2.1): (a) timeliness of the proposal; (b) legal content and analysis, which will include a detailed list of the rules that will be repealed as a result of the entry into force of the rule; (c) analysis of the adequacy of the proposed rule with the order of distribution of competences; (d) economic and budgetary impact, which will include the impact on the sectors, groups or agents affected by the rule, including the effect on competition, as well as the detection and measurement of administrative burdens; and (e) gender impact, which will make it possible to analyse and assess the results that may follow from the approval of the project from the perspective of the elimination of inequalities and its contribution to the achievement of the objectives of equal opportunities and treatment between women and men, on the basis of the indicators of the initial situation, the forecast of results and the forecast of impact set out in the Methodological Guide referred to in the first additional provision⁷⁵.

Thirdly, Law 17/2009, of 23 November, on free access to service activities and the exercise thereof, and Law 20/2013, of 9 December, on guaranteeing market unity, which have represented significant progress⁷⁶, since they

74 That is, the report on the necessity and appropriateness of the proposed regulation, the economic report and the gender impact report.

75 The regulatory impact assessment report shall include any other aspects that may be relevant at the discretion of the proposing body, paying special attention to social and environmental impacts and the impact on equal opportunities, non-discrimination and universal accessibility for people with disabilities.
For its part, when it is considered that the proposed legislation does not have an appreciable impact on any of the areas, so that it is not necessary to present a complete report, an abridged report will be drawn up which must include, at least, the following sections: appropriateness of the legislation; list of the legislation that is repealed; budgetary impact and gender impact. In this respect, the Methodological Guide referred to in the first additional provision will include indications of the precise content of the abridged report. However, the proposing body must duly justify in the report itself the reasons for its abridged preparation (art. 3).

76 An analysis of the aforementioned rule from the point of view of better regulation can be

have enabled the principles of good regulation and better regulation to be implemented in all sectors of productive activity⁷⁷. Particularly relevant are the provisions relating to regulatory improvement contained in the latter text, such as those provisions that make direct reference to cooperation in the procedure for drafting regulatory projects⁷⁸, or those that establish the obligation for the competent authorities to periodically evaluate their regulations⁷⁹.

found in PRIETO (2016: 347).

- 77 The aim of these rules, which transpose Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, is none other than to make it possible for service providers in one Member State to provide a service in the territory of the other Member States without unnecessary obstacles. To this end, it is necessary to undertake the liberalisation of the services market within each Member State by removing, minimising or rationalising the administrative requirements for the performance of these activities. On the relationship between the Services Directive and better regulation, see CANALS (2010: 324).

As PONCE (2009: 218-219) recalls, the main purpose of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market is to make progress towards the achievement of a genuine internal market for services. It is a complex piece of legislation, with 46 precepts, which affects various aspects, in addition to those related to regulatory quality, which are the ones that interest us here. Indeed, the Directive refers to the development of an administrative simplification programme, referring to electronic procedures and a one-stop shop system for service providers; it also refers to the establishment of an electronic system of administrative cooperation between Member States; furthermore, it refers to the elimination, modification or justification of the requirements for the cross-border provision or consumption of services, establishing obligations for the evaluation of existing and future national legislation. On this point, it should be pointed out that the Directive required an *ex post* regulatory assessment of the regulations affecting the provision of services to be carried out before 28 December 2009, with reports on the justification of the regulations to be drawn up, which would be subject to review by the European Commission and the Member States. From this perspective, the Directive is in line with the EU's "*better regulation*" programme, in its *ex post* evaluation aspect, in the sense that, in short, the aim is to analyse the quality of the regulation and measure its impacts, in order to proceed to its modification or repeal, although the Directive focuses exclusively on the impacts of the regulation on the freedom of establishment and the freedom to provide services.

- 78 Although it is true, only when they can have an impact on market unity (PERNAS, 2014: 433).
- 79 In this journey through the regulatory milestones that marked a before and after in the gestation and subsequent consolidation of a culture of regulatory reform, it is necessary to refer to Law 2/2011, of 4 March, on sustainable economy, which represents a significant milestone in this area, by introducing important instruments for regulatory reform. Without going any further, its Title I, which concentrates a large part of the reforms to be carried out within the public sector with the aim of guaranteeing an efficient economic environment and supporting the competitiveness of the Spanish economy, included a Chapter I [articles 4 to 7, now repealed by letter c) of number 2 of the sole derogatory provision of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations], relating to the improvement of the quality of regulation, which included the principles of good regulation applicable to regulatory initiatives and instruments for regulatory improvement, with special attention to transparency and the

Fifthly, Law 19/2013, of 9 December, on transparency, access to public information and good governance (LTAIBG) stands out, insofar as it brings with it the strengthening of transparency in the activity of all public administrations and has a significant impact on the process of creating regulations and on good administration. In this respect, it is worth highlighting the provisions contemplated in art. 7 LTAIBG, which obliges public administrations, within the scope of their competences, to publish, among other documents, draft bills and draft legislative decrees for which they are responsible for initiating; draft regulations for which they are responsible for initiating; the reports and reports that make up the dossiers for drafting regulatory texts, in particular, the regulatory impact analysis report; and the documents that, in accordance with the sectoral legislation in force, must be subject to a period of public information during their processing (*Mancilla*, 2014: 530).

Of particular relevance are the provisions contained in Law 39/2015 and its complementary law, Law 40/2015, of 1 October, on the legal regime of the public sector (hereinafter, LRJSP)⁸⁰, insofar as they include some crucial provisions on the exercise of legislative initiative and the power to issue regulations with the status of law and some improvements to the current regulation on hierarchy and publicity of regulations. Together with these provisions, Title VI of the LPACAP⁸¹ contains a series of principles of

prior and subsequent evaluation of such initiatives and the formalisation of instruments for this purpose: the new periodic reports on better regulation actions and the work of the Committee for Better Regulation of Services Activities. A comparison between the principles as they appeared in the Sustainable Economy Law and the way they have been enshrined in Law 39/2015 can be found in GARCÍA-ESCUDERO (2016: 436).

80 It is paradoxical that it is these rules that are responsible for regulating and upholding the principles of good regulation, given that, as a large part of the *legal-advertising* doctrine has insisted in pointing out, the LPACAP and the LRJSP constitute “another example of deficient legislative technique, particularly serious given that they are texts that form the backbone of the legal-administrative system and Spanish public law in general” (DÍEZ, 2016: 47-490). (DÍEZ, 2016: 471-490).

81 This Title VI is approved under the protection of the provisions of art. 149.1.14 EC, relating to the general Treasury and State debt, and article 149.1.13, which attributes to the State the competence in matters of bases and coordination of the general planning of economic activity, which evidences the economist approach of the new regulation (DÍAZ, 2016: 71). In the same sense, MORA (2016:518).

The constitutional basis used by the legislator to cover the aforementioned Title has given rise to profound controversy, which has finally resulted in the filing of appeals of unconstitutionality no. 3628-2016 and 3865-2016, presented, respectively, by the Government of Catalonia and the Government of the Canary Islands, admitted for processing by the Plenary of the Constitutional Court, by Ruling of 19 July 2016. In this regard, reference should be made to STC 55/2018, of 24 May 2018, FJ3, published in BOE no. 151, of 22 June 2018, according to which: “[t]o the contrary, in contrast to what is established in Law 39/2015 itself (first final provision, second paragraph), it cannot be accepted that numbers 13 and 14 of Article 149.1 EC contribute to covering Title VI and the second additional provision of Law 39/2015. These provisions, although they respond to savings or efficiency purposes, address issues of the legal and procedural regime of

good regulation (art. 129 LPACAP)⁸² and regulates aspects relating to the procedure for drafting regulations, including some instruments for regulatory improvement, such as *ex post* regulatory assessment (arts. 130 LPACAP)⁸³, regulatory planning (art. 132 LPACAP)⁸⁴ and public consultation prior to the drafting of the draft or preliminary draft of a law or regulation (art. 133 LPACAP)⁸⁵, tools that are mandatory for all public administrations⁸⁶.

public administrations: “[t]he attribution to the State of regulatory powers (art. 149 EC) [in this case, bases of the legal regime of public administrations and common administrative procedure] means, principally, the recognition of its capacity to politically decide on objectives and orientate the regulation of a matter towards them. When the State decides to direct a regulation towards the rationalisation of public resources and budgetary stability, it is drawing up policies and, in so doing, developing the genuine meaning of the fact that the Constitution has attributed powers to it in the regulated sphere. The State thus fills with political content the competence formally conferred on it in the corresponding matter, without these purposes being able to justify the consideration that the regulated matter is another or the entry into play of a different competence title (STC 41/2016, of 3 March, FJ 4)”. The aforementioned jurisprudential pronouncement partially upholds the appeal of unconstitutionality and, consequently: (i) declares that articles 129 (except for the fourth paragraph, second and third subparagraphs), 130, 132 and 133 LPACAP are contrary to the constitutional order of competences in the terms of FJ 7.b) of the Judgment; and (ii) declares that articles 132 and 133 LPACAP, except for the second and third subparagraphs), 130, 132 and 133 LPACAP are contrary to the constitutional order of competences. 133 LPACAP, with the exception of the clause in its first section “[p]rior to the preparation of the draft or preliminary draft law or regulation, a public consultation shall be held” and the first paragraph of its fourth section, both of Law 39/2015, are contrary to the constitutional order of competences in the terms of FJ 7.c) of the Judgment”.

- 82 According to art. 129.1 LPACAP, in the exercise of legislative initiative and regulatory power, public administrations must comply with the principles of necessity, effectiveness, proportionality, legal certainty, transparency and efficiency (MESEGUER, 2016: 135-144). However, there is a broad doctrinal consensus that these principles of good regulation contained in art. 129 LPACAP do not constitute a real novelty, as they are indebted to the provisions contained in the LES, although they are now configured as authentic principles that inform all actions of public administrations (SANTAMARÍA, 2016: 36).
- 83 The purpose of which is to review the regulations in force and to ascertain the real impact that the regulation has had and to review the existing public policy. This is a mechanism that was already foreseen previously, largely derived from article 6 of the LES, and which comes from the philosophy of “*smart regulation*” (REINOSO, 2016: 6).
- 84 Thus, art. 132 LPACAP obliges all public administrations to make public, on an annual basis, “a regulatory plan containing the legal or regulatory initiatives that will be submitted for approval in the following year” which, once approved, must be published on the Transparency Portal of the corresponding public administration. It is therefore committed to “improving *ex ante* regulatory planning, in the interests of greater legal certainty and predictability of the legal system” (PALOMAR, 2016: 49). (PALOMAR, 2016: 491).
- 85 While it is true that the introduction of this public consultation is a great step forward and should be viewed positively, insofar as it allows the opinion of the addressees of the future regulation to be taken into account even before it is planned, when all regulatory options are open, in practice its scope must be relativised, as a result of the configuration of a wide range of exceptions that distort the virtuousness of the consultation process (ORDUÑA, 2016: 7).
- 86 In the words of RODRÍGUEZ-ZAPATA (2015: 3), this decision is justified by the need to

At the same time, the LRJSP has made an important reform of Title V of Law 50/1997, of 27 November, which has made it possible to provide, as substantial innovations in the sphere of the General State Administration, and in line with international recommendations⁸⁷, the drafting of an Annual Regulatory Plan, the *ex post* evaluation of regulations and the issuing, by the current Ministry of the Presidency, Relations with the Courts and Equality, of the regulatory quality report (SÁNCHEZ, BUENO AND GARCÍA, 2019: 25-26).

Finally, we must make obligatory mention of Royal Decree 931/2017, of 27 October, which regulates the Regulatory Impact Analysis Report⁸⁸, which aims to ensure the exercise of legislative initiative and regulatory power, in accordance with the principles of good regulation, adequately guaranteeing the participation of citizens in the drafting of rules, reinforcing legal certainty and the periodic evaluation of the legal system. The regulation is made up of three articles that elaborate on the structure and content of the regulatory impact analysis reports (art. 2), in accordance with the provisions of the LPACAP and the LRJSP⁸⁹. It includes a section on the way in which

comply with international recommendations on better regulation and smart regulation.

- 87 Indeed, as can be seen in section VI of the Preamble of the LRJSP itself: “these important new developments, which are the result of the initiatives carried out on *Better Regulation* in the European Union, also follow the recommendations made in this area by the Organisation for Economic Cooperation and Development (OECD) in its report issued in 2014 *Spain: From Administrative Reform to Continuous Improvement*”. The European Commission’s Communication to the Council of 25 June 2008 (A “*Small Business Act for Europe*”) includes among its recommendations that specific dates should be set for the entry into force of any regulation affecting small and medium-sized enterprises, a proposal that is incorporated into state regulations and which will contribute to increasing legal certainty in our economic activity”.
- 88 Likewise, the regulation of the Annual Regulatory Plan and the Annual Regulatory Evaluation Report of the General State Administration has been approved, as well as the creation of the Regulatory Planning and Evaluation Board, by Royal Decree 286/2017, of 24 March, and the operating regime of the Regulatory Coordination and Quality Office, by Royal Decree 1081/2017, of 29 December, and the date of its entry into operation, by Order PRA/244/2018, of 12 March.
- 89 In accordance with the new regulation, the MAIN must contain the following sections: (a) timeliness of the proposed rule, which shall include, in any case, a clear identification of the aims and objectives pursued, an explanation of its compliance with the principles of good regulation provided for in art. 129 LPACAP, and an analysis of alternatives, which will include a justification of the need for the rule as opposed to the alternative of not approving any regulation; (b) content and legal analysis, which must summarise the main novelties introduced by the proposed rule; (c) analysis of the adaptation of the proposed rule to the order of distribution of competences, specifying the competence title or titles on which the rule is based; (d) economic and budgetary impact; (e) detection and measurement of the administrative burdens entailed by the proposal, quantifying the cost of compliance for the Administration and those obliged to bear them; (f) impact on gender, children and adolescents and the family; (g) other impacts, paying special attention to social and environmental impacts, the impact on equal opportunities, non-discrimination and universal accessibility for people with disabilities; (h) cost-benefit analysis, consisting

the evaluation of the results of the application of the regulation, or *ex post* evaluation, is to be carried out. In this regard, it should be borne in mind that Article 25.2 of Law 50/1997, of 27 November 1997, on the Government (LG), states that the Annual Regulatory Plan will identify the regulations that will be subject to an analysis of the results of their application, and Article 28.2 of the LG states that this evaluation will be carried out under the terms and deadlines set out in the report on the analysis of regulatory impact. Likewise, the possibility of drawing up abridged reports is maintained when the circumstances envisaged in this Royal Decree are met⁹⁰.

of a summary of all costs and benefits of the rule, both direct and indirect; (i) description of the processing and consultations carried out; and (j) ex-post evaluation, including the way in which the results of the application of the rules will be analysed, as referred to in art. 25.2 GL. To this end, the report shall indicate whether the regulation is included among those subject to evaluation in the corresponding Annual Regulatory Plan and, if so, it shall clearly describe the objectives and purposes of the regulation and the terms and deadlines that will be used to analyse the results of its application, in accordance with the criteria set out in art. 28.2 LG and art. 3.2 of Royal Decree 286/2017, of 24 March, which regulates the Annual Regulatory Plan and the Annual Regulatory Evaluation Report of the General State Administration and creates the Regulatory Planning and Evaluation Board.

In the opinion of the doctrine, the greatest difficulty lies in the part referring to the analysis of the economic impacts “when it comes to assessing the consequences on the sectors, groups or agents affected by the regulatory project, including the effect on competition, market unity, competitiveness and cost-benefit analysis” (PRIETO, 2019: 137).

To overcome this series of difficulties, “a first step would be to add to the report a series of metrics based on the analysis of the text of the standard to be approved. Specifically, it is worth considering a set of “structural metrics”, containing information on the length of the text (and the number of words) of the regulation and a reference to the weight of the regulation within the regulatory framework - based on the number of regulations that it repeals or does not repeal [article 1. b) of RD 931/2017]. This second calculation would require tracking the amount of regulation. All of this would be consistent with the current content of these reports, which already request information and justifications as to why the rule is necessary — as opposed to the alternative of not approving any regulation — [article 1.a) 3 ° of RD 931/2017] and an explanation of its consistency with the principles of necessity, efficiency and proportionality [article 1.a) 2 °]” (MORA-SANGUINETTI, 2019: 160).

- 90 In this sense, as stated in art. 3, when it is considered that the proposed legislation does not have appreciable impacts in any of the areas (economic, budgetary, gender, childhood, adolescence, family, etc.) or these are not significant, an abridged report will be drawn up. Its presentation will also be mandatory in the case of the processing of draft royal decree laws, in accordance with the provisions of art. 26.11 of the LG.

This abridged report must include at least the following sections: (a) the appropriateness of the rule; (b) identification of the prevailing jurisdictional title; (c) list of the rules that are repealed; (d) budgetary and gender impact, as well as other impacts detected that are deemed relevant; and (e) description of the processing and consultations carried out. It will also include a description of the way in which the results of the application of the rule will be analysed, if applicable, in accordance with the provisions of Article 2.1 (j) of the rule under study. In this respect, the Methodological Guide will include indications of the precise content of the abridged report. In addition, it is foreseen that the proposing body or bodies must justify the reasons for its abridged preparation in the report itself.

This Royal Decree also includes four additional provisions, relating, respectively, to the mandate to adapt the Methodological Guide, the specific provisions referring to the preliminary draft of the General State Budget Law, the gender impact in the draft Plans of Special Relevance and the non-increase in personnel expenses. Finally, a transitory provision, a derogatory provision and a final provision relating to its entry into force are included.

III. ADVANTAGES AND OPPORTUNITIES OF INCLUDING THE DEMOGRAPHIC AND TERRITORIAL DIMENSION IN THE REGULATORY IMPACT ASSESSMENT REPORT

Although it does not yet have a specific state regulation, there are numerous pronouncements by the General State Administration in relation to the need to incorporate the demographic and territorial impact report in the process of drawing up public regulations and policies, despite which little progress has been made in terms of its technical and legal specification and instrumentation.

In this regard, it should be recalled that legal norms, by constitutional mandate, must be rational, effective, efficient, non-discriminatory, proportionate, and must protect constitutional rights and also allow for their adequate development (DE MONTALVO, 2017: 148).

The aim of this paper is not to present a detailed guide for the assessment of the impact of the regulatory corpus on the rural environment and society, but only to lay the foundations for the necessary methodological reflection leading to its elaboration, in accordance with the provisions contained in art. 2.g) of Royal Decree 931/2017, of 27 October and, in line with the position adopted by the Ministry for Ecological Transition and the Demographic Challenge and the rural communities themselves for some time now, which have been pointing out the need for the legislator, when introducing regulations in our legal system that have special significance for rural territories with demographic challenges, The MAIN should include a systematised study of the impact on the fundamental right to equality of the interested parties of the different regulatory provisions contemplated in the law.

Although this approach will be viewed with scepticism by some, considered utopian by others, and will even provoke furious criticism from those brave and staunch defenders of the *myth* of effectiveness and legal-administrative efficiency, it should be stressed that this issue is already a reality in our country, as demonstrated by the Report on demographic impact assessment in the procedure for drafting regulations, approved by the Advisory Council of Castilla y León on 29 December 2020.

In accordance with this extraordinary and pioneering pronouncement, which demonstrates the enormous degree of commitment of the Castilian-Leonese Institution to the rural question, *“[t]he demographic impact assessment can be carried out under the umbrella provided by the analysis of the “economic consequences” and “social impacts” of the project, to which article 4.2 of Decree 43/2010 refers generically. However, in the experience of this Institution, practice shows that there have been very few regulatory projects in which the demographic component of the regulation has been addressed, not in detail, but simply as a reference, under that general provision”* (CONSEJO CONSULTIVO DE CASTILLA Y LEÓN, 2020: 39-40).

All of this would seem to call for a special treatment of the demographic and territorial perspective in the regulatory assessment, which would serve as a channel for reflection on existing problems and allow for the articulation of innovative solutions coordinated with the specific policies to be addressed by the regulatory instruments being drafted.

This is the majority option supported by the European institutions when they insist on calling for their own initiatives to develop *“comprehensive demographic and territorial impact assessments, carried out in parallel with economic, environmental and social impact assessments, with the aim of making regions lagging behind more dynamic and attractive, thus contributing to the social and territorial cohesion of the Union”* (COUNCIL OF THE EUROPEAN UNION, 2020: 6).

The European Committee of the Regions, for its part, points out that the inclusion of the rural and territorial dimension in the process of public policy and standard setting *“is not a “check box” to be ticked when everything is finalised. It is a philosophy on how to develop policies [and standards] and how to take into account the problems of specific regions at all stages and at all levels of policy making. Putting it into practice is not simply about applying an external verification methodology but must be integrated into policy [and rule] making processes”* (EUROPEAN COMMITTEE OF THE REGIONS, 2022: 69).

IV. SOME REFLECTIONS ON THE RECENT EMERGENCE OF THE RURAL GUARANTEE SCHEME

As noted throughout this study, *“rural proofing”* or the Rural Guarantee Mechanism (hereinafter MRG) is a commitment by all public administrations to systematically review and examine all public policies in order to ensure that their implementation does not cause significant harm to rural areas⁹¹. In short,

91 This issue, viewed by some with a certain scepticism, considered by others as utopian, is already a tangible reality in other areas, as is the case with the principle of not causing

it is a process of gathering information, consulting stakeholders and working with the different institutions and administrations involved in the revitalisation of rural territories, in order to finally identify where and how to address the most pressing rural issues as effectively as possible (SANZ, 2021: 155).

Its objective is none other than to guarantee the effective participation of rural communities and the incorporation of the needs and demands of their citizens in the shaping of different public policies and budgetary allocations, as well as in the design of the different programmes and strategies articulated by the public authorities. Therefore, for this mechanism to be effective, it is necessary to proactively and transparently include rural communities and their potential in the design phase of different public policies (HOGAN, 2017: 27-28).

Similarly, an independent body responsible for applying the “*rural proofing*” methodology must be set up, which in turn must be recognised and approved by the government. Such recognition not only operates in terms of effectiveness and efficiency in the analysis of different public policies, but is also the primary guarantee that the results obtained in the study will be taken into account and included in the policies being evaluated.

Therefore, this MRG is nothing more than an instrument to improve and guarantee the cooperation of rural communities with adjacent public administrations and institutions and to improve the coordination between the different public policies that are promoted with the purpose of dynamising rural areas⁹², once they have managed to penetrate the always complex political and governmental agenda.

From a legal point of view, it is a matter of “analysing the impact of regulations on rural areas (often “urban-centric”) and trying to design and apply new solutions that guarantee their positive impact on rural areas”

significant harm to the environment (known as “DNSH”), which burst onto the European scene in the framework of Regulation (EU) 2021/241 of 12 February 2021, establishing the Resilience and Recovery Mechanism (hereinafter RMRR) which attaches crucial importance to driving the ecological transition, in coherence with the European Green Pact, the EU’s commitments to implement the Paris Agreement and in line with the United Nations Sustainable Development Goals (SDGs).

In application of the above-mentioned Regulation, the European Commission has been responsible for ensuring, as part of the assessment process of the national plans, that “none of the measures implementing the reforms and investment projects included in the recovery and resilience plan cause significant harm to environmental objectives within the meaning of Article 17 of Regulation (EU) 2020/852”. In this respect, the positive assessment of the national plans has required that all measures (each reform and each investment) comply with the principle of “no significant harm”. (EUROPEAN COMMISSION, 2021).

92 This idea is not new. The old Law 45/2007, of 13 December 2007, for the sustainable development of the rural environment already established in its Title I, Chapter III, a series of important provisions on the necessary cooperation between public administrations, even going so far as to situate this cooperation as a *sine qua non* condition for the proper application of the regulatory milestone. For a complete study of the legal regime developed by the aforementioned regulation, see MUÑIZ (2009).

(SANZ, 2021: 156), a difficult task to which the Administrative Law Area of the Salamanca Law Firm has devoted significant efforts for some time, a concern that has ended up being reflected in the sixth additional provision of Law 27/2022, of 20 December, on the institutionalisation of the evaluation of public policies in the General State Administration⁹³, which reads as follows:

- “1. The Government shall promote a Rural Guarantee Mechanism, ensuring the participation of stakeholders in its design and implementation.
2. This Mechanism shall, in any event, include:
 - The incorporation of the evaluation of the territorial effects and the effects on the rural environment and society of public policies, in accordance with the provisions of article 2.1 of this law.
 - The development of a specific evaluation methodology taking into account the principles, recommendations and tools proposed by the European Union in this field.”

V. CONCLUSIONS

The problem of depopulation is a question of fundamental rights and freedoms, which threatens the very principle of equality and whose resolution necessarily involves articulating legal-administrative responses that help to transform the actions of the public authorities towards rural communities. Under this premise, in recent times we have witnessed a multitude of initiatives of varying depth and intensity aimed at incorporating the demographic and territorial impact into the procedures for drafting regulatory instruments — and, where appropriate, public policy planning instruments —. Alongside this trend, there have also been, albeit to a lesser extent, various actions aimed at promoting the real implementation of a “rural guarantee mechanism”, a suitable instrument to ensure the inclusion of the potential of the rural environment as a source of innovative, integrating and sustainable solutions to the current and future challenges of society; At the same time, it is presented as an essential tool to guarantee the cooperation of rural communities with adjacent public administrations and institutions, to improve coordination between the different public policies that are promoted with the aim of dynamising rural areas and to strengthen citizen participation in rural territories. Despite all these potentialities, in Spain there has not yet been a real “*rural proofing*” mechanism, although it is true that it has recently been introduced in Law

93 Such is the importance of this issue that the EU High Level Group in charge of designing the “Long Term Vision for Rural Areas 2040” has highlighted, within its preparatory discussions, the suitability of promoting rural proofing at all levels (national, regional) and the commitment to the establishment of a participatory local development approach as the most appropriate European instruments for its implementation on the ground, with the capacity to address the diversity of rural areas in an integrated manner at local level. The short and long term objective is to allocate more funds and resources and thus ensure a holistic approach to the implementation of strategies in rural territories.

27/2022, of 20 December, on the institutionalisation of the evaluation of public policies in the General State Administration, and in Law 13/2023, of 30 March, on the revitalisation of rural areas in Aragon, making it a strategic objective whose implementation in practice has yet to be undertaken. All this contributes to the fact that there is still a long way to go to achieve a legal treatment that allows us to give value to the rural world, to implement tangible instruments of positive legal discrimination in favour of this environment and of the people who have chosen to live in such an environment, a difficult task in which the Spanish public university is called upon to play a special role, as a vector of modernisation and innovation and as a spearhead of rural revitalisation, a clear manifestation of the best public service.

VI. BIBLIOGRAPHY

ALIQUE LÓPEZ, J., "Presentación de la Ley 2/2021, de 7 de mayo, de Medidas Económicas, Sociales y Tributarias frente a la Despoblación y para el Desarrollo del Medio Rural en Castilla-La Mancha", in *Revista Española de Función Consultiva*, núm. 33, 2020.

ALONSO GARCÍA, M.C., "La incidencia de las potestades de los entes locales en el desarrollo y la implantación de las energías renovables", in *Cuadernos de Derecho Local*, núm. 61, 2023.

ÁLVAREZ SUÁREZ, M., "La mejora de la regulación en España como política pública: análisis y evolución", in *Gestión y Análisis de Políticas Públicas*, núm. 17, 2017.

BANDRÉS, E. and AZÓN, V., *La despoblación de la España Interior*, Funcas, Madrid, 2021.

BASELGA GARCÍA ESCUDERO, P., "Materiales para el estudio de la técnica legislative", in *Revista de las Cortes Generales*, no. 76, 2009.

BELLO PAREDES, S.A., "La despoblación en España: Balance de las políticas públicas implantadas y propuestas de futuro", in *Revista de Estudios de la Administración Local y Autonómica. Nueva época*, núm. 19, 2023.

BETANCOR RODRÍGUEZ, A., *Mejorar la regulación: una guía de razones y de medios*, Marcial Pons, Barcelona, 2009.

BLASCO HEDO, E., "Ley 2/2021, de 7 de mayo, de Medidas Económicas, Sociales y Tributarias frente a la Despoblación y para el Desarrollo del Medio Rural en Castilla-La Mancha", in *Actualidad Jurídica Ambiental*, núm. 113, 2021.

CANALS AMETLLER, D., "Simplificación administrativa y Directiva de Servicios: objetivos, medios e incidencias", in *Revista Aragonesa de Administración Pública*, núm. 12, 2010.

CARBONELL PORRAS, E., “Un estatuto básico para los municipios pequeños?: Un comentario de urgencia”, in *Revista de Estudios de la Administración Local y Autonómica*. Nueva época, núm. 15, 2021.

CASADO CASADO, L., “La mejora regulatoria en España: los nuevos principios que informan el ejercicio de la iniciativa legislativa y la potestad reglamentaria de las Administraciones públicas”, in *A&C: Revista de Direito Administrativo & Constitucional*, year 2017, no. 67, 2017.

EUROPEAN COMMISSION:

- *European Governance: A White Paper*, Brussels, 2001 [COM(2001) 428 final].
- *Action Plan “Simplifying and improving the regulatory environment”*, Brussels, 2002 [COM(2002) 278 final].
- *Better Regulation for Growth and Jobs in the European Union*, Brussels, 2005 (COM(2005) 97 final).
- *Third strategic review of Better Regulation in the European Union*, Brussels, 2009 (COM(2009) 15 final).
- *Smart Regulation in the European Union*, Brussels, 2010 [COM(2010) 543 final].
- *Principles of subsidiarity and proportionality: enhancing their role in EU policy-making*, Strasbourg, 2018 [COM(2018) 703 final].
- *Better Regulation: Taking stock and reaffirming our commitment*, Brussels, 2019 [COM(2019) 178 final].
- *A Renovation Wave for Europe - Greening our buildings, creating jobs, improving lives*, Brussels, 2020 [COM/2020/662 final].
- *Better Regulation Guidelines*, Brussels, 2021 [SWD(2021) 305 final].
- *Technical Guidance on the application of the “no significant harm” principle under the Resilience and Recovery Mechanism Regulation*, Brussels, 2021 [2021/C 58/01].

EUROPEAN COMMITTEE OF THE REGIONS, *Rural proofing: a foresight framework for resilient rural communities*, Brussels, 2022.

CONSEJO CONSULTIVO DE CASTILLA Y LEÓN, *Informe sobre la evaluación del impacto demográfico en el procedimiento de elaboración de normas*, approved by the plenary session of 29 December 2020, Zamora, 2020.

COUNCIL OF THE EUROPEAN UNION, *The way forward on demographic challenges*, Brussels, 2020 [2020/C 205/03].

ECONOMIC AND SOCIAL COUNCIL, *A living and sustainable rural environment. Report 02/2021*, approved at the extraordinary plenary session of 7 July 2021, Madrid, 2021.

DE MONTALVO JÄÄSKELÄINEN, F., “La evaluación *ex post* de las normas un análisis del nuevo modelo español”, in *Asamblea: Revista parlamentaria de la Asamblea de Madrid*, núm. 36, 2017.

DÍAZ GONZÁLEZ, G.M., “La reforma de las potestades normativas”, in *El Cronista del Estado Social y Democrático de Derecho*, núm. 63, 2016.

DÍEZ SÁNCHEZ, J.J., “Consideraciones críticas a propósito de los planteamientos generales de las Leyes 39 y 40 de 2015 y el procedimiento seguido para su elaboración”, in LAGUNA DE PAZ, G.C., SANZ RUBIALES, I. y DE LOS MOZOS TOUYA, I. (Coords.), *Derecho administrativo e integración europea: estudios en homenaje al profesor José Luis Martínez López-Muñiz*, editorial Reus, vol.

DOMÍNGUEZ ÁLVAREZ, J.L.:

- “Hacia el diseño de nuevos instrumentos para afrontar el reto demográfico y territorial: de la potestad de planificación de las administraciones públicas a la transformación del ordenamiento jurídico”, in FERNANDO PABLO, M.M. and DOMÍNGUEZ ÁLVAREZ, J.L. (Dirs.), *Rural Renaissance: acción, promoción y resiliencia*, Thompson Reuters-Aranzadi, Cizur Menor, 2022.

- “Algunos apuntes acerca de la necesidad de repensar el ordenamiento jurídico y la técnica normativa como premisas para afrontar el reto demográfico y territorial”, in *Revista Española de Función Consultiva*, no. 33, 2020.

- *Comunidades discriminadas y territorios rurales abandonados. Políticas públicas y Derecho administrativo frente a la despoblación*, Thomson Reuters-Aranzadi, Cizur Menor, 2021.

DOMÍNGUEZ ÁLVAREZ, J.L. and TOMÉ DOMÍNGUEZ, P.M., “La conectividad de los territorios rurales como premisa para el fomento de la dinamización y la sostenibilidad de las áreas con desafíos demográficos: más allá de brechas y promesas”, in RODRÍGUEZ ESCANCIANO, S. and ÁLVAREZ CUESTA, H. (Coords.), *La economía social y el desarrollo sostenible*, Colex, A Coruña, 2022.

SPANISH FEDERATION OF MUNICIPALITIES AND PROVINCES, *List of measures to combat depopulation in Spain. Documento de acción de la Comisión de Despoblación de la FEMP*, Madrid, 2017.

FIGUEROA, A., “La evaluación del Derecho”, in FIGUEROA, A. (Coord.), *Los procesos de implementación de las normas jurídicas*, Instituto Vasco de Administración Pública, Bilbao, 1995.

FORTES GONZÁLEZ, A.I., “De la iniciativa legislativa y de la potestad reglamentaria. En especial la mejora regulatoria”, in RIVERO ORTEGA, R.,

- CALVO SÁNCHEZ, M.D. and FERNANDO PABLO, M.M. (Dirs.), *Instituciones de procedimiento administrativo común. Novedades de la Ley 39/2015*, Juruá, Lisbon, 2016.
- GALLO APONTE, W.I.** and **PINILLA RODRÍGUEZ, D.E.**, "Las transformaciones de la Regulación Inteligente y la incorporación de Instrumentos de Mejora Regulatoria en el Derecho Administrativo. A comparative analysis", in *Revista Direito Público*, vol. 17, no. 93, 2020.
- GARCÍA DE ENTERRÍA, E.**, *Justicia y seguridad en un mundo de leyes desbocadas*, Thomson-Civitas, Madrid, 1999.
- GARCÍA-ESCUDERO MÁRQUEZ, P.**, "Iniciativa legislativa del Gobierno y técnica normativa en las nuevas leyes administrativas (Leyes 39 y 40/2015)", in *Teoría y Realidad Constitucional*, no. 38, 2016.
- GARDE ROCA, J.A.**, "La creación de la Agencia de Evaluación en España", in *ICE: Información Comercial Española*, núm. 836, 2007.
- GOVERNMENT OF CASTILLA-LA MANCHA**, *ESTRATEGIA REGIONAL FRENTE A LA DESPOBLACIÓN EN CASTILLA-LA MANCHA (2021-2031)*, Toledo, 2021.
- GOVERNMENT OF SPAIN**, *Action plan for the reduction of administrative burdens*, Madrid, 2008.
- GÓMEZ ASENSIO, C.**, *La mejora regulatoria (Better Regulation): Aplicaciones en materia de contratación pública*, Tirant lo Blanch, Valencia, 2012.
- GRUPO DE ESTUDIOS DE TÉCNICA LEGISLATIVA**, *La forma de las leyes: 10 estudios de técnica legislativa*, Barcelona, Bosch, 1986.
- HOGAN, P.**, "Is the rural guarantee mechanism the key to unlocking the potential of rural development?", in *Rural Connections. The Journal of European Rural Development*, Autumn/Winter, 2017.
- JIMENA QUESADA, L.**, *Dirección política del gobierno y técnica legislativa*, Tecnos, Madrid, 2003.
- LOZANO CUTANDA, B.**, "Real Decreto-ley 6/2022: el nuevo procedimiento de determinación de afección ambiental aplicable a determinados proyectos de energías renovables", in *Actualidad Jurídica Ambiental*, núm. 127, 2022.
- MANCILLA I MUNTADA, F.**, *La recepció a Catalunya del dret a una bona administració. La governança i el bon govern*, Institut d'Estudis Autònoms, Barcelona, 2014.
- MARCEN J.M.**, "Normalización y racionalización de los Documentos de las Leyes, Decretos leyes y Decretos", in *Documentación Administrativa*, núm. 16, 1959.

MARTÍN-RETORTILLO BAQUER, S., “De la simplificación de la Administración pública”, in *Revista de Administración Pública*, no. 147, 1998.

MARTÍNEZ ROLDÁN, L., FERNÁNDEZ SUÁREZ, J.A. and SUÁREZ LLANOS, L., *La Ley desmedida: estudios de legislación, seguridad y jurisdicción*, Dykinson, Madrid, 2007.

MESEGUER YEBRA, J., “Procedimiento de elaboración de normas y mejor regulation en el ejercicio de la potestad reglamentaria local”, in CAMPOS ACUÑA, C. (Dir.), *El nuevo procedimiento administrativo local tras la Ley 39/2015*, Wolters Kluwer, Madrid, 2016.

MÍGUEZ MACHO, L., “La mejora de la regulación: antecedentes y principios”, in *Revista ICE: Información Comercial Española*, núm. 907, 2019.

MINISTERIO DE AGRICULTURA, PESCA Y ALIMENTACIÓN, *II Plan de Acción de la Estrategia de Digitalización del sector agroalimentario y del medio rural*, Madrid, 2021.

MINISTERIO DE POLÍTICA TERRITORIAL Y FUNCIÓN PÚBLICA, *Directrices Generales de la Estrategia Nacional frente al Reto Demográfico*, Madrid, 2019.

MINISTRY FOR ECOLOGICAL TRANSITION AND THE DEMOGRAPHIC CHALLENGE, *Recovery Plan. 130 medidas frente al Reto Demográfico*, Madrid, 2021.

MORA RUIZ, M., “Iniciativa legislativa y potestad reglamentaria. Disposición derogatoria”, in GOSÁLBEZ PEQUEÑO, H. (Dir.), *La nueva Ley del Procedimiento Administrativo Común*, Wolters Kluwer, Madrid, 2016.

MORA-SANGUINETTI, J.S., “La “complejidad” de la regulación española ¿cómo medirla? ¿qué impacto económico tiene?”, in *Revista ICE: Información Comercial Española*, núm. 907, 2019.

MUÑIZ ESPADA, E. (Coord.): *Un marco jurídico para un medio rural sostenible*, Ministerio de Medio Ambiente y Medio Rural y Marino, Madrid, 2011.

MUÑOZ MACHADO, S., *Cinco estudios sobre el poder y la técnica de legislar*, Civitas, Madrid, 1986.

ORDUÑA PRADA, E., “Sobre la potestad normativa local y la Ley del Procedimiento Administrativo Común de las Administraciones Públicas”, in *Actualidad Administrativa*, núm. 2, 2016.

ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT:

- *The Evolution of Regulatory Policy in OECD*, Paris, 2002.
- *OECD Regulatory Policy Outlook 2018*, Paris, 2018.
- *Implementing Better Regulation practices at EU level*, Paris, 2019.

ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, OECD *Regulatory Policy Outlook 2021*, Paris, 2021.

ORTÍ FERRER, P.L., “L’avaluació d’impacte normatiu a l’Administració de la Generalitat i la política de millora de la regulació: balanç i reptes en el context de la Llei de transparència”, in *Activitat parlamentària*, núm. 29, 2016.

PALOMAR OLMEDA, A., “De la iniciativa legislativa y de la potestad para dictar reglamentos y otras disposiciones”, in PALOMAR OLMEDA, A. (Dir.), *Practicum. Procedimiento administrativo común*, Thomson Reuters-Aranzadi, Cizur Menor, 2016.

PERNAS GARCÍA, J.J., “Libre mercado y protección ambiental. De la ordenación administrativa de actividades económicas a la contratación pública verde”, in LÓPEZ RAMÓN, F. (Coord.), *Observatorio de Políticas Ambientales 2014*, Thomson Reuters-Aranzadi, Cizur Menor 2014.

PONCE SOLÉ, J., “Better rules? Directiva 2006/123/CE, relativa a los servicios en el mercado interior, calidad reglamentaria y control judicial”, in *Revista de Administración Pública*, núm. 180, 2009.

PRESIDENCIA DEL GOBIERNO, PRESIDENCIA DEL GOBIERNO, *Plan de Recuperación, Transformación y Resiliencia “España puede”*, Madrid, 2020.

PRESIDENCY OF THE GOVERNMENT: *Digital Spain 2026*, Madrid, 2020.

PRIETO ROMERO, C.:

- “El nuevo procedimiento para la iniciativa legislativa y el ejercicio de la potestad reglamentaria”, in *Revista de Administración Pública*, no. 201, 2016.

- “La mejora regulatoria en el ámbito de las Entidades Locales”, in *Revista ICE: Información Comercial Española*, no. 907, 2019.

RAMOS ANTÓN, F., “La evaluación del impacto demográfico en el procedimiento de elaboración de normas”, in *Revista Española de Función Consultiva*, núm. 33, 2020.

REINOSO CARRIEDO, A., “Novedades en el ejercicio de la potestad reglamentaria tras las Leyes 39/2015 y 40/2015”, in *El Consultor de los Ayuntamientos*, no. 18, 2016.

RODRÍGUEZ-ARANA MUÑOZ, J., “Principio de seguridad jurídica y técnica normativa”, in *Revista de Derecho Administrativo*, no. 3, 2007.

RODRÍGUEZ-ZAPATA PÉREZ, J., “La iniciativa legislativa y la potestad para dictar Reglamentos”, in *Nueva Revista de Política, Cultura y Arte*, núm. 154, 2015.

- SÁEZ PÉREZ, L.A.**, "Análisis de la Estrategia Nacional frente a la Despoblación en el Reto Demográfico en España", in *Ager: Revista de estudios sobre despoblación y desarrollo rural = Journal of depopulation and rural development studies*, núm. 33, 2021.
- SAINZ MORENO, F.**, "Problemas actuales de la técnica normativa", in *Anuario Jurídico de La Rioja*, no. 1, 1995.
- SAINZ MORENO, F.** and **DA SILVA OCHOA, J.C.** (Coord.), *La calidad de las leyes*, Parlamento Vasco, Vitoria, 1989.
- SÁNCHEZ GRAELLS, A.**, "Movimiento por la calidad de la regulación: iniciativas en el contexto internacional y principios rectores", in AA.VV., *Marco regulatorio y unidad de mercado*, Círculo de empresarios, Madrid, 2006.
- SÁNCHEZ PUENTE, R.**, **BUENO RODRÍGUEZ, F.** and **GARCÍA VIDAL, A.**, "La evaluación ex ante. Una visión de la Oficina de Coordinación y Calidad Normativa", in *Revista ICE: Información Comercial Española*, no. 907, 2019.
- SANTAMARÍA PASTOR, J.A.**, "Un nuevo modelo de ejercicio de las potestades normativas", in *Revista Española de Derecho Administrativo*, no. 175, 2016.
- SANTAOLALLA LÓPEZ, F.**, "Las directrices de técnica normativa", in *Revista de Administración Pública*, no. 170, 2006.
- SANZ LARRUGA, F.J.:**
- "Instrumentos de evaluación y participación para la cohesión territorial y ante el reto demográfico", in *Revista Española de Función Consultiva*, no. 33, 2020.
 - "Cohesión territorial, reto demográfico y dinamización rural: las limitadas, pero necesarias respuestas desde el Derecho", in SANZ LARRUGA, F.J. and MÍGUEZ MACHO, L. (Dirs.), *Derecho y Dinamización e Innovación Rural*, Tirant lo Blanch, Valencia, 2021.
- TORNOS MAS, J.**, "La lucha contra la despoblación en España. Marco normativo", in *Cuadernos de Derecho Local*, núm. 56, 2021.
- VALENCIA MARTÍN, G.**, "La autorización fotovoltaica integrada valenciana", in *Actualidad Jurídica Ambiental*, no. 127, 2022.
- VATTIER FUENZALIDA, C.** and **DE ROMÁN PÉREZ, R.** (Coord.), *El desarrollo sostenible en el ámbito rural*, Aranzadi, Pamplona, 2009.

CHAPTER II

GENERAL LAWS AND TERRITORIAL GOVERNMENT IN RURAL AREAS: THE KINGDOM OF SPAIN

MARCOS M. FERNANDO PABLO

*Professor of Administrative Law
University of Salamanca*

SUMMARY: I. A LONG-TERM VISION FOR RURAL AREAS II. PRICE AND VALUE: THE TERRITORY III. THE HIDDEN INEQUALITY IN THE GENERALITY OF THE LAW. 1. *Generic promotion and restriction.* 2. *The example of positive fiscal discrimination and other references.* IV. A GOVERNMENT OF THE TERRITORY FOR THE RURAL AREA. 1. *The consensuses.* 2. *The Aid Map, the predetermined “c” zones and the operating aid as an instrument for a government of the rural territory.* 3. *Functional areas and pilot projects: is there anything new out there?* 3.1. *An initial assessment: the loss of the territorial perspective.* 3.2. *Cohesion. The ERDF multi-regional programme. Integrated Territorial Strategies, functional areas and functional urban areas.* 3.3 *EAFRD and LEADER rural development: On the ITIs.* 3.3.1. *Investments.* 3.3.2. *Cooperation.* LEADER and Integrated Territorial Investments (ITIs). V. CONCLUSIONS. V. BIBLIOGRAPHY.

I. A LONG-TERM VISION FOR RURAL AREAS

The Council (EU) Decision of 20 February 2006 on the Community strategic guidelines for rural development¹ (programming period 2007-2013) included within the second pillar of the Common Agricultural Policy (Rural Development) the core action “*putting the soul back into villages*” as part of

1 One of the ten objectives of the CAP for the period 2023-2027 ends up being to achieve *vibrant* rural areas, as they are able to contribute to the EU’s climate objectives (EUROPEAN COMMISSION, 2023).

the rural development priority 3.3 “Improving the quality of life in rural areas and encouraging diversification of the rural economy.”

Fifteen years later, at the end of June 2021, the European Commission presented the Communication “A long-term vision for rural areas” (COM (2021) 345 final) which committed to a Rural Pact² (aiming to amplify rural voices, put them back on the political agenda and encourage voluntary commitments to action), a Rural Action Plan, with targets to 2040 and a public report (2024) which will determine the proposals for the programming period 2028-2034.

In the long term, the future may be a repetition of the past. The availability of rural territories for the EU’s major climate objectives (decarbonisation of the economy, maintenance and restoration of biodiversity, ensuring the sustainability of the hydrological cycle) will only be possible if, in addition to acting on the industrial, energy and transport sectors, we act in a new way on the territory. Sectoral policies can lead to a failure to achieve results if we abandon many of the decisions to the logic of the market³.

Meanwhile, the living conditions of rural communities in much of the EU are the consequence of a market failure in the provision of basic conditions and services and in the provision of goods and conditions that guarantee equality for citizens⁴.

2 The first Rural Pact Conference on 15 and 16 June 2022 in Brussels brought together more than 450 participants who constituted the *Rural Pact Community* and, among other things, stressed the importance of assessing the impacts of legislation on rural areas (*rural proofing*), the need to simplify access to the funds committed by the EU, and the need to coordinate the contribution of the different mechanisms.

3 “Wind energy depends fundamentally on the existence of wind, which means that they are located in highly exposed areas, where the forest mass is scarce and herbaceous and bush species predominate, being areas with generally low agricultural productivity. Furthermore, they have a layout between machines that allows the productive use of the land, although the size of each wind turbine requires strict environmental criteria to be taken into account due to the exposure and visibility they have in areas of high landscape value, in nature tourism sites and the possibility of disturbing species, especially gliding birds and bats, which live in the different ecosystems near the wind farms. For its part, the development of solar energy, in the centralised form of large plants, requires a great demand for surface area, generally to facilitate its development and expansive implementation, many of them in territories that are Useful Agricultural Area (UAA). The very characteristics of the plants make their implementation easier in UAA territories, as they are lands accessible to heavy transport, with level orography and, in many cases, with a greater concentration of ownership. It should be borne in mind that if, on average, the installation of 1 MW requires 2 hectares and plants of around several hundred MW in size are being planned, as we are already seeing, *we are talking about a drastic change in land use and, therefore, in the productive characteristics of the area, which has a direct impact on the local economy*” (FUNDACIÓN RENOVABLES, 2021).

4 Regarding the deployment of renewable energy infrastructures on the territory, the RENEWABLES FOUNDATION (2021: 33) also warns that “it is necessary for administrations to recover the social licence they have lost, and the reason for this is to be found in our

It is therefore a matter of *general interest* to pay attention to areas and communities that have greater difficulty in accessing public services and suffer, as a result of the generality of the law, significant discrimination in the quality of life.

II. PRICE AND VALUE: TERRITORY IN SPAIN

As a result of a long process of industrialisation and then tertiarisation of economic activity, the location of the labour market shifted towards urban or peri-urban areas. This led to significant population gaps in the hinterland and to a decline in employment opportunities in rural areas. The need to provide services in large cities and small and medium-sized towns meant that access to services (water supply, electricity supply, communications, health, education, leisure and culture, etc.) was neglected in areas with smaller populations, isolated and far from the centres of activity. The rural world was then presented as a problem of economic and social cohesion, in a perception and reality that continues to this day. It is not a question of a smaller population⁵, it is a question of worse services, fewer employment opportunities, lower income, greater risk of poverty and a poorer quality of life, which feeds back into the process⁶.

And now, when European policy guidelines are oriented towards the climate (and digital) dimension, now that the decarbonisation of the economy is a priority objective⁷, rural territory is not only the object of attention, but also

own history, in the collective imagination of rural areas, which is seeing the history of the beginning of the 20th century being repeated, in this case with renewables, when large companies flooded agricultural areas to bring electricity over long distances, without the benefits being passed on to these areas until many years later”.

- 5 Some aspects of the demographic crisis are common to the whole of Europe, despite the fact that the EU has the third largest population in the world after China and India and that the birth rate is rising in almost all EU countries, more than two thirds of which are due to the arrival of large numbers of immigrants.
- 6 A total of 2.4 million Spaniards living in rural areas still do not have Internet access of at least 100 megabits per second (Mbps) through fixed networks. The autonomous communities where this digital divide remains deepest are Castile and Leon, with 30.4 % of the population affected, Galicia (23 %), Asturias (22.5 %) and Aragon (22.3 %), with villages of less than 500 inhabitants being the most affected (MINISTRY OF ECONOMIC AFFAIRS AND DIGITAL TRANSFORMATION, 2021).
- 7 Two years after the presentation of the European Green Pact [COM (2019) 640 final] the package of measures included in its annex has been extensively developed. Among others, the Commission adopted the Farm to Fork Strategy, a new Biodiversity Strategy, a proposal for a Climate Law and a new Action Plan for the Circular Economy, which already had important impacts on the agricultural and livestock sector and the rural world. The Farm to Fork Strategy [COM (2020) 381 final] contains stated objectives to halve the use of pesticides, reduce fertilisers by at least 20 %, restrict the sale of antimicrobials, cut antibiotic sales by 50 % for both farm animals and aquaculture, and increase the amount

of fierce competition: the need to accelerate the deployment of renewable energies (some of which are major consumers of territory⁸) has been

of land devoted to organic farming by up to 25 %. All this already implies a future line that will lead to a new agro-livestock sector (climate farming) in a European rural world in deep crisis.

The final adoption of the so-called “European Climate Law” [Regulation (EU) 2021/1119 of the Parliament and of the Council of 30 June 2021] called for “all sectors of the economy — including energy, industry, transport, heating and cooling and buildings, agriculture, waste and land use, land use change and forestry, irrespective of whether these sectors are included in the EU ETS or not, waste and land use, land use change and forestry, irrespective of whether these sectors are included in the EU greenhouse gas emission allowance trading scheme (EU ETS) — should contribute to achieving climate neutrality in the Union by 2050”.

For its part, the Action Plan for a circular economy [COM(2020) 98 final] is, in the view of the European Parliament’s Committee on Agriculture and Rural Development, “a genuine call for a qualitative change with the aim of reorienting and optimising farm production models in favour of more sustainable practices, new concepts and production systems, such as agroecology, organic farming, integrated production, conservation agriculture and topsoil protection, using precision or intelligent techniques in the face of degradation and scarcity, new concepts and more sustainable production systems, such as agro-ecology, organic farming, integrated production, conservation agriculture and protection of topsoil, using precision or intelligent techniques in the face of natural resource degradation and scarcity, as well as the consequent need to improve production”.

That set of EU acts also included a proposal [Communication on Sustainable Carbon Cycles, COM (2021) 800 final] on carbon capture and certification with the aim of promoting natural and technological solutions. This proposal is in the area of climate neutrality and in the context of the EU’s New Forest Strategy 2030 [COM (2021) 572 final] and the EU’s Long Term Vision for Rural Areas [COM (2021) 345 final].

In parallel, on 20 December 2021 the EU institutions have committed to immediately launch the European Rural Pact (June 2022). The future instrument “will support rural municipalities in the energy transition and the fight against climate change by disseminating best practices and providing guidance for accessing EU funding to consolidate the green transition; in the creation of carbon sinks by investing in wetland and peatland wetting will offer great potential in terms of climate benefits (...)”.

- 8 The National Integrated Energy and Climate Plan (PNIEC) to comply with the reduction of polluting emissions in 2030 “foresees the generation of 29,500 megawatts (MW) of solar photovoltaic, which means replacing in ten years some 60,000 hectares of crops, usually rain-fed and low yielding, in large extensions full of solar panels” (MINISTRY FOR ECOLOGICAL TRANSITION AND THE DEMOGRAPHIC CHALLENGE, 2019). Available at: <https://acortar.link/TLbhB5>.

Approximately 1.6 ha are needed to activate one MGW. The quantitative aspect is perhaps the least relevant, as the income increases that new installations can bring are leading producers to abandon traditional agricultural practices: the Extremadura regional government has been forced to legislate to prevent irrigated land from being converted into solar gardens, while in Toro vineyards are illegally uprooted to make land available, and in Alicante the same phenomenon is being denounced. Available at: <https://acortar.link/iaaOwl> (last accessed 28 November 2022).

At the same time, the European Commission (2022) launches its proposal to speed up permitting, even overriding the interests of the renewables sector over purely ecological ones. The document ends almost immediately, transformed into Council Regulation (EU) 2022/2577 of 22 December 2022, establishing a framework for accelerating the

imposed as a “higher public interest” than practically any other territorial or social consideration⁹.

The values traditionally understood to be linked to the rural environment (biodiversity, landscape, environmental services, agriculture) are reduced, where appropriate, to a simple price. Biodiversity is not charged for, landscape is not paid for, and environmental services are not attributed or remunerated. But the price of *land* for the factory settlement of the time (photovoltaic or wind) is offered as a certain alternative, either for lease or sale¹⁰. The risk of the value vanishing because of the price seems to be considerable. Crops are abandoned, agricultural renewal (and the possible contribution of the new climate agriculture to soil carbon sequestration) is put at risk, and the possible future of rural communities is sacrificed, almost in the same way that, in the past, large hydraulic works have marked the evolution of certain territories.

Will rural territories be able to use this “green-climate-digital” strategic path to put a price on the values they embody? In its day it was employment (geographical changes in the labour market) that was the decisive factor (EUROPEAN COMMISSION, 2022)¹¹ of depopulation. Today we must add another series of *hidden inequality* factors in the so-called “*empty Spain*” in Spain, “*area interne*” in Italy, “*municípios do interior*” in Portugal, or “*lonely places*” for the Joint Research Centre of the European Commission. These terms describe territories that, far from centres offering essential services, are affected by ageing, social distress and lack of leisure and employment. Transforming the values offered by these territories into opportunities

deployment of renewable energy. The text is applicable in these terms: Member States must ensure the application of the Regulation “to ongoing permit granting processes” and among other measures, “exemptions from certain assessment obligations laid down in Union environmental legislation for renewable energy projects”, and the introduction of a rebuttable presumption that renewable energy projects are of overriding public interest and contribute to public health and safety, for the purposes of environmental legislation.

- 9 For the time being, investment in so-called agrovoltaic energy, which is advancing in France and Germany, remains unpublished in Spain. While the Italian National Recovery and Resilience Plan (PNRR) (GOVERNO ITALIANO, 2021: 128) specifies the objective of “installing at least 1.04 gigawatts of agrovoltaic plants by 30 June 2026”, stating that “the investment objective is to install a production capacity from agrovoltaic plants when fully operational of 1.04 GW, which would produce approximately 1,300 GWh per year, with an estimated reduction of greenhouse gas emissions of around 0.8 million tonnes of CO₂”.
- 10 Sometimes a change of use and exploitation regime of communal property is processed in an accelerated manner. In the SSTSJ Castile and Leon of 5 May and 17 November 2022, it was established that only the defence of the neighbours and the sensitivity of the Junta of Castile and Leon prevented the removal, for a price, of communal pastures, transformed into a wind farm that yielded nothing for the benefit of the neighbours, the owners of the land.
- 11 In particular in Spain, where “an increase in employment was immediately followed by an increase in population in both remote and non-remote regions”.

requires public intervention, as the market is not able to reverse the process (EUROPEAN COMMISSION, 2022: 29)¹².

The realisation that the European Union (somewhat obsessed with digitalisation, greening and climate) is postponing a major rural policy to the next decade is to be found in the definition of the five strategic objectives of the European Funds for the period 2021-2027. From Art. 5 of the EU Regulation 2021/1060 laying down common provisions¹³ and the individual regulations of the different Funds, it can be concluded that:

“Investments in regional development will focus particularly on Objectives 1 (digitalisation) and 2 (greening Europe). Between 65 % and 85 % of ERDF and Cohesion Fund resources are allocated to these priorities, depending on the relative wealth of the Member States. Spain, whose national income is 91 % of the European average, has to devote 45 % to digitisation issues and 30 % to the green economy of the funds. The remaining 25 % can be used for other objectives” (CITY COUNCIL OF A CORUÑA, 2022).

Very relevant also, the Association Agreement of the Kingdom of Spain/ EU 2021/2017 contains some mentions to the “rural” related to education (Vocational Training), digital connectivity and the development of female employment¹⁴. Regarding Strategic Objective 5.2 (In rural areas, the promotion of integrated and inclusive social, economic and environmental

12 The study identifies some of the opportunities and recommendations across the EU-27: Lower cost of living in pleasant environments, care economy, multi-location and second homes, ecosystem services (carbon sequestration, biodiversity enhancement), sustainable land use, harnessing the wild and remote capital of many areas, working in nature.

13 Art. 5: “1. The ERDF, ESF+, the Cohesion Fund and the EMFF shall support the following policy objectives: (a) a more competitive and smarter Europe, promoting innovative and smart economic transformation and regional connectivity to information and communication technologies; (b) a greener, low-carbon Europe, transitioning to a net zero carbon and resilient economy, promoting a clean and equitable energy transition, green and blue investment, circular economy, climate change mitigation and adaptation, risk prevention and management and sustainable urban mobility; c) a more connected Europe, improving mobility; d) a more social and inclusive Europe, through the implementation of the European Pillar of Social Rights; e) a Europe closer to its citizens, fostering the integrated and sustainable development of all types of territories and local initiatives”.

14 Specifically, for strategic objective O.5, it is stated that.2. “In rural areas, the promotion of integrated and inclusive social, economic and environmental local development, culture and natural heritage, sustainable tourism and security Policy options chosen In view of the demographic challenges identified in rural areas (the progressive ageing of the population and the low birth rate and territorial depopulation), the measures financed by the European Funds in the period 2021-2027 will contribute to balance the population distribution with actions such as improving connectivity and digital literacy in rural areas, developing infrastructures and accompanying measures necessary for the provision of essential public services or supporting entrepreneurs who decide to establish their activity in these areas...”.

local development, culture and natural heritage, sustainable tourism and security) it adds:

“In view of the demographic challenges identified in rural areas (the progressive ageing of the population and the low birth rate and territorial depopulation), the measures financed by the European Funds in the period 2021-2027 will contribute to balance the population distribution with actions such as improving connectivity and digital literacy in rural areas, the development of infrastructure and accompanying measures necessary for the provision of essential public services or support for entrepreneurs who decide to establish their activity in these areas (...).

Demographic challenges will be addressed in a cross-cutting manner in the different specific objectives...However, under SO 5.2, actions may be programmed to address demographic challenges through integrated and participatory territorial strategies for territorial transformation and social and economic revitalisation of depopulated territories, in line with the “Long-term Strategy for rural areas in the EU.”

What in Regulation (EU) 2021/1058 (concerning the ERDF) seemed to be a requirement¹⁵ that was covered by the Common Provisions Regulation and the content of the Partnership Agreement¹⁶, is diluted in paragraph 10 of the latter document, which only contains generalities and does not identify any express funding commitment, as allowed by that Regulation.

However, in order to comply with one of the mandatory contents of the Association Agreement, the idea is formulated that “the key strategic objective of Spain in relation to OP 5 in the period 2021-2027 is Participatory Local Development. The aim is to strengthen local production chains, valuing traditional products and their knowledge, and promoting the consolidation of e-commerce for local products, industry and trade...”

III. THE INEQUALITY HIDDEN IN THE GENERALITY OF THE LAW

1. GENERIC PROMOTION AND RESTRICTION

The other document to pay attention to, given that rural development has been incorporated into the CAP, is the Strategic Plan¹⁷ (PEPAC), the

15 Art. 10: “In accordance with Article 174 TFEU, the ERDF shall focus in particular on addressing the challenges of disadvantaged areas, especially rural areas and regions which suffer from severe and permanent natural or demographic handicaps. Where appropriate, Member States shall provide in their Partnership Agreements for an integrated approach to address demographic handicaps or special needs of such regions and areas, in accordance with point (i) of the first paragraph of Article 11 of Regulation (EU) 2021/1060. This integrated approach may include a commitment of specific funding for this purpose”.

16 Art. 11 of Regulation (EU) 2021/1060, Content of the Partnership Agreement: 11.1 j “where appropriate, an integrated approach to address the demographic challenges of the regions or the specific needs of regions and areas”.

17 Some data on the impact of this major European policy: Spain is the second largest

most decisive policy instrument for rural areas. The Strategic Declaration, with which the Spanish document begins, prioritises the following needs: combating depopulation, permanence and settlement of new population, young people and women. At the same level of priority is the need to reduce the use of phytosanitary products and promote sustainable practices, reduce the consumption of antimicrobials in animal production and reduce NH₃ emissions. Finally, there is a clear recognition that “greater environmental and climate ambition has budgetary backing, as Spain estimates that approximately 43 % of the total PEPAC budget will contribute to environmental and climate objectives.”

The set of measures provided for by the PEPAC, as far as we are concerned (leaving aside, therefore, other interventions), consists of a set of payments in favour of production schemes in favour of the climate, the environment and animal welfare (eco-schemes). Another set of interventions and subsidies in the form of management payments (agri-environmental commitments on agricultural land, beekeeping to improve biodiversity, maintenance of endangered pure-bred indigenous breeds, etc.), also geared to the ecological side of production activity, euphemistically called “sustainable development of rural areas.” These are voluntary commitments on the part of producers, which, in addition to significant objective limitations (in terms of surface area, for example), require a highly complex administrative procedure¹⁸.

The phenomenon is well known: the generality of the rule defines general interests, the pursuit of which, however, falls to specific activities or subjects. When the situation of the rural world is described as a “market failure”, attention is paid to an analysis of a fundamentally economic nature, but the contribution of regulatory generality to the results is not always noted. The example of the protection of wild species, in the name of “good” biodiversity, is the best known. Also in the field of environmental law, it is equally well known how the normative qualification of a territory as a protected area, the simple qualification of the same as “forest”, or the urban determination of rural land, entails restrictions, limitations, and a loss of opportunity in the chain of human activity to transform value into price¹⁹.

recipient country (after France), with a percentage of 12 % of the EU total. But 70 % of beneficiary farms receive less than 5,000 euros: this last percentage, which is a better measure of the individual impact of the CAP, is much higher (and therefore worse) than that given for France or Germany. The fact that lies at the heart of these figures is the dispersion and small size of farms: 8 % of producers obtain 72 % of the value of Spanish agro-livestock production (ANALISTAS ECONÓMICOS DE ANDALUCÍA, 2021: 32).

18 ASAJA states that “the brutal bureaucratic burden for farmers and livestock farmers, which is going to make the management of the CAP difficult for the sector and the Administration itself, due to the complexity of the proposed rules, which is such that not even the Ministry’s own technicians who have given the training courses were able to answer the sector’s questions” (AgroCLM, 2022).

19 We have developed these ideas, with jurisprudential examples of the very high degree

The current legal position has recently been set out by the Court of Justice of the EU: “since the right to property does not constitute an absolute prerogative, its exercise may be subject, under the conditions laid down in Article 52(1) of the Charter, to a restriction justified by an objective of general interest recognised by the Union, such as that resulting from a national measure adopted for the purpose of protecting nature and the environment under Directives 92/43 or 2009/147, without the person whose right to property has been subject to such a restriction having to receive, in any event, compensation or, more specifically, aid...”

The CJEU’s view is unequivocally individualistic and fails to see the harm that the accumulation of restrictions causes in certain rural areas to which the conclusion of the same judgment would rightly apply:

“However, if a national measure taken to protect nature and the environment under Directive 92/43 or Directive 2009/147 results in a loss of value of the land concerned, which is akin to a deprivation of property, the owner of that land shall

of rigidity of administrative regulations and their punitive consequences for the rural population, in DOMÍNGUEZ ÁLVAREZ (2021: 19-23), describing the result as a system of legal domination: “It is interesting to note that this area of legal domination imposes daily consequences which, experienced *in situ*, are difficult to explain: to contemplate the helplessness of the farmer of a small extensive sheep farm who, south of the Douro, the Habitats Directive prevents him from any defence against *canis lupus*, or the despair of the last inhabitants of the Arribes del Duero (Protected Natural Area, SPA, and Biosphere Reserve) who watch how the *Gyps fulvus* (griffon vulture) pounces on recentals, because they have been forbidden (despite veterinary control) to abandon carcasses; witnessing a complaint by a forestry agent for pruning holm oaks without respecting the size of fifteen centimetres in diameter (in other Autonomous Communities the size is ten centimetres) because it is so ordered by a regulation of minimal rank, in the face of those who have made pruning their trade (*loppers*), ends up being very instructive about what urban environmental law means, designed for an ideal, academic context, which “thinks big”, but which, far from contact and authentically ecological life experience, forgets to act in a small way. I will give two examples of the legal domination of the urbanite over the rural way of life, which show how, without altering certain normative treatments, it seems to me impossible to regenerate the degree of feralisation of depopulated territories. First of all, a very complete expression of the small daily environmental conflict hidden by the rules in empty Spain: the concept of “woodland” and, therefore, the scope of a special administrative right of protection now includes (art. 5.1.c) of Law 43/2003, of 21 November, on Forestry) abandoned agricultural land that meets the conditions and deadlines determined by the autonomous community, and provided that it has acquired unequivocal signs of its forestry status. Some Autonomous Communities have set this period of abandonment at ten years. The cultivator who wants to “recover” or till his plot (for example, to prevent the natural cover developed without control from posing a fire threat) will need administrative authorisation to *re-vegetate* his land or risk serious administrative penalties. The Judgment of the High Court of Castile-La Mancha of 12 April 2019 deals with some of these cases. The farmer had to prove that, although the land had some signs of “monte”, he had been tilling the land, respecting the mature holm oak trees, sporadically every five or six years (...) and only in this way could he avoid the fine of 6,000 euros that had been imposed on him, on the basis of a complaint by the forestry agents who, obviously, noted the relative abandonment of the land...”

be entitled, having regard to the existence of a situation of application of Union law, to compensation in accordance with Article 17 of the Charter²⁰.”

The loss of value due to the set of legal measures adopted by States to pursue environmental assets, insofar as they have a disproportionate impact on rural communities, must be the object of compensation (if it is possible to individualise the effect) or at least of a particular public policy, which seeks to minimise the impact (reduce the disproportion) if such individualisation is not possible. The generality of the law is not enough. It is necessary to positively discriminate the legal treatment.

This is why an alternative form of territorial governance is needed that calls for different specific rules for specific territories.

2. THE EXAMPLE OF POSITIVE TAX DISCRIMINATION AND OTHER REFERENCES

In the field of taxation, there are positive discrimination measures in the Kingdom of Spain. Some Autonomous Communities have regulated direct deductions in the autonomous quota of personal income tax according to the rural nature of the nucleus of effective residence²¹. In other fields, policy

20 CJEU of 28 April 2022, C-251/21, *Piltene*, (ECLI:EU:C:2022:311). The judgment is important not only because of the highlighted paragraph, but also because of the treatment it offers to the possible compensation for the infringement of property rights, since in the case it is not conceived as “compensation” but as “aid”, bringing into play the Natura 2000 aid scheme (art. 30 of EU Regulation No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development). The aid was refused to the appellant because the company was in proven difficulties (net losses of more than 50 % of the capital). However, if such a payment is to be understood as compensation, it would have been appropriate.

21 *Vid.* Law 2/2021, of 7 May, on Economic, Social and Tax Measures against Depopulation and for the Development of the Rural Environment in Castile-La Mancha: “Taxpayers who have their habitual residence and effective stay in any of the municipalities included in the areas referred to in Articles 12 and 13 of Law 2/2021, of 7 May, on Economic, Social and Tax Measures against Depopulation and for the Development of the Rural Environment in Castile-La Mancha, as well as in any of the municipalities of the intermediate rural areas with a predominance of agricultural activity referred to in the sixth additional provision of the aforementioned Law, may apply the corresponding of the following deductions to their full regional tax liability: For habitual residence and effective stay in a municipality in an area of intense depopulation: 20 % if the municipality has a population of less than 2,000 inhabitants; 15 % if the municipality has a population equal to or greater than 2,000 and less than 5,000 inhabitants...”. In fact, this fiscal mechanism was also the main legal instrument (not the only one) used historically when it came to repopulating the Duero valley, and thus appears in the Carta Puebla de Brañosera: “... And all those who come to populate the town of Brañosera shall not pay abundance or castles, but shall pay taxes, as far as they can, by infurction of the Count of this part of the kingdom”.

adaptation is still necessary. This is the case, for example, in regulations that take the territory as their main reference point, and in particular in town planning regulations as they have been developed in Spain²². There is sometimes talk of ruralising laws²³ to refer to this need, and, in fact, the inclusion of a demographic impact analysis in the regulatory process may serve this purpose (CONSEJO CONSULTIVO OF CASTILE AND LEON, 2021).

Local communities insist on the opportunity to try out different rules that do not condition local activity in a disproportionate way, they recall the need to reformulate their own administrative structures (the rural municipality) and sectoral regulations or the convenience of accommodating new requirements to traditional activity. Measures such as facilitating certain types of buildings²⁴, facilitating forest management close to the traditional one, reformulating animal health²⁵, local trade in the farm itself or in local retail trade²⁶, are measures that are insistently demanded.

-
- 22 Spanish urban planning law, since 1956, has been built with techniques that think “in the city”, in its expansion, its provision of services, its programmed development, and which, as a consequence, impose severe restrictions on the right to private property. The inadequacy of such techniques where there is no city and there is plenty of territory is evident if we go down to the daily building practice in the small municipalities of Castile and Leon, for example. The need to “plan”, in costly documents, any urban planning, does not cease to be very paradoxical: funds are invested in elaborating finished normative urban planning documents... that are not going to be applied precisely because of the degree of restriction and difficulty that the building process entails and that the plan itself has contributed to increase. The complete regulation of land use and the system of administrative intervention that guarantees it excludes, de facto, the possibility of any use other than the simple “maintenance of the land” in its initial situation (PAREJO ALFONSO, 2022).
- 23 Sometimes we witness the reverse phenomenon of urbanising rural laws: This seems to be the case of the inconsiderate scope of application of Law 7/2023 of 28 March on the protection of the rights and welfare of animals: “dog” is easily identified with the idea of pet animals and their legal regime (animals as “pets”, a typical urbanite idea). Nothing could be further from the way animals are traditionally treated in a rural environment.
- 24 The fifth additional provision of Legislative Decree 1/2023, of 28 February, which approves the revised text of the Law on Spatial Planning and Urban Development of Castile-La Mancha, for example (“non-irregular traditional rural nuclei”), establishes a special regime in which “despite being located on rural land, it will not be required to prove that there is no risk of forming a population nucleus. Nor will the requirement regarding the minimum surface area for uses on rural land be applicable”.
- 25 In this field, the low-intensity environmental conflict is already evident and responds to a situation that requires a political and regulatory response: many of the outbreaks of notifiable animal diseases have been rooted in wild species, while the role of this fauna in the transmission to extensive livestock farming seems clear. Systematic livestock sanitation campaigns fail in the face of natural wildlife reservoirs.
- 26 The measures to make the food “hygiene package” more flexible were forgotten at the time, and the atavistic fear that the sale of small quantities of primary production would be illegal did the rest in a large part of the national territory. So much so that the European Parliament’s research service was able to note in 2016 that there are significant differences

IV. TERRITORIAL GOVERNANCE FOR RURAL AREAS²⁷

It should be noted that the EU is postponing to the next budgetary programming period (2028-2034) systematic proposals to address the rural area. In the meantime, we must underline some orientations already present in the current period and some corrections that should be made in this same period.

1. CONSENSUS

There is some consensus on the urgent needs and challenges of rural areas: rural communities need water, security²⁸, entrepreneurship, public services, housing and communications. At the same time, there is sufficient consensus in European public opinion²⁹ on the opportunity to devote resources to these

between countries: “while the proportion of farms involved in direct sales is almost 25 % in Greece, 19 % in Slovakia and around 18 % in Hungary, Romania and Estonia, it is less than 5 % in Malta, Austria and Spain. In France, 21 % of farmers sell their products within SFSC (short food supply chains and local food systems), and half of those producing vegetables and honey are involved in SFSC” (EUROPEAN PARLIAMENT, 2016).

In 2013 the European Commission published a first study (Short Food Supply Chains and Local Food Systems in the EU. A State of Play of their Socio-Economic Characteristics) where it stated that “Although the rules (of the hygiene package) allow for a flexible interpretation to lighten the burden on products, this has only been used to a very limited extent”.

A comparative and pioneering study can be found in (AZNAR PRADES, 2017).

- 27 The expression “territorial governance” has been taken to refer to the organisation and planning, by different public authorities, of the same territory: the subject of planning, the coordination of public policies and the cooperation of different authorities in relation to common problems (infrastructures, landscape and ecological diversity, economic development, etc.). This is used, for example, in Italian legislation. Here the expression is used in a somewhat different sense: the taking into consideration, by political actors, of the management of the specific needs of different territories and the consequent differentiated political and regulatory decisions and actions on them. For the case of Castile and Leon, the study by (MARTÍN JIMÉNEZ, HORTELANO MÍNGUEZ and PLAZA GUTIÉRREZ, 2007) is well known.
- 28 On the problem of how to manage public security in the rural territories of Castile and Leon in particular, given the regulatory framework in Spain (TERRÓN SANTOS, 2023).
- 29 In the 2021 Eurobarometer survey incorporated in the Long-term vision for the EU’s rural areas: A majority (79 %) of EU citizens support the EU taking rural areas into account in public spending decisions. Furthermore, 65 % of EU citizens believe that the local area or province should be able to decide how EU investment is spent in rural areas. The most mentioned key need of rural areas (44 %) is transport infrastructure and connections. Regarding transport connections, respondents from remote rural areas find it difficult or impossible to reach different services by public transport in their area (ranging from 52 % to 59 % depending on the service). Respondents from rural areas would like to have access to more local bus services... Regarding the environment, the majority of respondents say

goals, recognising that “the green transition must be managed as a benefit, not a burden: Rural areas are well placed to harness their natural assets with a greater focus on climate change mitigation/adaptation, which requires better recognition of ecosystem services and an inclusive approach to support a just transition” (EUROPEAN PARLIAMENT, 2022).

There is sufficient consensus on what should be done politically. Only some legal aspects of this line of consensus are noted here³⁰.

2. THE SUPPORT MAP, PRE-DETERMINED “C” AREAS AND OPERATING AID AS AN INSTRUMENT FOR RURAL GOVERNANCE

Article 107 of the Treaty on the Functioning of the EU prohibits, as a matter of principle, any aid granted by a Member State or through state resources which distorts competition. However, aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment and aid to facilitate the development of certain economic activities or of certain economic areas [Art. 107(3) TFEU] are considered compatible with the internal market.

The European Commission’s guidelines (2021) determine the conditions under which regional aid may be considered compatible with the internal market and set out the criteria for designating areas that fulfil the compatibility conditions of Article 107(3)(a) and (c) of the Treaty. At the same time, Commission Regulation (EU) 651/2014 declares certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, including inter alia *regional aid* (Art. 1.1.)³¹.

that environmental problems are an immediate problem for rural areas (ranging from 52 % to 65 % depending on the environmental problem). While EU citizens are divided when asked whether they can influence decisions affecting their local area, all respondents would like to be more involved by participating in citizen consultations (63 %), attending meetings or events organised in their local area or participating in community-led projects (56 %) and being more involved through social networks (42 %). Available at: <https://n9.cl/zo62w>.

30 Perhaps the document that best expresses the agreements on the governance of the rural territory can be found in (<https://acortar.link/ef5vA9>), created by various Spanish social platforms, which includes 101 measures to establish a model for the development of empty Spain.

31 Council Regulation (EC) No 994/98 of 7 May 1998 authorised the Commission, by means of regulations adopted in accordance with the procedures it defined, to declare compatible with the common market and not subject to the notification requirement laid down in Article 93(3) of the Treaty (EC), inter alia, aid which complies with the map approved by the Commission for each Member State for the grant of regional aid. Among other implementing acts, the Commission issued Regulation (EU) 702/2014 of 25 June 2014 declaring certain categories of aid in the agriculture and forestry sectors and in rural areas

The regional aid map is no more than a list of areas designated by a Member State in accordance with the provisions laid down in the Guidelines and approved by the Commission. Its content must comply with the Annex to the Communication which publishes them and be subject to approval by the European Commission. But its content is decisive as it not only defines the territorial eligibility of the aid, but also determines the intensity and characteristics of the aid. The latter condition is particularly important, as the application of this State aid policy in Spain has shown.

The Ley de Presupuestos Generales del Estado para 2023 regulates, in its disposición adicional nonagésima primera, a scheme of reductions in social security contributions for SMEs in the provinces of Cuenca, Soria and Teruel, which constitutes “operating aid” (regional aid intended to reduce a firm’s current expenses, as defined in point 15 of the Guidelines)³².

Moreover, the measure in question constitutes a “horizontal regional operating aid scheme”, i.e. an act under which, without further implementing measures, aid may be granted to undertakings defined in the act in a general and abstract manner. It is therefore easy to question why precisely those three provinces and not others?

This is the decisive role of the Aid Map in establishing what has become popularly known as “differentiated taxation”. Since operating aid³³ can only be considered compatible (in accordance with the Regulation) if it can be shown to be necessary for the development of the area, (e.g. if it prevents or reduces depopulation in sparsely or very sparsely populated areas, as well as in other cases), paragraph 77 of the Guidelines is of great significance:

compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union. The latter resulted in the aid referred to therein being the subject of the European Union Guidelines for State aid in the agriculture and forestry sector and in rural areas from 2014 to 2020 (OJEU of 1 July 2014) which set out the criteria for determining the areas fulfilling the conditions of Article 107(3) of the Treaty.

32 The cited EU Regulation 651/2014 identifies regional operating aid as follows: aid to reduce a firm’s current expenses; cost categories such as personnel, materials, contracted services, communications, energy, maintenance, rent and administration are included, but depreciation costs and financing costs are excluded if they were included in the eligible costs when the investment aid was granted.

33 Investment aid plays a much more limited role in rural government policy. Most of the time, subsidies alone are not strong enough to determine the installation or improvement of the activity: other factors (communications, digital connectivity, proximity to markets, availability of skilled labour, etc.) are the determining factors.
State aid policy for regional investment has a long history in Spanish law: when trying to apply the exemption allowed by European law, the old Law 50/1985 of 27 December 1985 on regional incentives for the correction of inter-territorial economic imbalances is still applied. Thus Royal Decree 625/2022 of 26 July delimits the economic promotion area of the Community of Castile-Leon and, in application of the aid map, sets the limit for such aid in Zamora, Salamanca and Soria.

“As regards aid granted for the development of areas included in the regional aid map in accordance with the rules in section 7 (Aid Map) of these guidelines, the Commission considers that, in those areas, the market does not achieve results conducive to a sufficient level of economic development of the region and territorial cohesion without State intervention. Therefore, aid granted in those areas is considered necessary...”

The inclusion of certain areas in the Map makes aid possible, including operating aid in the case of sparsely or very sparsely populated areas. The Member State does not have to demonstrate the need for operating aid for this territory or area, as the inclusion of the area as an assisted area in the map (and subsequent approval by the Commission) means that it is already deemed to be accredited.

However, the determination of the “assisted area” eligible for inclusion in the map is subject to the criteria laid down by the guidelines and by the Regulation itself, so that only certain assisted areas have access to the operating aid scheme when it is set up as a “horizontal aid scheme.”

The regulation defines assisted areas as areas designated on an aid map and the Commission’s guidelines condition the criteria for determining such areas. The first criterion for establishing an admissible derogation from the general prohibition of state aid takes into consideration the “abnormally low” level of economic development (and the Commission considers that NUTS 2 regions with a per capita gross domestic product below or equal to 75 % of the EU-27 average fulfil the conditions laid down in the Treaty (EUROPEAN COMMISSION, 2021: 25).

Sparsely populated and very sparsely populated areas (the second criterion that can determine an assisted area) must also be indicated in the regional aid map, in order to make it possible to derogate from the aid prohibition. The criterion (*ex. Art. 107-3 c TFEU*: to facilitate the development of certain economic activities or of certain economic areas) adopted by the Commission had its origin in the recognition by the CJEU (*Germany v Commission, Case 248/84*) that Art. 107(3) grants the Commission “the power to authorise aid to promote the economic development of areas of a Member State which are disadvantaged in relation to the national average.”

The reform of Commission Regulation (EU) 651/2014 (categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty) set up a specific territorial governance instrument, which took depopulation into account in a partially novel way³⁴. The initial text qualified

34 Curiously, the origin of this modification had an extra-EU motivation: Norway (which is part of the European Economic Area, but not of the EU and is therefore largely subject to EU rules) proposed the compatibility with European law of certain business operating aid (reduction of social security contributions) in highly depopulated areas of its territory, which were admitted. Sweden and Finland, therefore, demanded that the EU put them on

as areas with low population density only those areas recognised by the Commission in the Aid Map decisions, and restricted operating aid to the outermost regions (Article 349 of the Treaty) or an area with low population density, as they appear on the approved regional aid map (Art. 2(55)).

Commission Regulation (EU) 2017/1084 of 14 June 2017 introduced a text (art. 1.2) replacing the previous wording of Regulation (EU) No 651/2014 and defining “sparsely populated areas” (“NUTS 2 regions with less than 8 inhabitants per km² or NUTS 3 regions with less than 12.5 inhabitants per km² or areas recognised as such by the Commission by an individual decision on a regional aid map in force at the time the aid is granted”). Moreover, a new point 48a is inserted in Article 2 defining “areas with very low population density” (NUTS 2 regions with less than 8 inhabitants per km² or areas recognised as such by an individual decision of the Commission on the basis of a regional aid map in force at the time the aid is granted).

More importantly, the amendment to point 55 above included this wording: “areas eligible for operating aid: outermost regions referred to in Article 349 of the Treaty or sparsely populated or very sparsely populated areas”.

The Commission’s proposal for a regulation justified this instrument by stating that “operating aid to prevent and reduce depopulation should be extended to sparsely populated areas in order to provide better support in areas facing demographic challenges”, given the new orientations of the Green Pact and the Climate Act.

The substantive regime of this instrument is drawn from Art. 15 of the General block exemption Regulation (regional operating aid) which, in addition to other references to the outermost regions, and to transport aid in sparsely populated areas, states that in very sparsely populated areas, regional operating aid schemes must prevent or reduce depopulation under the following conditions: the beneficiaries have their economic activity in the area concerned and the annual amount of aid per beneficiary under all operating aid schemes does not exceed 20 % of the annual labour costs incurred by the beneficiary in the area concerned.

With regard to the general requirements applicable to all aid covered by the Regulation (incentive effect, necessity for State intervention, appropriateness, proportionality, transparency and effects on competition), in operating aid schemes, aid is considered to have an incentive effect “if it is likely that, without the aid, the level of economic activity in the area concerned would be significantly reduced because of the problems that the aid is intended to solve³⁵.”

an equal footing with Norway.

35 “The Commission will consider that operating aid provides an incentive for additional economic activity in the area if the Member State has demonstrated the existence and substantial nature of such problems in that area...Member States must demonstrate the

The need for State intervention is presumed in respect of the areas included in the Aid Map and the requirement for a progressive reduction in the intensity of the aid scheme does not apply in the case of aid to prevent depopulation in sparsely populated or very sparsely populated areas.

The *Commission Guidelines* and the Aid Map have contributed to the development of this instrument's regime, which, focusing now on the exception resulting from art. 174-3 c of the TFEU, presents some inconsistencies in Spain³⁶. If operating aid can only be considered compatible (among other situations) if it prevents or reduces depopulation in sparsely or very sparsely populated areas (which must also be indicated on the aid map, according to footnote 65 of the Guidelines), a literal reading of the Guidelines shows that in the designation of "sparsely populated areas"³⁷, the role of the State is more significant than in the designation of "very sparsely populated areas."

For the latter, the State must designate NUTS 2 regions with less than eight inhabitants per km², although it may also apply point 169, which allows only "adjacent areas" to be taken into consideration, but not "parts" of the NUT unit concerned. On the other hand, with regard to sparsely populated areas, although (for the purposes indicated below) they are "pre-defined", the Member State is authorised in these terms: However, a Member State may designate parts of NUTS 3 regions with less than 12.5 inhabitants per km² or other contiguous areas adjacent to those NUTS 3 regions, provided that the designated areas have less than 12.5 inhabitants per km².

Perhaps, in a first reading, it is possible for the Member State to designate parts of NUTS3 (provinces) that, in their totality, exceed the population threshold as predetermined "c" areas, provided that such regions, "internal" to that statistical unit, do not reach it. If this is not understood in this way, it

risk of depopulation of the area if operating aid is not granted" (EUROPEAN COMMISSION, 2021: 13-15).

36 Article 107(3)(c) of the Treaty provides that "aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the internal market where such aid does not adversely affect trading conditions to an extent contrary to the common interest". According to the guidelines, "this provision gives the Commission the power to authorise aid to promote the economic development of areas of a Member State which are disadvantaged in relation to the national average". The following areas are considered as default "c" areas: (1) former "a" areas for the period 2017-2020; and (2) sparsely populated areas.

37 Sparsely populated areas are "areas designated by the Member State in accordance with point 169", says paragraph 30 of the guidelines. As noted in the text, the consideration of some sparsely populated areas as "default c-areas" results from the simple application of point 166 (NUTS 2 regions with less than 8 inhabitants per km² or NUTS 3 with less than 12.5 inhabitants per km², which together constitute the default c-coverage for each State). But the State may "designate" other territorial areas, also as default c-areas (parts of NUTS 3 regions with less than 12.5 inhabitants per km² or other contiguous areas adjacent to these NUTS 3 regions, as long as the designated areas have less than 12.5 inhabitants per km²).

leads to many inconsistencies, because it leaves parts of the national territory without predetermined coverage where depopulation and the rural nature of the nuclei are more intense³⁸.

While a Member State may designate non-defined areas on the basis of certain socio-economic criteria set out in points 174 *et seq.* of the Guidelines, these criteria do not include depopulation (although they do include “population loss”) and, crucially, such areas are not included among the depopulated areas eligible for operating aid. As the role of the latter seems to us to be decisive in maintaining a minimum of economic activity (a small mechanical workshop, a small construction company, a bakery, a retail trade...) in areas with very weak demand, it can be argued that some areas which do not correspond to the whole province (NUTS 3) can be included³⁹.

38 Some examples: Soria yields a population density of 8 hab/km² and Teruel 9. Both areas are predetermined, with operating aids, very correctly applied. But Zamora (15.83 inhab/km²) is necessarily left out, although its western zone includes parts which give figures comparable to very sparsely populated areas: Sayago (5.5) Aliste (6.38) Sanabria (4.61) La Carballeda (3.42). It should be remembered that Finnish Lapland has a population density of 2 inhabitants/km² and Finland 16 inhabitants/km².

A similar phenomenon for the part of the province of Salamanca that also constitutes “La Raya” (border with Portugal), an area that, for some reason, has merited a special mention in the Pluri-regional Operational Plan of the Kingdom of Spain for the ERDF 2021-2027.

39 Although the argument is a bit longer, it can be summarised as follows, in case it is of interest: The “straightforward” interpretation of point 169 of the guidelines (the State can designate parts of NUTS 3 when they exceed the population density threshold, if those “parts” do not) is doubtful. The ambiguity of the wording (parts of NUTS 3 regions with less than 12.5 inhabitants per km²) is not cleared up by reading the guidelines in other languages (although, in English, it seems clear: “However, Member States may designate parts of NUTS 3 regions with fewer than 12.5 inhabitants per km² or other contiguous areas adjacent to those NUTS 3 regions, provided that these areas have fewer than 12.5 inhabitants per km²”) and remains ambiguous (when the full translation of the French partitive “des” is omitted: *peuvent désigner des parties de régions NUTS 3 comptant moins de 12,5 habitants au km² ou d’autres zones contiguës adjacentes à ces régions NUTS 3*), whether the condition of fewer than 12.5 inhabitants refers to the parts or to the regions (provinces in the case of Spain) as a whole. The NUTS 3 regions in respect of which the Member State may designate “parts” are to be interpreted as being only NUTS 3 regions which meet the condition of having a lower population density than indicated. This condition refers to the initial NUTS3 unit, not to the resulting area (as this is listed a posteriori: as long as the designated areas have less than 12 inhabitants...).

If one refers to the parallel Revised Guidelines on National Regional Aid for 2022-2027 [2022/1047], applicable to the EEA as from 1 December 2021, the question is clear: ‘EEA EFTA States should in principle designate either Tier 2 statistical regions with less than 8 inhabitants per km² or Tier 3 statistical regions with less than 12.5 inhabitants per km². However, EEA EFTA States may designate parts of Tier 3 statistical regions with less than 12.5 inhabitants per km² or other contiguous areas adjacent to such Tier 3 statistical regions...’.

In any case, the guidelines allow, in respect of NUTS3 (provinces) which together exceed the population threshold, certain “internal” areas to be designated as predetermined assisted areas, provided that the designated area does not reach the threshold and is contiguous to an area meeting the threshold. The territorial contiguity required by the

The importance of this aid scheme for rural areas is illustrated by the provisions of another Community document, the guidelines for state aid in the agriculture and forestry sector and in rural areas (2022/C 485/01), according to which “Member States” may grant aid for investments in connection with the processing and/or marketing of agricultural products if certain conditions are fulfilled.

3. EUROPEAN FUNDS AND THEIR PROGRAMMING. FUNCTIONAL AREAS AND PILOT PROJECTS: IS THERE ANYTHING NEW OUT THERE?

3.1. An initial assessment: the loss of the territorial perspective

In the current scheme of rural territorial governance defined at European and national level, there are too many symptoms of developmentalism, but almost exclusively in certain territorial areas. The consequences of this approach have just been described in the text: rural territories do not even matter statistically. The level of income, in relation to the European average, at these territorial levels, is decisive in cohesion policy.

Substantial resources have been devoted to making cohesion policy visible but little or very little has been done for inland rural areas or remote areas. This has been highlighted by a major European Parliament study, presented in September 2020, calling for “greater coherence and coordination between cohesion policy and EU rural development policy”. It highlights that cohesion policy “has focused particularly on urban areas, to which the EU as a whole has allocated three times as much cohesion policy funding, 165.5 billion euros, compared to 45.6 billion euros for rural development” (KAH *et al*, 2020).

The study recommends “increasing the territorial focus of cohesion funds, going beyond the division of funds by types of regions, by differentiating types of areas within them. This dimension has been lost in recent programming

guidelines (point 169), which should be enforced by the Kingdom of Spain, would apply in respect of the NUTS 2 areas designated by the Portuguese Republic. Although this Member State has not designated predetermined c areas (using the designation of “a” areas, i.e. ‘NUTS 2 regions whose GDP per capita measured in purchasing power standards is less than or equal to 75 % of the EU-27 average’) the wording of the guidelines (“contiguous areas adjacent to these NUTS 3 regions, provided that the designated areas have less than 12.5 inhabitants per km²”) admits that parts of our neighbouring provinces which are not, in the whole, provincial NUTS 3 regions predetermined by population density, can be predetermined by contiguity with Portuguese NUTS 3 regions even if they have not been designated by that other Member State.

periods, as shown by the fact that a large part of the financial allocation is not associated with any territorial focus⁴⁰.”

3.2. Cohesion. The ERDF multi-regional programme. Integrated Territorial Strategies, functional areas and functional urban areas

In the general framework of the Association Agreement to which we have already referred and by Commission Implementing Decision of 13 December 2022, the European Commission approved the Spanish ERDF Multiregional Programme 2021-2027⁴¹ (POPE). Of interest here is the specific objective: RS O5.2. “Promote integrated and inclusive social, economic and environmental development, culture and natural heritage, sustainable tourism and security in non-urban areas.”

A number of instruments are envisaged which may prove to be mechanisms for governing rural areas. The proposed actions, which once again rely on endogenous initiative capable of drawing up projects, are called integrated territorial strategies which, in accordance with art. 11 of Regulation 2021/1058 (ERDF) and the Common Provisions Regulation (art. 29), are nothing more than territorial instruments designed by the Member State.

These integrated territorial development strategies (which in the case of Spain will take the form of Article 28(c) of the CPR, “another territorial

40 The Economic and Social Council itself echoes the above study (2021: 117), recalling how the European Commission’s Directorate-General for Regional and Urban Policy (DG REGIO) has produced an interactive report that allows for a more in-depth analysis by fund and Member State. “However, the present figures are based on how the different programmes have associated their actions with a specific type of area (urban areas with more than 50,000 inhabitants, small urban areas or sparsely populated rural areas). In the case of Spain, 72 per cent of the funds are not specifically allocated to any area. It is therefore necessary to promote a specific evaluation exercise to analyse in depth how the implementation of cohesion policy has been applied or contributed to the development of rural areas...”.

41 According to the public information on the MTED website, “In the period 2021-2027, Spain will receive 23,539 million euros from the ERDF, which will be distributed in 19 Regional Operational Programmes (1 for each Autonomous Community and Autonomous City) and a Pluri-regional Operational Programme for Spain, which will serve as the main planning instrument for the actions of the General State Administration to be financed by this Fund”.

The eleven thematic objectives used in Cohesion Policy 2014-2020 have been replaced by five policy objectives for the ERDF, ESF+, Cohesion Fund and EMFF. Among them, we are now concerned with Policy Objective. 5, “Sustainable and integrated development of urban, rural and coastal areas through local initiatives”.

The Cohesion Fund covers Bulgaria, the Czech Republic, Estonia, Greece, Croatia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Romania, Slovakia and Slovenia for the period 2021-2027.

instrument to support initiatives conceived by the Member State”) are not well defined in the Programme, which simply mentions that they will be aimed at “functional areas” made up of rural municipalities with fewer than 10,000 inhabitants. Given that the projects to be supported will be co-financed by the ERDF and by the Fund for Cohesion and Territorial Transformation of the General State Administration, it is likely that the latter will be the one to validate such Strategies⁴².

In fact, the programme makes the approval of specific projects conditional upon “their being framed within an integrated territorial strategy (Articles 28 and 29 of the RDC) previously defined in that territory”, and although the participation of the various authorities, economic and social partners and representatives of civil society and non-governmental organisations in the design, implementation, monitoring and evaluation of this strategy must be demonstrated⁴³, nothing is said about the mechanism for its formulation.

With regard to the projects themselves, the POPE only asks that they be supramunicipal, integrated projects, covering *functional areas* of at least 10,000 inhabitants in rural municipalities, *promoted by these local entities*,

42 We do not believe that, strictly speaking, this role can be fulfilled by the National Strategy to Meet the Demographic Challenge, due to its lack of sufficient territorial precision.

43 The POPE is dealing with a different instrument than the simple calls for grants under the aforementioned Territorial Cohesion Fund (or its regionalised headings) in favour of municipalities and other actors, such as those called by OM TED/135/2021 for innovative projects for rural transformation, addressed to municipalities and local authorities.

We see no reason, however, why, if this instrument is something new, its formulation should not be left to the Autonomous Communities. However, the logic of ERDF regional programming tends not to give express and different relevance to the specific objective: O5.2 (Promote integrated and inclusive social, economic and environmental development, culture and natural heritage, sustainable tourism and security in rural areas), given the requirements of thematic concentration resulting from the ERDF Funds. As a result, some Autonomous Communities have opted not to programme this objective, but to completely “ruralise” the programming of the other objectives. This is the case of Castile and Leon, whose Plan apparently sacrifices Political Objective 5 (A Europe closer to its citizens) and priority P5B (Territorial and Local Integration. Non-urban territories), which represent the context of a policy of governance of the rural territory.

It should be noted that Castile and Leon, despite its immense demographic challenge, is included in the “transition” regions for the purpose of programming funds.

If, on the other hand, we examine the ERDF Programme of another Region in transition (Cantabria), it deals with this Priority P5B, through an Integrated Territorial Investment (sic: Perhaps it is referring to an Integrated Territorial Strategy) based on the development of a Territorial Strategy for the Besaya Region, with the following intervention logic: “Due to the profile of municipalities that make up the Comarca as a whole, we find ourselves in an area with a marked rural urban accent, where spaces with a wide range of services available to citizens coexist (such as the city of Torrelavega, the second most populated city in the region with 53.000 inhabitants, which has to face its own challenges such as population loss and the consequent possible loss of services if it continues along these lines), together with markedly rural areas with very specific rural needs and deficiencies which must be addressed...”.

and selected in the framework of competitive calls for proposals and designed to support actions that promote land-use planning measures aimed at encouraging economic activity and entrepreneurship and access to essential public services.

It is also requested that “operations should preferably be of a pilot or experimental nature, that they can provide an evaluable experience that can be continued and improved in successive years, as well as being transferable to other territories at national and European level, and involve actions in areas such as digitisation and connectivity in areas with difficult coverage; the provision of basic services; the promotion of ecological transition; or the development of a housing stock, preferably public and rented; the rehabilitation or enhancement of cultural heritage; the promotion of entrepreneurship, the requalification of local economic activity; the attraction of teleworkers; or the promotion of the *silver economy*, among others.” The planned pilot projects will be supramunicipal, county and/or provincial in nature and will be developed in the least developed regions, although Castile and Leon (a region in transition, for cohesion purposes) is specifically included due to its serious depopulation problems (GOVERNMENT OF SPAIN, 2020)⁴⁴.

The POPE envisages, within these approaches, a connection with the Common Cross-Border Development Strategy for the border area with Portugal (“la Raya”), which does not replace the need for territorial strategies for specific and determined functional areas.

The other point of interest presented by the POPE is the intervention on urban areas (Objective 5, Priority PS5A — territorial and local integration —, Specific Objective: RSO5.1. Promote integrated and inclusive social, economic and environmental development, culture and natural heritage, sustainable tourism and safety in urban areas), which seeks to emphasise the relationship between the urban and its surrounding environment. Thus, as a relative novelty, the figure of functional urban areas appears and the emphasis is placed on supra-municipal action, rescuing the role of the provincial councils.

The intervention requires a prior territorial strategy either urban (municipality of more than 10,000 inhabitants) or Functional Urban Area (minimum 20,000 inhabitants). The calls for proposals will foresee the number of strategies to be selected and will lead to the selection of the integrated action plans they contain. The participation of the urban authorities that are part of the AUF or of individual cities must be ensured both in the design and implementation

44 The omission of this objective and priority in the ERDF programme of the Autonomous Community itself is all the more striking. It would seem that Castile and Leon does not wish to indicate the specific territories targeted, nor does it wish to predetermine the intended use of territorial instruments.

phase of the strategies, also guaranteeing their participation in the selection of operations⁴⁵.

3.3. EAFRD and LEADER rural development: About the ITIS

The EU's rural development priorities are set out in Regulation (EU) 1305/2013 (EAFRD) with particular emphasis on: a) facilitating diversification, the creation and development of small businesses and job creation; b) promoting local development in rural areas; and c) improving accessibility to use and quality of information and communication technologies (ICT) in rural areas.

Today, Regulation (EU) 2021/2115 (CAP strategic plans) defines the types of public interventions in this area in terms of the following policy measures in rural development: attracting and supporting young and new farmers and facilitating sustainable business development in rural areas; promoting employment, growth, gender equality, including women's participation in agriculture, social inclusion and local development in rural areas, including the circular bio-economy and sustainable forestry.

3.3.1. Investments

Rural development actions and programmes are now integrated into the CAP Strategic Plan (CSAP) as this was traditionally the second pillar of the Common Agricultural Policy. Of the EAFRD objectives, number 8 identified as "living rural areas" is now of interest. The planned rural development interventions amount to 8,314.32 million euros and the PEPAC devotes the whole of section 5.3.

Eight policy measures resulting from European regulations (environmental, climate and other management commitments; natural or other area-specific constraints; area-specific handicaps resulting from certain mandatory requirements; investments; setting up of young farmers and rural business start-ups; risk management tools and cooperation) are envisaged, each articulated in different interventions.

In addition to other interventions (generally in the form of subsidies) relating to agricultural land, environmental commitments and forestry areas, organic farming, animal health and welfare, conservation of genetic resources, etc.), it is important to highlight those with a territorial dimension. These include

⁴⁵ The performance indicators foreseen in the POPE for these actions do not make the envisaged models generalisable: The number of Integrated Territorial Development Strategies and the number of Participatory Local Development Strategies identified as indicators are very low.

the now traditional aid for areas with natural limitations — mountain areas — together with intervention 6871 Investment in basic services in the natural environment. The latter allows for the creation and restoration of accesses and connectivity routes in the natural environment, agricultural infrastructures for collective use, and actions aimed at promoting the compatibility of extensive livestock farming with the presence of large carnivores/predators, as well as actions aimed at the social use of the natural environment, including investments for public use.

Intervention 6872 (Non-productive investments in basic services in rural areas) is targeted at public administrations and aims to promote basic services in rural areas through the provision of basic local services, including communications, energy, health, water supply, sanitation, waste management, education, culture and/or leisure.

Finally, of the set of interventions characterised as investments, one of them (6962: Start-up of new rural enterprises linked to forestry, agriculture and income diversification of farmers) should be highlighted. The PEPAC states that:

“This intervention is only covered (programmed) by one Spanish region, the Comunidad Foral de Navarra, but this does not mean that other regions do not carry out the “start-up of new rural enterprises linked to agriculture and forestry or the diversification of the income of farming households, new non-agricultural business activities”, but that other regions can carry it out through the LEADER intervention. In the case of LEADER this information can be provided when the strategies are approved...”

The start-up of new rural enterprises linked to agriculture or forestry or the diversification of income of farming households or new non-agricultural business activities makes an essential contribution to population retention in rural areas that are generally depopulated. It also contributes to the generational renewal necessary for the sector. The objective of this intervention is to contribute to job creation in rural areas and to the development of the rural economy. Addressing the selected needs of the specific objectives SO7 and SO8 is achieved by establishing as many enterprises as possible in the agricultural and/or forestry sector or, outside the agricultural and/or forestry sector, by providing beneficiaries with lump sums in the initial start-up period in order to meet the economic challenges that arise at the beginning of the process when the enterprise is less profitable.

We should highlight this intervention because, although the PEPAC text seems to take it for granted, it is not easy for LEADER strategies and Participatory Local Development to finance part of this type of intervention, much less by granting initial flat-rate amounts. This has to do with the mechanics and weaknesses of the LEADER approach, on the one hand, and on the other, with the practical exclusion of new rural enterprises linked to agriculture, given that it has been understood, by many Autonomous Communities, that LEADER could only act to a very limited extent in this

field⁴⁶. This vision was in fact based on the initial idea of LEADER, which was born to diversify the rural productive fabric. Today, however, Article 75 of Regulation (EU) 2021/2115 (CAP strategic plans) also seems to admit this intervention⁴⁷ linked to agriculture, with some greater flexibility, so that certain LEADER aid does not necessarily have to be granted for non-agricultural business activities⁴⁸.

Another equally noteworthy intervention, also outside the LEADER, is 7163 Cooperation for the structuring of the territory, directly linked to SO8 (remember: “promoting employment, growth, gender equality, including the participation of women in agriculture, social inclusion and local development in rural areas”). This measure includes “actions that have multiple positive effects other than economic, such as promoting the use of renewable energy, increasing the use of forest biomass and reducing the risk of fire.”

46 For example, M19 - Support for LEADER local development (DLP, participatory local development) in the Castile and Leon Rural Development Programme (2020). Submeasure 19.2. Implementation of operations in line with the participatory local development strategy: “Subsidised operations may be aimed at: 1. diversification towards non-agricultural activities on agricultural holdings. 2. Support for the creation, extension, modernisation and/or relocation of enterprises, excluding from the primary sector projects under Article 17(1)(a), 17(1)(c), 17(1)(d) and Article 19(1)(a)(i), 19(1)(a)(iii) and 19(1)(c) of Regulation (EU) No 1305/2013. Operations carried out by SMEs within the primary sector may be included provided that their final and priority objective is not agricultural production *per se* and they propose actions whose main purpose is of an inclusive and social nature (not the marketing of the products obtained), 3. Promotion of tourism activities. Basic infrastructures and services for the population and the rural economy. 5. Conservation, improvement, promotion and dissemination of the rural heritage, including architectural, environmental, cultural, ethnographic, etc. 6. Training”. References to EU Regulation 1305/2013 refer to other support lines for young farmers and development of small farms (Art. 19).

Castile-La Mancha seems to have programmed a line, within the activity of the LEADER Groups, of new enterprises in the rural world that covers any initiative, including those linked to agriculture, as long as it is not covered by the “young farmers” line (TOLEDO DIARIO, 2023).

47 Art.75. “Establishment of young and new farmers and start-up of new rural businesses: 1. Member States may grant support for the setting up of young farmers and the setting up of new rural businesses, including the setting up of new farmers, subject to the conditions set out in this Article and the further specifications of their CAP strategic plans, in order to contribute to the achievement of one or more of the specific objectives referred to in Article 6(1) and (2). 2. Member States may grant support under this Article only for: a) the establishment of young farmers who fulfil the conditions set out in this Article; b) the setting up of new rural enterprises linked to agriculture or forestry, including the setting up of new farmers, or the diversification of farmers’ income by including non-agricultural activities; c) the setting up of non-agricultural business activities in rural areas which are linked to the community-led local development strategies set out in Article 32 of Regulation (EU) 2021/1060”.

48 It does not seem that the aforementioned art. 75 should necessarily be understood in the sense that only new non-agricultural enterprises can be targeted by the participatory local development strategies.

Its thematic scope is very limited and it is programmed only in four Autonomous Communities (Extremadura, Balearic Islands, Madrid and Castile- La Mancha) which have focused on local markets and short chains of agri-food products, because, in effect, in the agricultural field “cooperation actions may be promoted for the creation of jobs and the generation of companies for the transformation after harvesting, conditioning, processing or storage of food products and/or by-products.” The intervention methodology calls for the constitution of “Cooperation Groups”⁴⁹ (in which a public administration may participate) and may, in the future, be incorporated into other Autonomous Communities.

3.3.2. Cooperation. LEADER and Integrated Territorial Investments (ITIs)

According to Art. 28 of the CPR (included in the chapter “Territorial development”) when a Member State supports integrated territorial development, it shall do so through territorial or local development strategies under any of the following modalities: integrated territorial investments (ITIs), participatory local development or other territorial instruments supporting initiatives conceived by the Member State. As mentioned above, the latter is the formulation that is specifically included in the BEPG when referring to functional areas and functional urban areas.

After more than 30 years on the ground, the LEADER mechanics are well known and need not be described again. The new CAP includes this intervention as the COOP action (77), Cooperation 7119, and has a minimum EAFRD allocation (5 %). The LEADER method (based on a bottom-up approach, from the communities involved to the projects implemented) is extended, under the broader term of participatory local development (arts. 32, 33 and 34 of the CPR), and can admit other EU funds than the EAFRD⁵⁰.

49 Although the measure is not very well defined in the PEPAC, it does state: “The beneficiaries of this aid may be natural or legal persons, including public administrations, that form part of a Cooperation Group (CG) set up for the implementation of one or more projects that contribute to the specific objectives related to improving the position of the primary sector in the value chain, the development of rural areas (...) The Cooperation Groups: shall be formed by at least two entities with distinct physical or legal personality that have no organic or functional relations with each other. Cooperation will not be supported in groups in which only research bodies participate...”.

50 MAPA (2023) describes this intervention and its different actions (selection of local development strategies and their implementation). There, for example, it is stated that “The LEADER implementation mechanisms in each of the Spanish regions will be designed by each of the Regional Management Authorities, according to their specificities and experience...”. The Kingdom of Spain has earmarked 160 million euros for the promotion of local initiatives (LEADER), to which 10 % of the rural development budget of 1,762 million euros (European, national and regional funding) is allocated.

This territorial development technique should focus on specific sub-regional areas (with a population of not less than 10 000 inhabitants and not more than 150.000 inhabitants), be governed by local action groups composed of representatives of local public and private socio-economic interests, in which neither public authorities nor any particular interest group represent more than 49 % of the voting rights, and act through integrated, multi-sectoral and area-based local development strategies developed by the groups themselves. The judgement of the European Court of Auditors has not been very favourable to this approach (DOMÍNGUEZ ÁLVAREZ *et al*, 2023).

A look at how LEADER has been designed in other states⁵¹ can show how these critical appreciations have been taken into consideration. In France, the intervention seems to be aimed at the provision of basic services in rural areas, the enhancement of the natural heritage and the requirements of the ecological, energy and digital transition, in a context in which priority is given to the *innovation* of the solutions offered by the Groups (MINISTÈRE DE L'AGRICULTURE ET DE LA SOUVERAINETÉ ALIMENTAIRE, 2023), and emphasises

51 Different examples of how Spain is interpreting the provisions of the CAP Strategic Plan in terms of LEADER: La Rioja (Order ATP/24/2023, of 27 April, establishing the public call for the selection of participatory local development strategies, LEADER), already specifies the type of eligible operations (in a traditional list: The eligible actions on which the groups should focus their strategies may be, among others: Creation of small non-agricultural enterprises in rural areas; development of small non-agricultural enterprises in rural areas, basic services and renovation of villages in rural areas; creation, improvement or extension of all types of small-scale infrastructure, including investments in renewable energies and energy saving, investments for public use in recreational infrastructure, small-scale tourist information. Castile- La Mancha (Order 51/2023 of 17 March) devotes a section to "operations supported in the EDLP" including advice, training and exchange of knowledge on sustainable, economic, social, environmental and climate-friendly performance, operations related to producer organisations, local markets, short supply chains and quality schemes, including support to investment, marketing activities or other similar operations, operations related to renewable energy production capacities, or contributing to environmental sustainability objectives and the achievement of climate change mitigation in rural areas, operations supporting rural enterprises other than agri-food industries, operations related to "smart villages" strategies, among others. In Navarre, RESOLUTION 252E/2022, contemplates the possibility of opening a line aimed at entrepreneurship for young unemployed people, for the start-up of non-agricultural business activities in rural areas, related to participatory local development strategies, with similar management and characteristics to that developed in intervention 6962 but with the eligibility conditions and selection criteria adapted to the LDPs. The intervention 6962 of Navarra consists of "The start-up of new rural enterprises linked to agriculture or forestry or the diversification of the income of farming households with the objective of this intervention is therefore to contribute to the creation of employment in rural areas as well as to the development of the rural economy. In Extremadura, the ORDEN of 1 December 2022 (selection of Participatory Local Development Strategies in the period 2023-2027) insists on the "complementary nature with the interventions of other programmes in the area of action, as well as giving priority to actions that aim to encourage equal opportunities between women and men and to offer opportunities to youth".

the complementarity of this intervention with the other rural development measures, so that everything not expressly covered by other interventions should be understood as available for LEADER, respecting the requirements of European regulations⁵².

The reform of Cohesion Policy through integrated territorial development created another territorial development instrument⁵³ (art. 36 CPR) called Integrated Territorial Investments. This instrument refers directly to urban development strategies, but it can also be linked to other territorial strategies, provided that an integrated approach is necessary, involving investments from the ESF, ERDF or Cohesion Fund, which can also be complemented by financial support from the EAFRD. Along with the requirement for a territorial strategy and the implementation of different funds (according to the scheme of each fund) an ITI requires the State to designate one or more intermediate bodies (including local authorities, regional development agencies or non-governmental organisations) as responsible.

The governance of this instrument ends up being decisive: resources are concentrated, but there is a need for leadership, a management unit that is likely to be called upon to leapfrog over ordinary competencies.

The studies available on this instrument in Spain (PATÓN, 2019), focusing on operations other than sustainable urban development, show that they are organised as an integrated package of actions aimed at a territory with very marked specificities, with needs and challenges that cannot be generalised

52 The following paragraphs of the French PEPAC are thus decisive: "In order to avoid any risk of double financing by European funds, each Local Action Group should analyse the different European programmes likely to intervene on its territory in order to determine the main lines of division between LEADER and other European funds...". "Clearer lines of demarcation between LEADER and non-LEADER EAFRD schemes could be defined in each region before the launch of calls for expression of interest aimed at selecting LAGs, in order to limit the controls involved and simplify implementation...". "Actions in the field of non-agricultural rural development should be articulated between the EAFRD and the ERDF, in particular through local development by local actors (DLAL), benefiting from support via LEADER intervention (and FEAMPA for neighbouring areas) ... The line of partnership is at the discretion of the regional management authorities...".

53 Recital 30 of the current CPR reads: "In order to consolidate the integrated territorial development approach, investments in the form of territorial instruments, such as integrated territorial investments, participatory local development, called "LEADER" under the European Agricultural Fund for Rural Development (EAFRD), or any other territorial instrument supporting initiatives designed by Member States, should be based on territorial and local development strategies" The ITI instrument comes from the European Funds regulation for the period 2014-2020. Spain programmed three territorial development strategies under the form ITIs: Cadiz (province), Mar Menor, ITI Blue (linked to the Atlantic). Castile-La Mancha programmed another one for certain comarcas in its territory, with the aim of "socio-demographic recovery" and "a budget of 490 million euros".

and that require a major coordination effort between government bodies and other parties at different levels around a priority axis.

The aforementioned art. 36, in its previous application to the ITI of Castile la Mancha, intended to provide the intervention with an “added value” consisting of “generating a more effective and efficient intervention to stop depopulation, achieve generational replacement, give continuity to the villages, modify the socio-economic model and offer alternatives to the population to compensate for the strong existing territorial and social imbalances”, with a set of 114 actions explicitly linked to each of the European Funds. It involved (as is common to these actions) high entry costs (formulation of the strategy), which gave rise to express, concrete and singular rule for the same (Decree 31/2017 Castile-La Mancha) trying to facilitate the most difficult point: The governance of the different levels of administrative and coexistence between different responsible for the management of various funds⁵⁴. Without removing these conditioning factors, the ITI offers little or no results compared to more conventional formulas.

In the face of these, this tool requires very strong political and institutional commitments, at the highest level, continued over time, together with highly involved administrative bodies that allow for smooth governance, as well as resources especially dedicated to the “bottom-up” effort that require, and this is decisive, a base of territorial public actors with a vision of and for the ITI (PATÓN, 2019). An ITI is not an easy resource to manage by the conventional territorial administration no matter what its level of government and more seems to call for a “mission administration.”

At the same time, if the traditional LEADER effort and Local Action Groups can now opt for the multi-fund approach, the ITI model may only come into play when the weakness of the assisted area also requires leadership, dedication and personal skills, or a special concentration of resources.

V. CONCLUSIONS

The generality of laws, in their equal application on the territory, will not rescue the future of rural areas. Rural government has sufficient legal mechanisms at its disposal to allow for specific treatment, which is necessary insofar as certain general interests weigh heavily on rural areas. Operating aids, favourable tax discrimination, better implementation of the arsenal of rural development measures are a possible way forward.

54 On the contrary, the instrument seems “especially designed for challenges and needs that cannot be addressed individually; as for the absorption of funds, it is a mechanism that allows channelling European resources in a more EFFICIENT AND EFFECTIVE way, demonstrating that under appropriate conditions the objective pursued with the ITI is achieved” (PATÓN, 2019: 41).

The other way is still to trust in the resilience of the rural world. A journalist, who knows the terrain well, has put it this way: *"it is true, we Zamoranos are farmers and shepherds, we are proud to be so, but we need to be the best, the most prepared for a demanding and chaotic future that pushes us before being and asks us, above all, to be able to sell and demonstrate that we are the best..."* (CELEDONIO PÉREZ, 2022).

VI. BIBLIOGRAPHY

AGROCLM, "Asaja Córdoba warns that the new CAP "is going to mean a brutal bureaucratic burden" for farmers and livestock farmers", in *Agroclm*, 2022.

ANALISTAS ECONÓMICOS DE ANDALUCÍA, *El sector agrario en Castilla y León*, 2021. Available at <https://n9.cl/y0v60>.

CITY COUNCIL OF A CORUÑA, *Basic Guide to European Funds 21/27*, Department of Strategic and European Projects, A Coruña, 2022.

AZNAR PRADES, G., *La venta directa de productos agroalimentarios en España y Francia*, Hecho en los Pirineos, Zaragoza, 2017. Available at <https://n9.cl/mgoja>.

CELEDONIO PÉREZ, "Ovinnova, el futuro ya está aquí", in *La Opinión de Zamora*, 2022.

COMMUNICATION FROM THE COMMISSION, *Guidelines on national regional aid*, 2021. (OJEU C-153 of 29.4.2021).

CONSEJO CONSULTIVO DE CASTILLA Y LEÓN, *Policy responses to demographic challenges*, 2021.

ECONOMIC AND SOCIAL COUNCIL, *Report 02 2021: A living and sustainable rural environment*, 2021.

DOMINGUEZ ÁLVAREZ; J.L.:

- *Comunidades discriminadas y territorios rurales abandonados. Políticas públicas y derecho administrativo frente a la despoblación*, Aranzadi, Cizur Menor, 2021.

- "Why subsidies fail. El caso del desarrollo rural LEADER", *Actas del XVII Congreso de la AEPDA*, INAP, Madrid, 2023.

EUROPEAN COMMISSION:

- *New perspectives on territorial disparities: from lonely places to places of opportunities*, Publications Office of the European Union, 2022. Available at: <https://data.europa.eu/doi/10.2760/847996>.

- *Proposal for a COUNCIL REGULATION laying down a framework to accelerate the deployment of renewable energy*, 2022. (COM (2022) 591 final).

- *Key policy objectives of the new CAP*, 2023. Available at: <https://cutt.ly/EBNn46x>.

RENEWABLES FOUNDATION, *Territory and Renewables*, 2021.

GOVERNMENT OF SPAIN, *Castilla y León ERDF Programme 2021-2027*, 2022. Available at: <https://acortar.link/3dB5Sm>.

GOVERNO ITALIANO, *Italian National Recovery and Resilience Plan*, 2021.

KAH, S., GEORGIEVA, N. and FONSECA, L., *The European Union's Cohesion Policy in Non-Urban Areas*, 2020. Available at <https://bit.ly/35ohiQT>.

MARTIN JIMENEZ M., HORTELANO MÍNGUEZ, L.A. and PLAZA GUTIERREZ, J. I., "Cooperación territorial y gobierno del territorio en Castilla y León", in *Estudios Geográficos*, vol. LXVIII, no. 263, 2007.

MINISTÈRE DE L'AGRICULTURE ET DE LA SOUVERAINETÉ ALIMENTAIRE, PAC 2023-2027 - Le Plan Stratégique National, 2023.

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD, *CAP Strategic Plan*, 2023.

MINISTRY OF ECONOMIC AFFAIRS AND DIGITAL TRANSFORMATION, *Broadband Coverage in Spain Report*, 2021.

MINISTRY FOR ECOLOGICAL TRANSITION AND DEMOGRAPHIC CHALLENGE, *National Integrated Energy and Climate Plan (PNIEC) 2021-2030*, 2019.

PAREJO ALFONSO, L., "La reconsideración de la mirada territorial-urbanística sobre el mundo rural y la reciente ley andaluza de impulso para la sostenibilidad del territorio", in *Práctica Urbanística*, núm. 179, 2022.

EUROPEAN PARLAMENT:

- *Short food supply chains and local food systems in the EU*, 2016.

- *Report on a long-term vision for rural areas in the EU: towards stronger, connected, resilient and prosperous rural areas by 2040*, 2022.

PATÓN, J., *Analysis of the ITIs effectiveness in Spain (2014-2020)*, 2019. Available at <https://n9.cl/op8e4>.

TERRON SANTOS, D., "La garantía del servicio de policía local en los municipios rurales de reto demográfico", in *Revista de Estudios de Administración Local y Autonómica*, forthcoming (October 2023).

TOLEDO DIARIO, "El emprendedor rural, clave en el futuro de la región con el próximo programa LEADER 2023-2027", in *Toledo Diario*, 2021. Available at: <https://n9.cl/6sk8a>.

CHAPTER III

DEMOGRAPHIC CHALLENGE AND RENEWABLE ENERGIES: IS SPAIN AN EXAMPLE FOR EUROPE?

DANIEL TERRÓN SANTOS

*Associate Professor of Administrative Law
University of Salamanca*

SUMMARY: I. INTRODUCTION. 1. Sustainable rural development. 2. Regulation of renewable energies applicable to the rural environment. II. REGULATION OF RENEWABLE ENERGIES AND THE IMPACT OF THEIR PROMOTION IN RURAL AREAS. 1. Regulation and possible ways of streamlining it. 1.1. The framework of Royal Decree-Law 6/2022 of 29 March adopting urgent measures in the framework of the national plan of response to the economic and social consequences of the war in Ukraine. 1.2. The question of zoning. 1.3. Some facts and figures. 2. Impact of renewable energies on rural areas. 2.1. Environmental impact of renewables. 2.2. Economic impact of renewables. 2.3. Is renewable energy sustainable? III. SOCIAL LICENCE TO OPERATE. 1. What is the social licence to operate? 1.1. Obtaining and granting a social licence to operate. 2. Energy Saving Plan and 4th renewable auction. IV. CONCLUSION. V. BIBLIOGRAPHY.

I. INTRODUCTION

1. SUSTAINABLE RURAL DEVELOPMENT

The problem of depopulation in rural areas in general, and in Spain in particular, is an issue that is now accepted by the vast majority of politicians and citizens in general. The depopulation experienced by our villages and, above all, by the people who have bravely decided to carry out their life projects in rural areas, generates a risk to the subsistence of these population centres.

As is evident, the emptying of rural areas has led to an increase in the population living in urban areas, so much so that, in 2019, 80.57 % of the Spanish population lived in cities, which occupy only 30 % of the country's territory (STATISTA, 2022).

These data, in general, which can be extrapolated to many other states, end up translating into an overcrowding of cities, and with it, a greater impact of these population centres on our environment. This is because cities concentrate more industrial spaces, which produces a greater amount of waste. In addition, cities have a higher rate of vehicles, which leads to more pollution and, on the other hand, their green spaces are smaller, which affects air quality (OXFAM INTERMON, 2020).

This excessive growth of some areas and the emptying of others makes it necessary to take measures that combine the fight against climate change with the promotion of rural populations, as to undertake one without the other would be fruitless for both problems. It is from this need to merge the environment and the demographic challenge that the concept of sustainable rural development was born. This concept took legislative form in Spain in 2007, with Law 45/2007, of 13 December, for the sustainable development of the rural environment. The purpose of this law is defined in its first article, which states that:

“...aims to regulate and establish measures to promote the sustainable development of the rural environment insofar as they represent basic conditions that guarantee the equality of all citizens in the exercise of certain constitutional rights and insofar as they have the character of bases for the general organisation of economic activity in this environment...”

This sustainable rural development can be defined as “the process of balanced and self-sustainable revitalisation of the rural world based on its economic, social and environmental potential through a regional policy and an integrated application of territorially based measures by participatory organisations” (QUINTANA CAZORLA and MERINO, 1999: 49). In other words, in order to achieve the desired sustainable rural development, we have to combine economic development with environmental issues, but without leaving the territorial issue out of the equation. Therefore, it is necessary to invest in generating projects that will have a positive impact on the economy of all those affected. Without forgetting the social aspect, since, at the very least, it must ensure that existing inequalities are not increased. The same applies to the environmental perspective, as incorporating this is an indispensable requirement in the context of current climate commitments¹.

1 Within the European Union we have made a number of binding commitments, such as a 55 % reduction in emissions compared to 1990 by 2030, or net zero emissions by 2050, as part of the European Green Pact.

These objectives include the promotion of renewable energy sources, including solar and wind energy, marine and hydropower, geothermal energy and bioenergy, as they are an alternative to fossil fuels and their use generates fewer greenhouse gas emissions². They also contribute to the diversification of energy supply and reduce dependence on fossil fuel markets (EUROPEAN COMMISSION, 2021: 1). Furthermore, taking into account not only the need to reduce emissions in the current context, but also being aware that energy consumption will grow exponentially in the medium term (SÁNCHEZ DURÁN, 2018: 56).

The commitment to renewables is clear and decisive from the main authorities. Specifically, with regard to renewable energy sources, in 2009 the European Union set a target for renewables to account for 20 % of total energy use, and by 2018, it had already reached 18.9 %³. European leaders decided to be even more ambitious and in July 2021 increased this commitment to 40 % by 2030 (EUROPEAN COMMISSION, 2021: 2).

All these actions to promote renewable energies have a potentially positive impact on renewable energy plants and parks installed in rural areas. In fact, the Renewable Energy Sources Directive contains references to renewable energy and the opportunities for employment and regional development, “especially in rural and isolated areas⁴.”

However, the promotion of renewable energy projects in rural areas cannot be considered *per se* as beneficial for rural areas, not directly, but not even indirectly, which makes it necessary to analyse the different variables that have to be taken into consideration. The European Court of Auditors (2018: 24) has established a series of benefits that investments in renewable energy must meet in order to truly contribute to sustainable rural development, taking into account the work of the OECD (2022) in this area, which are as follows:

- environmental benefits;
- income diversification for farmers and forest owners;
- employment opportunities in rural enterprises and business opportunities for them;
- new and improved energy infrastructure and services in rural areas;

2 The text agreed by the 200 countries present in Dubai at the 28th Conference of the Parties — better known as COP — of the United Nations (UN), puts the focus on the main culprits of the climate crisis: oil, coal and gas, opening, it seems, a definitive way to leave behind fossil fuels, drastically reduce greenhouse gas emissions and do everything possible to limit global warming to a maximum of 1.5 °C.

3 Eurostat renewable energy statistics extracted in 2020.

4 See recital 3 of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.

- new sources of revenue to support essential public services and infrastructure in rural areas.

Bearing these indicators in mind, in this paper we will attempt to analyse, even *roughly*, the impact of the promotion of renewable energies in rural areas and whether this will lead to a real opportunity to reverse the depopulation process or whether, on the contrary, it is a mere declaration of intentions, empty of content, if not even an increase in the existing inequalities between urban and rural areas.

To do so, we will begin by analysing the economic and environmental impacts that renewable energies have on the areas where they are implemented, particularly in rural areas. Both positive and negative impacts will be analysed in order to make a global analysis of the real sustainability of renewables and their scope in the demographic challenge. Once these impacts have been analysed, we will look at the small print of current legislation in order to identify possible improvements that could be made to correct possible deficiencies that could prevent the promotion of renewables from going hand in hand with rural development, thus complying with the precepts and mandates of sustainable rural development.

2. REGULATION OF RENEWABLE ENERGY APPLICABLE TO RURAL AREAS

In order to address this social reality, it is necessary to analyse the evolution of current regulation, and how it has tried to tackle what now seems to be the fundamental core: the regulation of access to the network and the administrative processing of projects.

The issue of renewables cannot ignore the obligation in the form of a commitment for Member States to remove carbon from the atmosphere, as the Land Use, Forestry and Agriculture Regulation sets an overall EU target for the removal of carbon by natural sinks, equivalent to 310 million tonnes of CO² emissions by 2030. National targets will require Member States to maintain and expand their carbon sinks to reach this target. By 2035, the EU should achieve climate neutrality in the land use, forestry and agriculture sectors, including also non-CO² agricultural emissions, such as from fertiliser use and livestock farming. It should not be forgotten that the major CO² sinks are forests, not forgetting arable land. Other growing resources such as biomass or the importance of the agri-food sector itself, including the EU forestry strategy which aims to improve the quality, quantity and resilience of EU forests, are decisive in this respect⁵.

5 Spain ranks tenth in the World Energy Trilemma Index 2021, a global energy sustainability ranking compiled by the World Energy Council (WEC) in collaboration with Oliver Wyman. In addition, it is already ranked as the eighth country in the world with the highest

In particular, Spain already has a Strategic Energy and Climate Framework that develops the opportunities, policies and measures for the energy transition in the coming years. It is also immersed in the National Integrated Energy and Climate Plan 2030 (PNIEC 2021-2030), which consists of a project that aims to reduce greenhouse gas (GHG) emissions by 23 % by 2030; it is also included in the Long Term Decarbonisation Strategy 2050 (ELP 2050), approved in 2020, which aims to reduce greenhouse gas emissions by 90 % in 2050, compared to 1990. It is a strategy that has a structure based on technological innovation and knowledge, with the aim of achieving climate neutrality in 2050, allowing the final consumption of renewable energy.

This raises the important issue of spatial management and advocates the suitability of renewable energy installations. Thus, issues such as environmental zoning for renewable energies are essential tools for the rationalisation of non-limitless resources⁶.

The Commission is also working on a recommendation on renewable energy permitting. This is a project aimed at removing obstacles in administrative procedures that continue to be excessively complex. In addition, it is based on the implementation of milestones that allow the degree of implementation of the measures adopted to be monitored. The ultimate aim is to achieve, through administrative — bureaucratic — simplification, a faster and, by extension, more effective and efficient permit granting procedures in application of EU environmental legislation⁷.

This European soft law route on the basis of Art. 292 of the Treaty on the Functioning of the EU is part of the RED III process and seems to target mainly the electricity sector and wind and solar technologies, with the aim of detecting best practices in Member States⁸. The consultation itself was already the subject of overwhelming evidence of anti “traditional” renewable energy views, especially offshore wind.

renewable capacity in 2021. According to data from the International Renewable Energy Agency's (IRENA) statistical yearbook on renewable energy capacity for 2021, Spain has 59,108 MW of renewable installed capacity.

- 6 The zoning is restricted to the Spanish terrestrial environment and is focused on projects for large renewable energy generation facilities, wind and photovoltaic (it does not include small self-consumption facilities, isolated low-power infrastructures or those located on roofs or roofs of buildings or urban land, small R&D&I facilities, etc.).
- 7 An example of this are the administrative decisions enabling a regulatory function, such as administrative contracts or agreements which, signed by the Administration with private economic operators, enable the latter to carry out a certain market regulation function (Arroyo Jiménez, 2004: pp. 504 and following).
- 8 Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources and repealing Council Directive (EU) 2015/652 (RED III Directive).

A new environmental governance would seem to be necessary in relation to photovoltaic and wind renewable energies. It is these same opposing voices and opinions that, through the Environmental Impact Assessment procedure, make themselves heard and their opinion must be discussed beforehand: A prior social adhesion that, through the resources to the digitalisation of procedures, and the prior task of the interested operator, shortens the administrative work and reduces the number of procedures, replacing the activity of direct public provision/intervention with a manifestation of information and inspection powers (verification) throughout the process of granting the permit.

The very detailed regulation of the Environmental Impact Assessment resulting from Spanish legislation allows some room for improvement if the now optional prior study requesting the environmental body to determine the scope of the impact study (art. 34 of Law 21/2013) is made mandatory for certain projects and requires the use of guides or documents that have already been drafted in its drafting.

In this regard, the information provided by the SABIA project shows that, of the 206 records of Wind Farm projects in environmental processing, not all the initial documents (where they exist) use the Ministry's own Environmental Zoning resource for Wind and Photovoltaic energies⁹.

It should not be forgotten that the development of renewable energies in Spain, driven by the objectives of transitioning the energy system towards a climate-neutral one, in accordance with the provisions of the National Integrated Energy and Climate Plan and the Long-Term Strategy for a Modern, Competitive and Climate Neutral Spanish Economy in 2050, has contributed to a considerable increase in applications for the installation of new wind farms and photovoltaic plants, deployed throughout the Spanish territory. On the other hand, the implementation of this type of facilities has an impact on the environment, the assessment of which is necessary within the framework of EU, state and regional environmental assessment legislation, which leads the Administrations to seek resources to help in the strategic decision-making process regarding the location of these energy infrastructures, which involve a significant use of territory and can generate significant environmental impacts.

9 The SABIA Project is an initiative of the Spanish Ministry of Agriculture, Food and Environment, which aims to improve the management of environmental assessments, as well as the consultation by the interested public. SABIA encompasses the databases of the files in the environmental assessment procedure, both for plans and programmes as well as projects. It also adds geo-referencing and creates an interface for teletransmission.

II. REGULATION OF RENEWABLE ENERGIES AND THE IMPACT OF THEIR PROMOTION IN RURAL AREAS

Over the last century there has been a promotion by public institutions and private companies of energy using renewable sources, both to comply with EU mandates and to take part in the global problem of climate change.

We are currently in the midst of a whirlwind of renewable energy installation, with continuous announcements of renewable energy megaprojects. Data from the last year show that the installed renewable power in the national electricity system has increased by 5.9 GW, which has allowed reaching a percentage of installed power from renewable generation sources of 59.2 % of the total installed power (RED ELÉCTRICA, 2023: 5)¹⁰.

To reach these figures, as is logical, large economic investments have had to be made and, as is evident, this has meant an expansion throughout the territory of the construction of the infrastructures necessary for the development of these infrastructures. The majority of this implementation has taken place in rural areas, as this is where there is the greatest availability of land.

The importance of the electricity sector in mitigating climate change cannot go unrecognised, especially through the revision of the more traditional forms of generation and consumption. The data are compelling: the energy sector is directly responsible for 65 % of global greenhouse gas emissions. The need to significantly reduce these figures, which is neither easy nor quick (LINARES, 2018: 21-22), has led the European Union to propose a long-term energy strategy. Taking the text of Article 194 of the Treaty on the Functioning of the European Union (hereinafter TFEU) as a starting point, the EU has taken the lead through the legislative initiative on the matter.

Without being a peaceful average (Fabrés Garrido, 2023), the fact is that it is the line followed by the European regulator, which is the basis for the celebrated Triple Twenty Target (20/20/20), consisting of reducing greenhouse gas emissions by 20 %, compared to the 1990 reference values, while increasing the consumption of energy from renewable sources by 20 %, but reducing overall energy consumption by 20 % through improved energy efficiency. In short, consuming less energy and doing so in a more sustainable way, with a

10 It is striking that, in our country, policies aimed at promoting renewable energies have already seen their results multiply. If we take as a reference the year 2020, in which the percentage of installed power from renewable generation sources was “only” 43.6 %, this means a growth of 15.6 % in just three years, i.e. a third of all installed power up to 2020 (RED ELÉCTRICA, 2023). Online: <https://acortar.link/SNzWB8> (Accessed on: 4 October 2023)

target date of 2020, a decade ahead, which was sufficient for the achievement to be effective.

The success of the measure encouraged the EU to set itself the so-called Target 55 or Target 2030. This is a legislative package whose goal is to achieve a 55 % reduction in emissions by 2030. In addition, a share of energy from renewable sources is set at 40 % of the total, reducing the savings, but in this case less significantly, to “only” 32.5 % (GARCÍA LUPIOLA, 2023: 52).

But achieving such an increase in sustainable (green or renewable) energy has an undeniable transcendence in the spaces destined to generate it, which is none other than rural areas; in short, it has a cost. We must start from the indisputable fact that renewable energies have a different impact on the territory than conventional energies, since the latter require a larger physical space and this can only be found in those areas with a more dispersed population. Taking 2021 as a reference year, in 2021 electricity generation was carried out in 68,270 installations spread over 4,794 municipalities, mainly located in regions with a smaller population (HERRERO LUQUE *et al*, 2021).

An example of this is our own autonomous community, Castilla y León, which is predominantly rural. Our region is one of the leading regions in terms of installed capacity and the volume of energy fed into the grid. In our territory, the implementation of renewable energy plants has traditionally been a form of economic growth, finding in the energy sector an opportunity for employment and economic development.

It is therefore important to analyse the impact of renewables on the demographic challenge, specifically their environmental and economic impacts, in order to determine their degree of sustainability, beyond their benefits in terms of being key to replacing fossil fuels in energy production.

First of all, it should be noted that the most important renewable energy sources in our country in terms of generation and current momentum are wind and solar photovoltaic. With this in mind, we will analyse the environmental and economic impact of renewable energies in our rural environment, developing both the positive and negative aspects, in order to be able to make a final reflection on the sustainability of renewable energies in our territory.

As we mentioned a few lines ago, green energies are not innocuous and generate costs that go beyond their economic nature, also affecting the social, landscape and environmental order (KRAUS *et al*, 2011). These costs must be taken into account when evaluating the implementation of renewable energies if they are to be truly sustainable installations, as the vast majority of them are being assumed by rural areas without any compensation.

If those populations in which the so-called “renewable mega-projects” have been implemented show their discontent because they have generated conflicts related to land use, local economic activities, and even with the population itself, as they perceive that it is external agents who appropriate

the benefits while the harm falls on their populations (FROLOVA IGNATEVA *et al*, 2014), we cannot speak of installations as innocuous, and certainly if they produce damage, sometimes irreparable, they are not renewable either.

It is absolutely necessary to take into account the opinion of those who live in the villages where these installations are being built, which are predominantly rural. Without such a view, it is impossible to talk about renewable energy projects, a requirement which, from the perspective of transparency, also seems to be indispensable. The acceptance of those directly affected is a *sine qua non* requirement, at least it should be, in order to be able to affirm a character that, at the present time, it is certainly not possible to recognise. The approval of Royal Decree Law 6/2022, which has introduced the procedure for determining the environmental impact, replacing the Environmental Impact Statement, seems to have the opposite effect.

We must agree with the fact of advocating a simplification of the bureaucracy and obstacles that generate delays in the installation of renewable energy projects, but this does not mean disregarding the elements that must be taken into account, such as the acceptability of the installation by the local community, especially when there are other alternatives for reducing deadlines, simplifying, eliminating or organising formalities, etc., that would achieve the same result with the maximum guarantees of transparency.

1. REGULATION AND POSSIBLE WAYS OF STREAMLINING

There is no point in denying the existing bottleneck in the installation of renewables and, in principle, the certainly restrictive nature of the regulation does not seem to leave too many doors to knock on in search of solutions to speed up the process and achieve, if not end, at least reduce the administrative bottleneck of permits¹¹.

However, a more calm review of reality allows us not only to think of solutions that would combine the two main objectives that a truly efficient regulator should pursue. On the one hand, to accelerate the installation of renewables without undermining the necessary legal guarantees. On the other, to take into account the position of those directly affected by these installations, i.e. the longed-for social licence. It should be emphasised that these are not opposing realities; we only need to make an effort to determine the reason for this bottleneck, identifying at least the obstacles that hinder

11 On the problem of excessive bureaucracy encountered throughout the authorisation process for renewable installations, which has not been overcome in the successive reforms of the Directive (RUIZ OLMO, 2019).

the speedy granting of installation authorisations, which have nothing to do with the purpose or the interests of the affected populations.

Some of the avenues that could be considered with the possibility of obtaining a positive result could involve the elimination of some authorisations and their unitary processing (replacing old authorisations — such as local ones — with reports, as is the case with IPPC authorisations, or even transforming some of them into a responsible declaration, with guarantees). Linked to this point, an analysis of the effective possibility of a real one-stop shop for the access network operator and all licences should be carried out.

Another of the points to be taken into consideration would be the determination of a common urban planning regime for renewables that would make their implementation simpler and not depend on each State, Autonomous Region or City Council.

It would also be positive to take into consideration prospective factors, which could be carried out through soft law, detecting environmental problems that are not an obstacle to the development of renewables, or facilitating the adoption of uniform measures to overcome these problems, without depending on the criteria of each Community. Soft law can be a resource for streamlining administrative procedures, which does not necessarily have to break the very procedural guarantees on which the current system is based.

Technical measures could include the reinforcement of the transmission grid to provide more capacity for the injection of electricity from renewable installations, especially in the most necessary areas, although this would not necessarily have an impact on procedural streamlining, nor would making repowering more flexible, but it could indirectly have positive consequences.

Another possibility is the establishment of collateral to detect “queue” applications, those whose only reality is that of transmitting the right acquired by the principle of *prior tempore* but which have never really had a consistent reality behind them, beyond the profit to be gained by the transmission of their place in the queue.

1.1. The framework of Royal Decree-Law 6/2022 of 29 March adopting urgent measures in the framework of the national plan of response to the economic and social consequences of the war in Ukraine

Within the framework of renewable energies, this RDLaw 6/2022, although announced to be temporary in nature, includes several new features with regard to streamlining procedures related to renewable energy projects, some of which can be perfectly subsumed in a future, permanent regulation aimed at simplifying and “de-bureaucratising” procedures.

Basically, there is a reduction in environmental formalities, not their absence, with a substantial reduction in deadlines and, above all, the inclusion of positive administrative silence, without this implying the granting of any authorisation, but allowing the procedure to continue in the absence of a response from the competent environmental body, this being considered as acceptance of the content of the proposed report for the purposes of continuing with the proceedings. Also noteworthy is the non-subjection to an environmental assessment under the terms regulated in Law 21/2013, of 9 December, of certain projects (those of art. 6.1 of said legal text), to the extent that this is determined in the report that, following analysis of the documentation, will be issued by the environmental body, in which it will analyse whether the project will foreseeably produce significant adverse effects on the environment. This report, still proposed, with the determination of environmental effects, will be sent to the competent environmental body, which will have a period of ten days to make observations. Once this period has elapsed, the absence of a reply will be considered as acceptance of the content of the proposed report, which will allow the actions to continue¹².

Along with the aim of speeding up renewable energy projects, other objectives of the regulation are to accelerate decarbonisation and reduce energy dependence. The regulatory starting point is the very situation of paralysis in which many renewable energy installation projects were at a standstill, as the existence of this bottleneck in applications for access and connection rights made it difficult to meet European objectives.

To achieve this end, even with the question of the temporality of the measures contemplated in the present regulation, a procedure for determining the environmental impact of renewable energy projects is established, in which the ordinary deadlines for environmental assessments are shortened and important procedures such as public information are eliminated. This means that, at least in law, the procedure is reduced, in most cases, to a period of three months (LOZANO CUTANDA, 2022).

Art. 6 of this Royal Decree creates a “procedure for determining the environmental impact of renewable energy projects.” This procedure exempts renewable energy projects from being subject to the Environmental Impact Assessment under the terms regulated by Law 21/2013, of 9 December, if a series of requirements are met¹³. For its part, the connection requirement

12 Art. 6.3.c) Royal Decree-Law 6/2022.

13 The requirements are of three different types: connection, size and location. a) Connection: Projects that have overhead evacuation lines not included in group 3, section g) of Annex I of Law 21/2013, of 9 December; b) Size: 1) Wind power projects with an installed capacity equal to or less than 75 MW; 2) Solar photovoltaic projects with an installed capacity equal to or less than 150 MW. 2. Photovoltaic solar energy projects with an installed capacity equal to or less than 150 MW; c) Location: Projects which, not being located in the marine environment or in areas forming part of the Natura 2000 Network, at the date

determines that the projects must have overhead evacuation lines that do not have a voltage equal to or greater than 220 kV and a length greater than 15 km, unless they run entirely underground through urbanised land, as well as associated substations. The size of the installations refers to the maximum power of the installations, which must not exceed 76 MW for wind projects and 150 MW for solar photovoltaic projects.

Furthermore, installations may not be located in the marine environment or in areas that form part of the Natura 2000 Network, nor may they be located in areas of low and moderate sensitivity according to the Environmental Zoning for the implementation of renewable energies drawn up by the Ministry for Ecological Transition and the Demographic Challenge¹⁴.

In the event that these requirements are met, the developer must draw up a project that includes, at least in summary form, the main effects of the project on different areas: *effects on the Natura 2000 Network, protected areas and their peripheral protection zones and habitats of Community interest; effects on biodiversity, in particular on protected or endangered catalogued species; effects on discharges into public watercourses or onto the coast; effects on waste generation; effects on the use of natural resources; effects on the use of natural resources; effects on the environment; effects on the environment; effects on the use of natural resources; effects on cultural heritage; socio-economic impact on the territory and synergistic effects with other nearby projects, at least those located 10 km or less away for wind farms, 5 km away for photovoltaic plants and 2 km away for power lines.*

This regulation involves dealing with most of the important aspects of the effects and impacts that must be assessed, although the simplicity and synthesis of the projects do not allow for an in-depth study of all the aspects. So much so that the environmental body itself must analyse whether the project will produce, in terms of foreseeability, *significant adverse effects on the environment*. As a result of this analysis, the proposed environmental impact assessment report will be drawn up. In the event of failure to comply with the deadlines established in the legal text, the effect of the administrative silence that will be produced will be of a positive or positive nature. In this

of submission of the application for authorisation by the developer are located entirely in areas of low sensitivity according to the "Environmental zoning for the implementation of renewable energies", a tool developed by the Ministry for Ecological Transition and the Demographic Challenge. This procedure will be applied to those projects for which the promoters submit the application for administrative authorisation provided for in art. 53 of Law 24/2013, of 26 December, on the Electricity Sector, to the substantive body before 31 December 2024.

14 At the very least, it is certainly anecdotal that the study carried out in 2020 by the Ministry for Ecological Transition and the Demographic Challenge stated that "this model is a simplification of the reality in order to understand the territory from a general and strategic approach, which does not exempt it from the relevant environmental assessment process". Online at: <https://bit.ly/3E2Nolu> (Date of last consultation: 05-10-2023).

way, the inactivity of the Administration is penalised, allowing the procedure to continue, with the report presented by the operator being understood as accepted in environmental terms.

There is no doubt that the effects of this “new procedure” have a direct impact on rural areas, which could generate pernicious effects for them. Even if it is understood that the installation is favoured through a simpler, more agile and less bureaucratic procedural process, reorienting the meaning of an administrative silence that has effects or at least is likely to have them on the environment is difficult to understand under the protection of art. 24 of Law 39/2015¹⁵. This is undoubtedly a 180° turn in the regulation of the regime of administrative silence in relation to activities likely to have a negative effect on the environment. This is certainly the position of the case law of the CJEU¹⁶, but it is striking that our Supreme Court, STS of 9/01/2023 (RC 1509/2022) establishes the following case law doctrine:

“the silence of the Administration in response to a request for environmental information made under Law 27/2006, formulated after the entry into force of Law 19/2013, must be interpreted in a negative sense.”

It seems clear that, if silence in a relatively secondary matter such as environmental information is dismissive or negative¹⁷, it should be even more

15 The regulation of the aforementioned Article 24, in the second paragraph of section 1, determines the dismissing effect of administrative silence *in procedures relating to the exercise of the right to petition, referred to in Article 29 of the Constitution, those whose acceptance would result in the transfer to the applicant or third parties of powers relating to the public domain or public service, those involving the exercise of activities that could damage the environment and in procedures for the patrimonial responsibility of the Public Administrations.*

16 Among others, see the CJEU of 21 April 2005 (“Pierre Housieaux”) which states in paragraph 35 that “Article 3(4) of the abovementioned Directive (in particular Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment, now repealed) precludes such a decision from not containing a statement of reasons at the time of expiry of the two-month time-limit. In these circumstances, the implied decision of refusal certainly constitutes a “response” within the meaning of that provision, but it must be regarded as unlawful”, and reiterates in paragraph 36, in fine: “However, Article 3(4) precludes such a decision from not containing a statement of reasons at the time of expiry of the two-month timelimit. In such circumstances, the implied decision of refusal must be regarded as unlawful”.

17 In this specific area, it is the position of this writer that the case law of the CJEU, as well as the majority doctrine in favour of a positive regime of silence in matters of “mere environmental information”, are more than reasonable arguments, but when it comes to the applicability of actions likely to affect the environment in terms of effectiveness and in a negative way, maintaining a positive regime of administrative silence is only possible with the unwavering guarantee that the effect will in no case be negative. Only in this way would the wording of art. 24.1, second paragraph of Law 39/2015 make sense. Therefore, the differentiation between environmental information and environmental activities likely to produce negative effects on the environment seems clear.

so in those cases in which, in the absence of guarantees of non-affectation, it serves to grant rights of action.

This regulation undoubtedly produces a greater risk, not to mention the fact that the shortening of the procedural deadlines can lead to a reduction in environmental guarantees insofar as the full impact on the environment in which it is installed is not studied. This is not a trivial issue, as even with the environmental impact assessment mechanism that was previously in place, there were cases of significant landscape impacts (FROLOVA IGNATIEVA, 2010).

On the other hand, the elimination of the consultation procedure eliminates the participation of the public in this procedure. Certainly, it is necessary to separate what is public information from the hearing of the interested party. The latter is compulsory and unavailable to the processor in accordance with art. 82 of Law 39/2015¹⁸, but public information, regulated in terms of option in art. 83 of the aforementioned legal text, does not have this character. Not even when the nature of the procedure requires it, the public hearing is not mandatory. However, although this behaviour is covered by the regulations, we cannot deny that public participation in the area in which we find ourselves is clearly of paramount importance, since publicity and timely information for rural communities is key to adopting decisions in environmental matters (CUESTA HINESTROZA *et al*, 2016: 57). This is because endogenous citizens know their territory, their landscape and their economic uses better. We are referring to agriculture, livestock farming and sustainable tourism¹⁹, activities that stimulate the territory and require the landscape for their development.

It is clear that the current regulation generates a series of environmental, social and economic opportunity costs that are perceived fundamentally by the affected population and minimised, if not denied, both by the promoters and, more seriously, sometimes by the regional and state administrations themselves, who put their concern for the promotion of renewable energies first, without assessing the size or suitability of their location. In this context, it seems advisable to maintain the environmental impact assessment procedure, as well as including another one referring to territorial planning, in order to be able to make more appropriate and coherent decisions to meet the objectives of the energy transition without going against rural communities (IBARRA BENLLOCH, 2022: 150-151)²⁰.

18 As is well known, *the hearing procedure may only be dispensed with when no other facts or allegations and evidence other than those adduced by the interested party appear in the procedure or are taken into account in the decision*, ex art. 82.4 Law 39/2015.

19 In addition, it is worth noting that the price offered by large energy companies for land for electricity generation is currently higher than what farmers and livestock farmers can afford, which encourages local residents to prefer this type of activity, which in the short term generates more benefits for them (PRADOS VELASCO *et al*, 2012).

20 This work analyses the perception of local residents of the installation of a renewable

It is true that we are living at a time when renewable energy generation seems to motivate, protect and justify everything. This is a serious mistake. The question is not whether to be for or against what is imperative — no one can deny that — but how and where. Not in any way and not anywhere, the opposite is unacceptable, not even in terms of legality. We advocate a reconsideration of the procedure, and it is necessary not only to re-apply the Environmental Impact Assessment, but it would be interesting to incorporate other reforms in order to integrate other aspects that affect rural areas. It would undoubtedly be very positive to incorporate an analysis of the previous uses of the land on which these mega-projects are being implemented, avoiding their location in agricultural and livestock areas, etc., when there is land without a more suitable use for this purpose. It would also be interesting to use land-use planning techniques similar to those already used in the field of building and urban planning.

Of course, the decision to eliminate the public consultation process should be revoked, which, in contrast to the situation after the legal reform, should be a fundamental part of the process, since doing without it would be tantamount to leaving the local councils, local authorities, associations and other rural stakeholders without a voice. These are bodies whose opinions are fundamental for their knowledge of the environment, and whose inclusion in the projects themselves is also achieved. We cannot understand environmental actions that do not include local actors, otherwise they become mere external projects with a centralist vision focused on achieving European objectives at all costs, ignoring the local reality of the area in which they are located.

Although this subject will be dealt with a little further on, one of the mechanisms that can be used to avoid the abandonment of the opinion of the affected rural areas is the so-called “social licence”, which we have already had the opportunity to discuss (TERRÓN SANTOS, 2022). The concept is simple in its conceptualisation, although its practicality is a different matter. It involves including a mechanism in the Environmental Impact Assessment through which it is confirmed that the project has social acceptance and presents compensation measures for the rural territories.

To sum up the issue, we can advocate, with a strong legal basis, for the suppression of the environmental impact procedure established by Royal Decree 6/2022, reinstating the environmental impact statement procedure, as it includes mandatory public participation. The latter is of paramount importance in order to achieve public acceptance of renewables. Nor should we overlook the need to structure compensation procedures for the

energy plant, pointing out the need for consultation procedures to prevent the new scenario from destroying the dynamising activities of their region.

population of rural areas affected by projects through what has come to be known as “social licensing.”

1.2. The zoning issue

Addressing the issue of zoning goes beyond the question of the suitability of the land, or if we want to go into the terminological analysis of the concept, i.e. looking for a suitable and appropriate space for something, involves rethinking the mere geographical question of location as the only *ratio decidendi*. Today, it is no longer possible to argue for an electricity system concentrated in a few rural areas, but rather for a model of energy transition in which self-consumption and energy communities have an important role to play. At the same time, the different energy installations should be distributed throughout Spain, so that agricultural uses, the natural and landscape heritage, as well as other local economic uses, are not compromised. Obviously, priority should be given to those areas whose characteristics make the area suitable for the energy generation needs of sunshine hours or with the necessary wind for the installation of photovoltaic panels or wind generators.

Otherwise, the already compromised survival of rural areas will be even more threatened. As has already been made clear, the end of the 20th century and the beginning of the 21st century has been characterised by a capitalism euphemistically called financial capitalism, which depopulated rural areas under the logic of the agglomeration economy. Under this mantra, the population concentrated in the cities in search of economic and employment opportunities (CAMARERO and QUEROL, 2020: 27). Persisting in the territory is what has made it possible to maintain sources, especially environmental and agri-food ones. However, it seems that these sources no longer matter, despite the fact that international reality has highlighted the fragility of systems that depend on the exterior to guarantee certain supplies beyond energy.

This is not a case of denying the truth. Climate change exists, just as an energy transition to more renewable energy sources is needed. But both issues can also be addressed through a just energy transition for rural areas — that would be true sustainability. Renewables cannot be used as another excuse to concentrate capital and people in cities, as this would go against the very idiosyncrasy of sustainable development. We must move towards a society in which people can choose where to live, without forcing more migratory movements, the perverse effects of which are well known in many cases.

In view of the above, the zoning maps, initially published in December 2020, make it possible to identify the areas with the best conditions for the implementation of wind and photovoltaic projects in order to guide developers in their choice of location for these facilities. However, this tool

requires periodic review, as the environmental information used is subject to updates, such as the declaration of new protected areas or the approval of other biodiversity protection instruments.

As the main novelty, the indicator on recovery and conservation plans for endangered species is now revised and updated with the elements provided by the Ministry's Nature Databank, such as new Natura 2000 sites, Protected Natural Areas, Biosphere Reserves, RAMSAR-listed wetlands and the terrestrial part of the Specially Protected Areas of Mediterranean Importance.

In addition, the indicator linked to the Management Plans approved in Sites of Community Importance (SCI) that have been declared Special Areas of Conservation (SAC) in several Autonomous Communities is updated.

On the other hand, on the occasion of this update, the updated environmental sensitivity maps, classified into 5 sensitivity categories: low, moderate, high, very high and maximum-not recommended, are also available to the public on the Ministry's GeoPortal and in downloadable format in the Environmental Assessment section of the website.

The development of renewable energies in Spain, driven by the objectives of transitioning the energy system towards a climate-neutral one, in accordance with the National Integrated Energy and Climate Plan and the Long-Term Strategy for a Modern, Competitive and Climate Neutral Spanish Economy in 2050, has contributed to a considerable increase in applications for the installation of new wind farms and photovoltaic plants, deployed throughout the Spanish territory. On the other hand, the implementation of this type of installation has an impact on the environment, which must be assessed within the framework of EU, national and regional environmental assessment legislation.

This new scenario has highlighted the need for a resource to assist in strategic decision-making on the location of these energy infrastructures, which involve a significant use of territory and can generate significant environmental impacts. For this reason, the Ministry for Ecological Transition and the Demographic Challenge, through the Subdirectorate General for Environmental Assessment of the Directorate General for Environmental Quality and Assessment, has developed a tool to identify the areas of the national territory that present the greatest environmental conditioning factors for the implementation of these projects, by means of a territorial model that groups together the main environmental factors, the result of which is a zoning of the environmental sensitivity of the territory.

The scope of the zoning is restricted to the Spanish terrestrial environment and is focused on projects for large renewable energy generation facilities, wind and photovoltaic (it does not include small self-consumption facilities, isolated low-power infrastructures or those located on roofs or roofs of buildings or urban land, small R&D&I facilities, etc.).

This model does not exempt the relevant environmental assessment procedure to which each facility must be subjected in its case, being a methodological approach for guidance in order to ascertain the environmental conditioning factors associated with the locations of the projects from the early stages. Likewise, this tool should always be complemented with the regulations established in planning and management instruments approved by the Autonomous Communities within the scope of their competences. This new resource should be understood as a flexible tool that requires continuous revision, as the information used will be subject to improvements, adjustments and updates²¹.

Currently, being aware of the impact that large installations have on the territory and population, tools have been developed to develop zoning for renewable energies. It is true that they are generally restricted to the terrestrial environment, as is the case in Spain, and that they tend to be focused on projects for large renewable energy generation facilities, whether wind or photovoltaic, excluding small self-consumption facilities, isolated low-power infrastructures or those located on roofs or roofs of buildings or urban land, as well as small R&D&I facilities, etc.).

This type of tool consists of superimposing two layers of information (one for wind energy and the other for photovoltaic energy) that show the value of the environmental sensitivity index existing at each point on the map, and the environmental indicators associated with that point. The system is simple but effective: by superimposing a coloured layer on top of the map of the territory, a coloured layer that varies according to the viability of the selected site, so that the more intense the colour, the lower the viability, establishing scores for each enclave between values that mark the absence of viability or the total viability of the installation, it is possible to clearly identify, at a glance, in which areas the suitability for the location of this type of installation is guaranteed.

It is not possible to deny the validity of the solution, since, among other positive aspects, it allows for the integration of values into the regulations established in planning and management instruments approved by the territorial entities within the scope of their competences. The viability of this remedy must be conditioned by its flexible nature. Insofar as it is a tool that requires continuous revision, given that the information it uses will always be subject to improvements, adjustments and updates, we can venture a high degree of success in its implementation, which would disappear in the absence of adaptability to the factual reality of the moment.

1.3. Some data

The continued deployment of new forms of renewable energy in many countries and territories is undeniable. Consider the example of Spain, where,

21 On Environmental Impact Assessment, see (CASERES MARCOS and FERNÁNDEZ DE GATTA SÁNCHEZ, 2018).

in fact, more than 145 GW of renewables already have access permits, of which 96 GW also have connection permits, according to data from Red Eléctrica de España (REE), as of 31 January 2022. Focusing only on those that have obtained both licences (the right to access and the right to connect to a point on the electricity grid), from the 41.8 GW of wind and solar PV generation in service, a further 95 GW are expected to be added.

In other words, renewable capacity would more than double in a few years, according to the “status of applications” on the REE website. The rest, up to more than 96 GW, is for other clean technologies. In the queue, 23.7 GW are still awaiting their turn, as their applications are in progress but have not yet been granted. These figures are much higher than those forecast for eight years from now: an additional 60 GW by 2030, according to the PNIEC (National Integrated Energy and Climate Plan).

The technology at the forefront of this impressive growth is undoubtedly solar PV. If 13.5 GW are already in operation, a whopping 101.6 GW are expected. This could almost increase tenfold. A PV park is usually built within one to two years, but it depends on the speed of the administrative procedures, including the application to REE.

Andalusia is undoubtedly the autonomous community with the greatest growth: from the 2,400 MW of photovoltaic power it currently has, it will soon have more than 17,071 MW distributed across its extensive geography. In other words, it will increase its solar panel installations sevenfold. The Andalusian regional government has on several occasions expressed its intention to be the leader in Spain in energy transition, following in the renewable energy footsteps of Castile and Leon and Galicia. To this end, it has estimated that 1,280,000 hectares of land are available to install and increase its gross renewable potential. This is demonstrated by the latest data available from the Andalusian Energy Agency. It aspires to add 254,000 MW of photovoltaic, 25,000 MW of onshore wind and 11,000 MW of offshore.

Castile and Leon will also have a strong boost for photovoltaic, although far from the “Andalusian miracle.” From the current 931 MW, there could be 11,951 MW in two or three years. The champion in wind power installations (6,092 MW in operation today) expects to add another 3,498 MW, and narrowly overtake Aragon, which is close on its heels (of the 4,280 MW in operation), with 3,722 MW more.

But let’s go back to the growth of photovoltaic, because the most surprising for the number of projects that could come to fruition is the Community of Madrid. From hosting only 132 MW to growing to 10,917 MW. Nothing less than a 100-fold increase in solar capacity in just a few months. Another significant region is Catalonia. The Generalitat has put a stopper on renewable development, which explains why one of the largest territories in the Peninsula has only installed 263 MW of solar panels. It is also expected to multiply, but by 10 times, to 2,409 MW. Something similar

to what is happening in the Valencian Community, where 589 MW of solar panels are in operation and growth is expected to reach 6,475 MW.

And while the northern fringe regions are not expecting much PV, La Rioja, Navarra and Aragon are taking off strongly. From 87 MW to 921 MW, from 152 MW to 979 MW and from 1,308 MW to 7,509 MW, respectively. In the central area Castilla-La Mancha is also developing very favourably, from 2,279 MW to 6,351 MW. Extremadura and the Community of Murcia are not going so fast.

Finally, in the archipelagos, the commitment to solar is evident. In the Canary Islands, it will be multiplied by almost 5 (from 157 MW to 515 MW), and also in the Balearic Islands (from 118 MW to 488 MW).

Similarly, all the autonomous communities are growing in wind power capacity, with the exception of the Balearic Islands, which already have a token 3 MW. However, Galicia is the region where most wind farms are planned to be built.

Even though today it is one of the leading regions in wind technology, with 4,071 MW, it is expected that in a few years another 5,423 MW will be added, for a total of 9,494 MW. This does not include the possibilities that are opening up in offshore wind, which Red Eléctrica has not yet accounted for because the necessary infrastructure and regulations do not exist.

Together with Castile and Leon, Aragón is competing for the winner's podium. And the Castilian plateau will narrowly win first place, because if the 3,498 MW that already have an access point are installed, together with the existing 6,092 MW, they would add up to 9,590 MW. In the case of Aragon, it would be in third place, with 8,002 MW (it currently has 4,280 MW and 3,722 MW are expected).

Renewables are not just about wind and photovoltaics. Other technologies are trying to carve out a niche for themselves in a decarbonised energy future. These are biomass plants, solar thermal power plants, some geothermal energy, but more could be added in the future, such as offshore wind, wave, tidal power, storage... In the case of solar thermal, only 50 new MW have been requested in Murcia, but not in the only five autonomous communities that are developing this technology: Catalonia (23 MW), Castile-La Mancha (250 MW), Valencia (81 MW), Extremadura (849 MW) and Andalusia (997 MW).

For the rest of the clean technologies, applications barely exceed 50 MW per region, with the exception of Aragon (124 MW) and Andalusia (161 MW).

2. IMPACT OF RENEWABLE ENERGIES IN RURAL AREAS

As has been argued, although there is a general consensus on the environmental virtues of renewable energies, it is also necessary to talk about the negative impacts, which, although they are less than in other energy

sources, must be pointed out in order to have a true vision of the impact and sustainability of renewable energies.

It might seem that so-called green energies are totally innocuous and only have positive aspects and effects, but nothing could be further from the truth. It is true that this type of energy, to a much lesser extent, generates not only economic costs, but also social, landscape and environmental costs (KRAUSS *et al*, 2011), costs that must be taken into account for a truly sustainable implementation of renewable energies. The question goes beyond compensation issues, as sometimes the damage cannot be repaired with compensation of any kind²², without prejudice to the fact that compensation, not only of an economic nature, must be present.

It should be remembered that there is growing discontent on the part of the populations in which renewable mega-projects have been implemented, as conflicts have arisen in relation to land use, local economic activities and with the population itself, as they perceive that it is external agents who appropriate the benefits while the harm falls exclusively on their populations (FROLOVA IGNATEVA, 2010).

Bearing in mind that the towns in which they are being built are eminently rural, with a fragile economy and generally dependent on the land, the need to have the opinion and vision of those who live in rural communities when undertaking renewable energy projects is evident, which will undoubtedly result in the creation of more transparent and respectful processes with the rural environment, which in turn will lead to greater acceptance of them. Not only is this not being done, but with the approval of Royal Decree Law 6/2022, the environmental impact assessment procedure has been introduced, which replaces the Environmental Impact Statement.

2.1. Environmental impacts of renewable energy sources

The positive impact of the use of renewable energies is widely known by the vast majority of the population, as it reduces dependence on energy

22 Without going any further, let us suppose that any photovoltaic installation, for whatever reason, development of new sources of cleaner energy, viability in economic terms, etc., would make this installation unnecessary or economically unviable. This may seem a chimerical question, but let us not forget that the generation of renewable energy is intimately linked to subsidies for the production of green energy, electricity costs, consumption, etc., in other words, to a plethora of factors in which any of them that fail, for example, without going any further, if the implementation of electric vehicles were to fail — the latest data and news are not exactly flattering in this respect — could mean that an installation would become unnecessary at any given time. Let us also assume that the land occupied by the installation was previously used for agricultural purposes. Well, the dismantling of this installation would not directly restore the original use of the land, since the organic layer and the topsoil would be contaminated by the concrete of the installation's foundations. This damage, although it can be corrected by decontamination, regeneration, etc., has a high cost, which must be foreseen in the environmental impact assessment itself, which must also foresee the obligation to restore the area to its environmental state when the activity ceases, as occurs in other types of installations.

imports, which predominantly come from non-renewable energy sources that are responsible for a large part of greenhouse gas emissions and their regenerative capacity, as they are obtained from natural resources that are replenished at a faster rate than other traditional energy sources.

This brings environmental benefits, but also in terms of security, because today more than ever after the war events suffered in our own continent that have brought with them the increase in the price of electricity, it shows us the need to diversify our generation *mix*, by raw materials available in our country.

On the one hand, we can mention the visual impact per megawatt (MW) compared to other conventional energy systems and we can see how this impact is higher, due to its need for space (in the case of solar and wind energy) and its verticality (in the case of wind energy) (PRADOS VELASCO *et al*, 2014: 225).

The approach taken in Spain is hierarchical, authoritarian and functional and is based on a technocratic management of natural resources regardless of possible physical constraints, taking into account economic and industrial interests, forgetting the landscape dimension (FROLOVA IGNATIEVA, 2010: 97). The landscape impact has been forgotten in EU legislative frameworks and therefore has not been transferred to national plans (VAN DER HORST and LOZADA-ELLISON, 2010: 233). In short, the integration of windmills or solar panels in the landscape of our rural areas is not being taken into account when it comes to accepting projects, which has repercussions for the rural environment itself, as one of its assets is precisely its landscapes and natural wealth, which sustains activities such as rural tourism.

2.2. Economic impact of renewable energies

First of all, we will analyse the possible beneficial impacts that the promotion of renewable energies can have on rural areas. To begin with, we can mention job creation, since renewable energies create five times more jobs than conventional energies (MERINO, 2012: 10). Furthermore, job creation is decentralised, which favours the growth of the entire territory, since renewable energy is implemented in a more dispersed manner throughout the territory. Unlike conventional energies, which are fossil fuel installations, they tend to be larger and more geographically concentrated (BURGUILLO CUESTA and DEL RIO GONZÁLEZ, 2008: 153). Job creation is beneficial in general, but even more so in rural Spain, as the search for work is one of the main reasons for rural exodus (PINILLA NAVARRO and SÁEZ PÉREZ, 2017: 2).

Another relevant issue is the contribution to the reduction of electricity prices in the electricity market, as the generation of electricity from renewable sources results in lower marginal prices in the wholesale energy market (ASOCIACIÓN DE EMPRESAS DE ENERGÍAS RENOVABLES, 2013, 21), which is very

important for the public, as in the last year we have suffered continuous increases in the price of electricity bills.

However, it is important that the areas close to the renewable plants, i.e. the rural municipalities in the vicinity, can benefit more than the general population, with return systems such as the one proposed in the third section of this chapter, through the proposed legislative improvements.

While it is true that the renewable energy sector can revitalise rural areas in terms of job creation, it is necessary to analyse where the necessary infrastructure for renewable energy generation is being built and what activities were previously carried out there.

In Spain, the implementation of renewables has taken place on large tracts of land that were destined for the primary sector, and the conversion of this land use has been simple, as the owners of land dedicated to the primary sector cannot compete with the new energy plantations.

This is because, given the current price of KW, it is difficult for any crop, whether extensive or irrigated, to compete with energy use (PRADOS *et al*, 2012: 139). It is not only the price of KW, but also the economic aid that these plantations are receiving.

Therefore, landowners in rural areas, when choosing the destination of their properties in the short term, may find it more profitable to lease or sell their farms to renewable energy projects, rather than to the primary sector. This could lead to the abandonment, or at least a significant reduction, of the primary sector in rural areas, which is strategic, not simply necessary, as has recently been highlighted, both for these areas and for the country as a whole. The agri-foodstuffs sector must be guaranteed, as it is key to protecting us from external shocks, such as the Russian-Ukrainian armed conflict, which, given the dates at which this text is being drafted, it is not possible to do so in terms of ignorance, which has meant more than just a risk to the security of our normal supply of cereals and sunflower oil, without going into other questions of energy supply infrastructures, etc.

Finally, it is necessary to make a few brief notes on the influence of the so-called self-consumption, which was introduced in Spain from Law 24/2013, of 26 December, on the Electricity Sector, defining self-consumption in its article 9 as follows: "self-consumption shall be understood as the consumption of electricity from generation facilities connected within a consumer's network or through a direct electricity line associated with a consumer", i.e. production and consumption are associated with an electricity generation facility, mainly of renewable origin. However, it should be added that there are two types of self-consumption, self-consumption without surpluses and with surpluses, within which there is simplified compensation or sale to the market (CHATÍN OTERO, 2019: 408).

Whatever the modality, in the event that another consumer is associated with this production, i.e. enjoys such surpluses by any of the routes, they must have a distance between them of less than 500 metres²³. The problem associated with this, and in this sense, why there is a more limited economic impact than there could be, is that, due to the idiosyncrasy of rural territories, specifically in our Autonomous Community, where large estates with large distances between them predominate. This distance is not in line with this distribution of the territory, causing energy losses that have a negative impact on the producer himself, who loses potential profits and undoubtedly discourages future private projects of this type.

Secondly, because, logically, as long as we encourage consumers to produce their own energy and at the same time other consumers can take advantage of it, we reduce the demand for energy in the wholesale market, contributing to the containment and reduction of prices in the wholesale electricity market (CHATÍN OTERO, 2019: 407).

2.3. Is renewable energy sustainable?

There are many variables that must be assessed in order to make a general sketch of sustainability, firstly, it must be assessed in terms of the space they occupy with respect to the energy they generate, they are really extensive plantations, since it is estimated that to obtain 1 MW of electricity, two hectares are necessary, as a minimum space is needed between solar panels, for example, to guarantee their efficiency and maximum performance. Therefore, in order to obtain large amounts of energy, considerably large plots of land are needed (PRADOS *et al.*, 2012: 139). In this sense, it is important to mention that this is likely to change, as the political powers at both the EU²⁴ and national levels are promoting medium-sized generation facilities, which generate a lower impact and decentralise the impact.

With regard to land diversification, it is important to talk both about the compatibility of these installations with other activities and, if this compatibility is not possible, on what types of land they are going to be built. Firstly, compatibility with primary sector activities is different depending on whether we are talking about solar or wind energy, as solar energy plantations require exclusive dedication of the land for this activity. This is not the case with wind energy, which allows crops to be grown between the wind turbines, or even frequently combined with extensive livestock farming, so in this sense the impact on land diversification is greater in the case of solar energy (PRADOS *et al.*, 2012: 139).

23 *Vid.* Royal Decree 244/2019, of 5 April, which regulates the administrative, technical and economic conditions for the self-consumption of electricity.

24 *Vid.* Regulation (EU) 2019/943 of 5 June 2019 on the internal electricity market.

This leads us to analyse the land on which they are going to be built, which, as we have already explained, in the majority of cases is land destined for the primary sector. This immediately raises the question of whether this land-use planning is being approached in the right way, as it forces us to balance the need for renewable energy production against the necessary food supply. However, there are alternatives, which, although they are not being considered, this work aims to set a precedent to prevent the loss of land for the primary sector, which is key in rural areas, and to revitalise lost areas that are not being exploited. We are talking about the areas of industrial estates built in small and medium-sized municipalities, which in times of prosperity were built, but which today are largely abandoned and which could be an opportunity to reconvert them and make the most of existing facilities.

Finally, an additional issue in relation to renewables is that, if we really want to promote them, storage capacity must also be promoted, since, as we know, renewable energies are not stable, as they produce production peaks, as they depend on environmental phenomena (wind, sun, rain, etc.). This means that storage capacity is a necessary budget for the promotion of renewable energy production (IBERDROLA, 2023).

3. IMPROVEMENTS IN RENEWABLE ENERGY LEGISLATION TO FIGHT DEPOPULATION

It is convenient to begin by analysing one of the problems associated with the promotion of renewable energies, namely access to the grid, as there is currently a bottleneck, since the promotion of renewables, which has led to an increase in the number of requests, has saturated the grid, causing Red Eléctrica de España to reject numerous requests for connection. This form of prioritisation has also created a secondary market, since setting the age of the request as a criterion creates a market for the subsequent resale of these acquired rights, simply because they have been requested earlier. These problems affect the promotion of renewables in general, but also have an impact on rural development, as both the electricity grid itself and rural communities could benefit from improved legislation and the introduction of certain reforms in terms of fairness and efficiency.

Starting with the access procedure, there are currently 41.8 GW²⁵ of wind and solar PV generation in service. To get an idea of the magnitude of requests, there are 144.3 GW of requests with access permission but not yet in service and there are 23.7 GW of ongoing requests that do not yet have

25 Magnitudes referring to facilities that with the information available and permits issued by Red Eléctrica de España are in a position to start the discharge of energy (emission of APESp), as well as the information available in the official registers for the rest of the facilities.

access permission²⁶. This means that pending access and connection is three times the current generation in service. Well, the way to order this large magnitude of access and connection permits is the timeframe as established by article 7 of the Royal Decree on access²⁷. This date is the date on which the application is accepted for processing, which will be the date and time of submission of the application for the granting of the access and connection permit to the corresponding grid operator.

We understand that this form of prioritisation is not only unfair, since using only the time criterion, taking into account that, right now, the grid's capacity to absorb these requests is limited, makes us lose and reject more innovative and efficient projects that benefit the electricity system more than other projects. Furthermore, we should not simply take a snapshot of the current moment, in the sense that we would favour the most efficient projects that are currently in the process of requesting access and connection, but we would also encourage future projects that request access and connection requests to be in line with and promote the criteria established legislatively for prioritisation.

This form of prioritisation is, moreover, endorsed in European terms, since Regulation (EU) 2019/943 of 5 June 2019 concerning the internal electricity market²⁸, establishes in its article twelve that despite the fact that in principle, the dispatch of electricity generation and demand response facilities should not be discriminatory, there are some exceptions that allow discrimination between some applications and others. The exceptions are: (i) electricity generation facilities using energy from renewable sources with an installed electrical capacity of less than 400 kW; or (ii) demonstration projects of innovative technologies, subject to the approval of the regulatory authority, provided that such priority is limited in time and scope necessary for the achievement of the demonstration purposes.

As we can see, there is justification in EU legislation for these forms of prioritisation or even positive discrimination between certain access and connection projects. The way to introduce this improvement would be through this temporary criterion, modifying it for another that implies a prioritisation of projects as long as certain objective variables that are beneficial to the achievement of the general interest are met. In our case, in order to contribute to our rural environment, it would be advisable, since they are installed in rural areas to a greater extent, that these nearby localities that are harmed by the detriment of available land or even negative environmental impacts,

26 Information from Red Eléctrica de España dated 31 January 2022 on the status of access and connection of renewable wind and solar photovoltaic generation.

27 Royal Decree 1183/2020, of 29 December, on access and connection to electricity transmission and distribution networks.

28 Official Journal of the EU 14.06.2019

benefit from return systems, that is, that an obligation be established to retain a percentage of the energy produced in the locality in which the energy generation facility is installed, in order to favour the reduction of electricity prices in these population centres. Undoubtedly, this would contribute to a certain extent to improving the welfare of those who live in these localities or even encourage the return of those who were forced to leave²⁹.

As stated in the aforementioned regulation, this discrimination is not only justified in order to favour more innovative and beneficial projects, but it also makes a firm commitment to medium-small generation facilities, which can also be used to prioritise some projects over others. This is more desirable and beneficial for the demographic challenge for two reasons: firstly, because the smaller the installation, the environmental and economic impacts we are talking about are less and, secondly, because if the installations are smaller it is more plausible that a return system can be incorporated, since when they are large installations all the electricity generated goes to the transmission grid.

Lastly, and in line with the need for those who hold positions of power at local level, or even the local residents themselves, to take part and point out the potential and weaknesses of renewable energy installations, as they are the ones who truly understand the essence of rural life and experience the damage caused by this type of installation. The public hearing process for the approval of these installations must include a social licence, i.e. ratification by the local authorities and the citizens of the localities affected by the installation. They are the ones who are always forgotten in decision-making and in the creation of legislation that directly affects them and which, on most occasions, is made from an urbanist perspective, with the result that the peculiarities of rural areas are forgotten.

III. SOCIAL LICENCE TO OPERATE

The paradigm of progress has always been represented by large infrastructures. Their multiplier character of opportunities and the possibility of generating a positive impact are well received by communities, if they are accompanied by the generation of employment for the inhabitants of that place, respect for the environment, etc. This is why the economic premise of carrying out an infrastructure project is relevant, but it is not the only one necessary: the real legitimacy to develop an activity is not enough; the social legitimacy of the communities is necessary.

29 Without going any further, the first steps are being taken in the same direction with projects such as the constitution of local energy communities, to produce energy for commercialisation at the same time as producing self-consumption that generates savings for the members of these communities, made up of neighbours (natural or legal persons) and even including local administrations.

This is what the concept of a social licence to operate or, in other words, the “permission” of the community, which goes beyond complying with local regulations for the initiation of a project on its territory, is all about. Obtaining such permission has to rely, at least in part, on a number of measures involving compensation to rural areas. These may include: provision of jobs with incentives to fix population, reduction of energy prices, creation of infrastructure for the benefit of the municipality, among others³⁰.

1. WHAT IS THE SOCIAL LICENCE TO OPERATE?

The social licence is a measure that was born out of a United Nations initiative in 2004. It urged companies, mainly in the extractive sectors, to involve the indigenous peoples of the territories in which they operate in their projects and to obtain their consent before implementing them (this consent had to be free, prior and informed). This was intended as a reminder that legal legitimacy is not enough without the social legitimacy of those affected.

Since then, the Social Licence to Operate started to be applied mainly to activities involving high environmental impact or safety risks.

While there is still no closed list of requirements to be met, as these will depend on the beliefs and perceptions of each community, today the standards for this concept are more rigorous, as companies are more transparent in their self-assessment and people are more aware of the rights that protect them.

At the level of an individual project, the social licence is rooted in the beliefs, perceptions and opinions of local people and other stakeholders about the project. The licence is therefore “given” by the community. It is also intangible, unless efforts are made to measure these beliefs, opinions and perceptions. Finally, it is dynamic and not permanent, because the beliefs on which it is based change as new information is acquired; therefore, the social licence must be earned and maintained.

A Social Licence is considered to have been granted when a project has the approval or continued acceptance of the local community and stakeholders. The difference between approval (good or sufficient rating, favourable and positive consideration) and acceptance (willingness to tolerate or acquiesce) can be perceived as real and indicative of two levels of social licence: a low level of acceptance and a high level of approval. While the lower level is

30 There are many examples, some more traditional and others more innovative. Among the former, the most noteworthy are the fixation of population through the provision of housing for the workers of energy generation facilities and exemption from paying electricity, a very traditional model in the case of hydroelectric power plants. A more novel option is to reduce the price of electricity for all residents registered in a given locality, allowing significant percentage savings on electricity bills.

sufficient to allow a project to proceed and enjoy a peaceful relationship with neighbours, the higher level is more beneficial for all involved. In practice, the absence of legitimacy leads to the rejection of a project; the presence of legitimacy and credibility leads to the acceptance of a project, while a high level of credibility and the presence of trust form the basis for approval. The most significant level of social licence, co-ownership, can only occur when there is a high level of trust.

This measure offers advantages in both directions: the affected communities assess how the project can benefit or harm them and can participate in its development, while the companies ensure that their plans are implemented without social conflict.

Nowadays it is not possible to consider undertaking an industrial or urban development project without a social licence to operate to legitimise it. Companies assess and report on environmental impact, waste generation, local employment generation, as well as employee training and many other aspects of their activities with a critical eye.

However, it is true that the social licence to operate is difficult to define and almost impossible to measure, and sometimes when it comes to implementing projects, administrations and companies come up against it when it is too late because in some of the design phases the integration of environmental, social and corporate governance factors that are suddenly essential for the implementation of the project was missing.

Moreover, its dynamic nature is a disruptive element that makes the licence fully operational, as it avoids obsolescence since it requires continuous renewal and approval by those who have granted it (the community), and should not be seen as a mere formality that was completed ab initio of the project.

This configuration means adaptability to change, without detracting from legal certainty, one of the most worrying issues in this area. Projects with a social licence, once executed, do not lose their validity because the social reality changes and the same project, some time later, cannot be reproduced, or at least not under identical terms and conditions. Thus, there are three premises that make up the social licence:

- Legitimacy

Being governed by the social, legal and cultural “rules of the game” of the community to be affected is a competitive advantage as long as the entities, mainly the project implementers, are able to know and understand the “norms” of the community and are capable of interacting at the local level. To renounce this implies an assumption of risk that is hardly justifiable today. In practice, it is a matter of avoiding rejection of a project, thus gaining social legitimacy as this comes from engagement with all members of the

community and the dissemination of information about the project, the company, what may happen in the future, and the subsequent clarification of any doubts that may arise.

– Credibility

Obtaining the social licence, the non-formal but formalisable authorisation of those who will interact with the project to be implemented, provides transparency and veracity to the information presented and incorporated into the administrative file, especially when it means compliance with the agreed commitments. Credibility is established and maintained more effectively through the application of formal agreements in which the rules, roles and responsibilities of the company and the community are negotiated, defined and consolidated.

It should be borne in mind that, once formalised, the social licence can serve as an element to remove bureaucratic obstacles, given that nothing prevents the procedural rule from recognising priority to projects that have the social endorsement, over those that have opted to ignore social demands.

– Trust

This is really a consequence of the two previous characteristics. The achievement of a quality and lasting agreement generates shared value. The freedom of one party ends where the freedom of the other party begins, which means being vulnerable to the actions of the other party, hence mutual trust is the basis of social licence, as it is understood that neither party will break the limits they have voluntarily agreed to.

It is therefore not about generating mere commercial transactions or simply making a set of investments. Rather, it is closer to the idea of creating opportunities in a given community through measures specific to the existing reality.

1.1. Obtaining and granting a social licence

Generally, a social licence is usually granted for a specific project, so a social licence may be granted for one operation, but not for another, even with similar characteristics (VILLAREAL and LANDETA, 2014). Moreover, the greater the social, economic and environmental impacts of a project, the more complicated it is to obtain a social licence (ZIMMERMANN, 2005).

For example, an independent project carried out by a subject, which is also part of the community where it is to be executed, will normally obtain a social licence automatically. On the other hand, the degree of complexity in obtaining a social licence is directly proportional to the size (the same could be said of the financial resources) of the applicant entity.

Certainly, the licence ends up being granted not so much by the community, but by the “network of interest groups” that are present in the community. There may even be an incidence, more or less accentuated depending on the specific case, of other groups that may not be part of a geographical community, but that are also affected, even indirectly, or that have their legitimacy through the representation of third party interests, such as associations, trade unions or other types of entities that defend group interests. This is another type of interest group that, although not directly affected, their position may pose a risk to the viability of a given project, so that their position may even be a reference for the granting of the social licence (THOMAS *et al.*, 2018).

(A) CHALLENGES AND CHALLENGES IN OBTAINING A SOCIAL LICENCE

As noted above, obtaining and maintaining a Social Licence is a process of considerable complexity, but, with adequate preparation and support, the challenges created by such circumstances can generally be overcome. Difficulties are most often manifested when companies are unable or reluctant to make the nominal investment to get things right. The most common problems posed by a company are:

- It perceives obtaining a social licence in terms of a series of tasks or transactions (in effect, making a deal), while the community grants the licence based on the quality of the relationship — a cultural disagreement that can lead to failure.
- It confuses Acceptance with Approval, Cooperation with Trust and Technical Credibility with Social Credibility.
- It fails to know the community (social profile) and the local “rules of the game”, and is therefore unable to establish social legitimacy; it delays or delays engagement with stakeholders.
- Not enough time for relationship building.
 - It damages its own credibility when it fails to provide reliable information or, more commonly, fails to deliver on promises made to the community.
 - Does not respect or listen to the community.
 - It underestimates the time and effort required to obtain a social licence to operate.
 - It overestimates or, worse, assumes the quality of the relationship with the community.

(B) GROUNDS FOR REFUSAL OF THE SOCIAL LICENCE

Yes: the term “community” is often used in a way that suggests a uniqueness and purpose that does not always exist. Most “communities” are actually sets of communities, kinship groups or interest groups that operate

as a network. However, the concept of social licence to operate presupposes that all families, clans, interest groups and institutions in a geographic area have achieved a shared vision and attitude about a resource development project. This kind of cohesion is often lacking, and therefore needs to be built. This is why obtaining a social Licence to Operate often includes the development of social capital in a process known as “community building”, “capacity building” or “institution building”, among others.

The key to a community’s ability to grant a meaningful social licence lies in the pattern of social capital present in its network structure. Without the right patterns of social capital within the community and between the project and the various elements in the community network it is difficult, if not impossible, to obtain and retain a social Licence to Operate.

Companies that want a social licence need to understand the patterns of social capital in the network with which they want to interact. With this information, the company knows where it needs to concentrate its efforts. However, each community has its own specific concerns and interests that can form the basis for building relationships between the company and the community, building social capital and, in time, the social licence — there is no one-size-fits-all recipe. An initial requirement is therefore the need for the company to conduct social studies that analyse and understand the social structure, concerns and visions of the various individuals, groups and organisations in the network that collectively form the “community.”

(C) MEASURABILITY OF THE SOCIAL LICENCE

Tools such as “SocialLicence™” employ different indicators to measure the level of Social Licence that exists at any given time in terms of Rejection, Acceptance, Approval and Co-Ownership. However, it is important to remember that the quality of a social licence is dynamic and responds to changes in company and project perceptions, and is also susceptible to external influences; therefore, it must be maintained. Confidence in the status of the social licence is only temporary, so a system of periodic measurement must be incurred, using the results of the measurements to adapt actions in the interest of improving the project-community-stakeholder relationship. In any case, it will be the circumstances and characteristics of the project, the geographical area, the community and, of course, the stakeholders, which will identify the periodicity of the measurements on the one hand, and the need to adapt the measures on the other.

Credibility is lost to the extent that social demand is not met; being out of touch with reality only increases the loss of credibility. In the same way that products and services are quickly transformed to meet the tastes of citizens, however, for the most part, such efficiency has not been replicated in ensuring that these same products or services have an effective social impact, something that is undoubtedly also demanded today.

Until recently, what was known as Corporate Social Responsibility (CSR) (GÓMEZ NIETO and MARTÍNEZ DOMÍNGUEZ, 2016)³¹, in the sense of carrying out a certain amount of social work, was the only effort made by companies to achieve first the Millennium Development Goals and then the much celebrated Sustainable Development Goals. But generally what companies included, perhaps it is more correct to use the past tense when talking about such practices, was far from what society demanded in order to understand that a company is truly socially committed. What is demanded are transparent organisations, ethically responsible in aspects such as the preservation of the environment, social issues, etc. This implies a whole transformation of the concept of CSR, which is now approaching a characterisation as a crucial element of the entire strategy of organisations, as CSR has gone from being a mere complement to “social recognition” to a mandatory value in the business and social sphere.

Adapting the business to the new requirements implies modifying not a few patterns of action. In addition, it is necessary to abandon a business model based on return on investment and profit in the form of dividends for shareholders, and replace it with another, where this return is produced in the form of satisfying stakeholder expectations. The power that stakeholders have been acquiring mainly in recent years means that, in order to be able to maximise, if not even guarantee an acceptable economic return on investment, we have to ask ourselves whether we are dealing with a company that society wants to exist. Any negative answer will turn any initiative that insists on intervention without the corresponding social “endorsement” into a business failure. Thus, we will not be wrong if we consider that CSR is no longer something internal to the company, but rather a social licence, an external factor, granted by society itself.

It is true that CSR is still a commitment to ethical and sustainable business management in relation to employees and society. Therefore, there is certainly an internal control over this figure, which is true as long as what is a declaration is reflected in the unequivocal actions of execution carried out by the company. Taking risks, even reckless ones, that end up in unfavourable situations, while resorting to CSR to try to make amends, when this is not done, as is generally the case, by transferring responsibility for the events to third parties, only distances the company from the social support necessary to carry out its activity in a socially acceptable manner. So much so that on many occasions these errors have a substantially higher economic cost than the measures that would have prevented or reduced them.

This obsolete approach to CSR is clearly overtaken by the concept of social licence, which, among other objectives, ensures that this outdated

31 In which there is no hesitation in pointing out that the company must not be *understood as an isolated entity, but as part of an environment in which it must be perfectly integrated as one of its elements*.

vision is no longer prevalent in business environments where the culture of “I thought” rather than “just in case” is deeply rooted.

The benefit of having a social licence to operate is usually a consequence of a correctly designed and implemented CSR, which not only favours the ability to carry out a specific activity, but also enhances its strategic value, as those who *manage to align their stakeholders and carry out responsible management of their value chain will achieve competitive advantages that are difficult to imitate* (SUÁREZ SERRANO, 2013).

2. ENERGY SAVING PLAN AND 4TH RENEWABLE AUCTION

In the midst of the debate on the energy savings plan, the fourth renewables auction was called unnoticed, perhaps hence the result, and was held on 22 November. This new auction was born with ambitious objectives, as it would nominally allow the deployment of 3,300 MW of renewable energy, 1,800 MW of photovoltaic and 1,500 MW of wind power, to be commissioned before the end of 2024 and 2025 respectively.

In terms of design, there were no major novelties compared to the auctions of recent years, except for the fact that among the requirements demanded of successful bidders was the obligation to present a strategic project plan. Without being exactly a novelty, either in terms of the elements that the plan must necessarily include (socio-economic impact, carbon footprint, circular economy strategy, etc.) or the transparency of the process (the plan is published on the Ministry’s website), three elements did stand out due to their relevance in the recognition of the social licence:

a) Good practice

Firstly, the need to justify good environmental and social practices implemented in the promotion, development, construction and operation of the project. Compliance with environmental authorisation, job creation or tax collection are considered by society as minimums on which to build a value proposition for the territory.

In this regard, it is worth highlighting the Best Practice Guide published by UNEF in March 2022, which establishes a methodology for the development of solar plants with shared value creation principles.

b) Communication strategy

In this case, the Ministry for Ecological Transition required the incorporation of a communication strategy into the plan in order to guarantee, through transparency and dialogue, that the public has access to information about the project, its impact and the benefits (social, economic and environmental) that it will generate. In other

words, the way in which the community learns about the project is formally important, as it will condition its position on the project. More than a requirement of the call, which it is, we are really facing an obligation that for some time now has been self-imposed by companies, since it will be those that are proactive in this area that will achieve optimum levels of collaboration with society.

c) Citizen participation

Finally, it is required to report on the promotion of citizen participation in the project, indicating the objectives in this area. In some Autonomous Communities such as Catalonia, the Balearic Islands and Navarre, citizen participation is a mandatory requirement in certain cases, so that the local population can see the benefits of the projects and become allies in their implementation. To this end, crowdfunding platforms have been promoted, starting from very small amounts, which open up projects to social participation.

Certainly, there is a growing trend against the installation of renewable energy projects, even more so in areas where there is a higher concentration of renewables. No one denies the need to decarbonise the electricity system and, through electrification, other sectors such as transport and heating. The National Integrated Energy and Climate Plan, which foresees the installation of some 50 GW in this decade, is also ambitious, but there is a lack of planning with regard to the location of renewables. Given these circumstances, it is even more important, if not already sufficiently justified, to obtain the recognition generated by the social licence. Nowadays, any project must be socially accepted, and to this end it must generate a return that is effectively perceived by the local population, within a logic of shared value creation.

We cannot attribute the outcome of the auction to these last premises, but the fact is that it did not turn out as expected. Finally, the low reserve price has been a determining factor in achieving an award of 45.5 MW, which brings the auction closer to a deserted auction than to any other definition³².

IV. CONCLUSIONS

At the beginning of this work we pointed out a series of benefits introduced by the European Court of Auditors that investments in renewable energy must comply with in order to truly contribute to sustainable rural development, and to conclude this work we will discuss how these have been fulfilled or not, To conclude this work, we will discuss how these have been fulfilled or not, to a greater or lesser extent, in order to be able to make a real approximation

32 *Vid.* data from the Resolution of 23 November 2022, of the Directorate General for Energy Policy and Mines, resolving the auction held for the granting of the economic regime for renewable energies under the provisions of Order TED/1161/2020, of 4 December.

to the purpose of this chapter, which is none other than the need to focus the debate on the way in which renewable energies are being promoted and the necessary approach from a rural perspective, so as not to aggravate the already existing inequalities.

The first of the benefits to be achieved was the environmental benefit. On this point, there is a general consensus that despite the fact that renewables have a visual impact and have an impact on the land they occupy, they are a necessary part of decarbonisation and the elimination of our country's dependence on non-renewable sources that do not help to achieve the environmental objectives, which are of vital importance, as climate change is a problem that must be tackled ambitiously and without delay.

The second of the benefits to be achieved was the diversification of income for farmers and owners of forestry holdings, and in this respect two issues have been pointed out, firstly, the possibility of making wind power generation facilities compatible with some types of livestock farming and, secondly, the possibility that those rural areas that have lost their use, such as industrial estates, can be converted into renewable energy generation facilities, the possibility that rural areas that have lost their use, such as industrial estates, could be reconverted into renewable energy generation facilities, as it is important to note that on many occasions, the rural environment has resources, but they are no longer used due to the abandonment of private or public action in these areas. The use of these existing resources is an opportunity both to revitalise them and to reduce the need to use land for the development of the primary sector.

The third of the benefits was the need to incorporate employment opportunities in rural companies and business opportunities for them, for the first of these there is no doubt, since renewables, as we have already said, produce five times more employment than traditional electricity generation facilities. As far as business opportunities are concerned, in a way, the proposed change in the maximum selling distance of excess self-consumption energy is not a business *per se*, but it is a greater opportunity for those who own self-consumption installations to make these installations profitable.

The fourth benefit was that including new and improved energy infrastructure and services in rural areas, among these, it is worth highlighting how the change of the ordering criteria in access requests to include other prioritisation systems that reward, for example, return systems in rural areas, benefits consumers of electricity services in rural areas, as it reduces the price they would have to pay for the electricity consumed.

The fifth benefit is that these new sources of income can be used to support public services and essential infrastructure in rural areas. This can be achieved if, as is rarely the case, we take into account the opinion of those who lead local projects, such as local councils or citizens, who should necessarily be involved in the public hearing procedures for electricity generation facilities.

This analysis is of paramount importance, as the commitments of the European Union and Spain in this regard are very high, which is why an exponential growth in installations of this type is expected. Faced with this growth, it is therefore necessary to balance the positive and negative aspects.

Thus, as we have already said, in the economic sphere, although renewables represent an employment opportunity in rural areas, renewables require the occupation of large parts of the territory, which in many cases used to be used for primary sector activities. Therefore, renewables cannot be promoted in an uncontrolled manner without taking into account that both renewables and the primary sector are key both in rural areas and for the country's economy in general.

On the other hand, there are possible legislative improvements such as those set out in the third section, so that rural areas can truly take advantage of the benefits in priority over urban areas, as it is the latter that suffer the detriment in available land and the negative environmental impacts. The current legislation means that the benefits are appropriated by the country as a whole and that the negative aspects of renewables are assumed only by the rural areas, without any type of benefit, such as the return system, which we have proposed, as a criterion for access permits.

V. BIBLIOGRAPHY

ARROYO JIMÉNEZ, L. *Libre empresa y títulos habilitantes*, Centro de Estudios Políticos y Constitucionales, Madrid, 2004.

ASSOCIATION OF RENEWABLE ENERGY COMPANIES, *Study of the Macroeconomic Impact of Renewable Energies in Spain*, 2013.

BURGUILLO CUESTA, M. and **DEL RIO GONZÁLEZ, P.** "La contribución de las energías renovables al desarrollo rural sostenible en la unión europea: pautas teóricas para el análisis empírico", in *Tribuna de economía*, vol. november-december, núm. 845, 2008, pp. 149-166.

CAMARERO, L. and **QUEROL, V.**, "Introduction to "La eterna brecha rural: desigualdades, exclusiones e inaccesibilidad ciudadana. Anotaciones para crisis crónicas", in *Kultur: revista interdisciplinaria sobre la cultura de la ciutat*, vol. 7, núm. 14, 2020, pp. 27-34.

CASERES MARCOS, A. B. and **FERNÁNDEZ DE GATTA SÁNCHEZ, D.**, "El sector agroalimentario y el medio ambiente: aspectos generales y evaluaciones ambientales", in **TERRÓN SANTOS, D.** (Dir.). *Estudios de Derecho Agroalimentario*, Comares, Granada, 2018, pp. 27-56.

CHATÍN OTERO, A. L., "El autoconsumo de energía eléctrica", in **SÁNCHEZ RODRÍGUEZ, A. J.** (aut.), *Manual de derecho y mercado de la energía*, Tirant lo Blanch, Valencia, 2019.

EUROPEAN COMMISSION, Renewable energies. *Chapter II Economy, science and quality of life*, Factsheet on the European Union, 2021.

CUESTA HINESTROZA, L., NUPAN MOSQUERA, M. I., RAMÍREZ MORENO, S. and **PALACIOS LOZANO, L. G.**, "El derecho a la participación en el trámite de licencias ambientales: ¿Una garantía para la protección del medio ambiente?", in *Revista Academia & Derecho*, year. 7, núm.12, 2016, pp. 53-86.

FABRÉS GARRIDO, E., "Estudio interpretativo de las competencias de la Unión Europea en materia de energía. El artículo 194 del TFUE en el marco de la transición energética", in *Quaderns IEE: Revista de l'Institut d'Estudis Europeus*, vol. 2, núm. 1, 2023, pp. 61-92. DOI: <https://doi.org/10.5565/rev/10.5565/rev/quadernsiee.45>.

FROLOVA IGNATIEVA, M. "Wind energy landscapes", in *Nimbus: Journal of Climatology, Meteorology and Landscape*, No. 25-26, 2010, pp. 93-110.

FROLOVA IGNATEVA, M., ESPEJO MARÍN, C., BARAJA RODRÍGUEZ, E. and **PRADOS VELASCO, M. J.**, "Paisajes emergentes de las energías renovables en España", in *Boletín de la Asociación de Geógrafos Españoles*, núm. 66, 2014, pp. 223-252.

GARCÍA LUPIOLA, A. "Nuevas estrategias de la Unión Europea para abordar el doble reto de la crisis climática y la dependencia energética", in *Cuadernos Europeos de Deusto*, núm. 68, 2023, pp. 33-67. DOI: <https://doi.org/10.18543/ced.2697>.

GÓMEZ NIETO, B. and **MARTÍNEZ DOMÍNGUEZ, R.**, "Responsabilidad Social Corporativa de concepto abstracto a elemento clave en la estrategia empresarial", in *Poliantea*, vol. 12, núm. 22, 2016, pp. 14-35.

HERRERO LUQUE, D., BARAJA RODRÍGUEZ, E. and **MARTÍNEZ ARNÁIZ, M.**, "Transición energética y territorio: mapas de la producción eléctrica en España", in GARCÍA RODRÍGUEZ, J.L. (ed. lit.), *Geografía, cambio global y sostenibilidad. Comunicaciones del XXVII Congreso de la Asociación Española de Geografía. Tomo III Desarrollo territorial, sostenibilidad y calidad de vida*, Asociación Española de Geografía, La Laguna, 2021, pp. 495-509.

IBARRA BENLLOCH, P., ESTEBAN RODRÍGUEZ, S., HEREDIA LACLAUSTRA, A. and **TOMÁS DEL RÍO, E.**, "Transición energética y reto demográfico del medio rural: análisis prospectivo del efecto de la instalación de macroplantas de energía solar en el Valle de la Fueva (Huesca, Spain)", in NAVARRO GÓMEZ, C., RUIZ PULPÓN, Á. R., VELASCO CABALLERO, F. and CASTILLO ABELLA, J. (ed. lit.), *Actas del I Congreso interdisciplinar sobre despoblación: Diagnóstico, territorio y gobierno local*, Universidad Autónoma de Madrid e Instituto de Derecho Local, Ciudad Real, 2022, pp. 149-166.

IBERDROLA, *Energy storage: the key to a decarbonised future*, 2023.

KRAUSS, W. et al. *Infrastructures of German Wind Power Landscapes. International conference "Landscapes of everyday life: Intersecting perspectives on research and action"*, Perpignan (France) and Girona (Spain), 2011.

LINARES, P., "La transición energética", in *Ambienta*, núm. 125, 2018, pp. 20-31.

LOZANO CUTANDA, B. "Real decreto ley 6/2022: el nuevo procedimiento de determinación de afección ambiental aplicable a determinados proyectos de energías renovables", in *Actualidad Jurídica Ambiental*, núm. 123, 2022, pp. 55-66.

MERINO, L., "Las energías renovables", in *Energías Renovables*, Iberdrola, núm. 1, 2012.

OECD, *Linking Renewable Energy to Rural Development*, OECD Publishing, 2012.

OXFAM INTERMON, *Do you know which environmental problems are most prevalent in the city?*, 2020.

PINILLA NAVARRO, V. and **SÁEZ PÉREZ, L. A.**, "La despoblación rural en España: génesis de un problema y políticas innovadoras", in *Centro de Estudios sobre Despoblación y Desarrollo de Áreas Rurales*, vol. 2, 2017.

PRADOS VELASCO, M. J., **BARAJA RODRÍGUEZ, E.**, **FROLOVA IGNATEVA, M.** and **ESPEJO MARÍN, C.**, "Integración paisajística y territorial de las energías renovables", in *Ciudad y territorio: estudios territoriales*, vol. 171, 2012, pp. 127-143.

PRADOS VELASCO, M. J., **FROLOVA IGNATEVA, M.**, **BARAJA RODRÍGUEZ, E.** and **ESPEJO MARÍN, C.**, "Paisajes emergentes de las energías renovables en España", in *Boletín de la asociación de Geógrafos españoles*, núm. 66, 2014, pp. 223-252.

QUINTANA, J., **CAZORLA, A.** and **MERINO, J.** *Desarrollo rural en la Unión Europea: modelos de participación social*, Ministerio de Agricultura, Pesca y Alimentación, Madrid, 1999.

RED ELÉCTRICA, *Electricity System Report*, 2023.

Royal Decree 1183/2020, of 29 December, on access and connection to electricity transmission and distribution networks.

Royal Decree 244/2019, of 5 April, which regulates the administrative, technical and economic conditions for the self-consumption of electricity.

Regulation (EU) 2019/943 of 5 June 2019 concerning the internal market in electricity.

RUÍZ OLMO, I. "Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources", in *Ars Iuris Salmanticensis: AIS: revista europea e iberoamericana de pensamiento y análisis de derecho, ciencia política y criminología*, vol. 7, núm. 1, 2019, pp. 238-241.

SANCHEZ DURÁN, R. "Energía y digitalización. ¿Estamos ante una evolución o revolución digital?", in *Cuadernos de energía*, núm. 55, 2018.

STATISTA, *Población residente en zonas urbanas en España 2007-2019*, 2022.

SUAREZ SERRANO, M. E., "La Responsabilidad Social Corporativa. Un nuevo paradigma para las empresas", in *Encuentros multidisciplinares*, vol. 15, no. 45, 2013, pp. 22-31.

TERRÓN SANTOS, D. "Las energías renovables en la hoja de ruta de la dinamización rural: luces y sombras", in FERNANDO PABLO, M. M. y DOMÍNGUEZ ÁLVAREZ, J. L. (Dir.), *Rural Renaissance: Acción, Promoción y Resiliencia*, Thomson Reuters Aranzadi, Cizur Menor, 2022, pp. 342-344.

THOMAS, M., BRADSHAW, M. and PIDGEON N., "Shale development in the US and Canada: A review of engagement practice", in *The Extractive Industries and Society*, Elsevier, vol. 5, issue 4, 2018.

EUROPEAN COURT OF AUDITORS, *Renewable energy for sustainable rural development: significant potential synergies, but mostly not materialised in practice. Special report number 5*, 2018.

VAN DER HORST, D. and LOZADA-ELLISON, L. M., "Conflicts between renewable energies and landscape: seven myths and the proposal for adaptive and collaborative management", in *Nimbus*, no. 25-26, 2010.

VILLAREAL, O. and LANDETA, J., *El estudio de casos como metodología de investigación científica en economía de la empresa y dirección estratégica*, Universidad del País Vasco, Bilbao, 2014.

ZIMMERMANN, J., "Entreprises et territoires. Entre nomadisme et ancrage territorial", in *La Revue de l'Ires*, vol. 1, no. 47, 2005.

CHAPTER IV

A RURAL PROOFING MECHANISM TO ENHANCE SPECIAL FINANCIAL AND TAXATION POLICIES IN AREAS WITH DEMOGRAPHIC SINGULARITIES: THE CASE OF CASTILE AND LEON

NORA LIBERTAD RODRÍGUEZ PEÑA

*Professor of Financial and Tax Law¹
University of Salamanca*

SUMMARY: I. INTRODUCTION: TERRITORIAL SINGULARITIES AS A DETERMINING ELEMENT IN THE APPROVAL OF DIFFERENTIATED FINANCIAL AND TAXATION POLICIES. II. THE DEMOGRAPHIC AND TERRITORIAL CHALLENGE IN SPAIN AS A DESTABILISING FACTOR OF THE WELFARE STATE: SPECIAL REFERENCE TO THE PARTICULARITIES OF CASTILE AND LEON. III. APPLICATION OF RURAL PROOFING TO THE TAX LEGISLATION OF CASTILE AND LEON AND TO SPANISH REGIONAL FINANCING. *1. Tax benefits in personal income tax to encourage the settlement of young people in rural areas. 2. Tax benefits in the ISyD and its impact on farms. 3. Tax benefits in the ITPyAJD in key legal transactions in rural areas. 4. The problem of regional funding: the scant or non-existent valuation of the demographic challenge in the distribution of public funds.* IV. FINAL REFLECTIONS. V. BIBLIOGRAPHY.

1 Assistant Professor of Financial and Tax Law at the Faculty of Law of the University of Salamanca. This publication is part of the R&D&I 2020 Project “Depopulation in Spain: from demographic challenge to territorial challenge” (PID2020-114554RB-I00) led by the principal researcher Prof. Dr. Javier Espacia Pérez, Professor of Geography at the University of Valencia.

I. INTRODUCTION: TERRITORIAL SINGULARITIES AS A DETERMINING FACTOR IN THE ADOPTION OF DIFFERENTIATED FINANCIAL AND TAXATION POLICIES

Most of the Constitutions of Western and democratic States, as is the case in Spain, devote their first articles to the configuration of the State. The recognition or not of certain fundamental rights and guarantees, the direction of public, economic and social policies, as well as the structure of its tax system and its influence on the execution of these public policies will depend directly on this configuration. The Spanish Constitution approaches it in art. 1.1, where it configures the Spanish State as a social and democratic State governed by the rule of law and establishes that the higher values of its legal system are freedom, justice, equality and political pluralism. Hence, the Spanish tax system is configured in art. 31 as a fair tax system inspired by the principles of equality and progressiveness which, under no circumstances, will have a confiscatory scope, and public spending, for its part, will make an equitable allocation of public resources, despite the fact that it is established that its programming and execution will respond to the criteria of efficiency and economy.

That's why Spanish citizens are obliged to contribute to the support of public expenditure in accordance with their economic capacity within a tax framework of equality and progressivity, public expenditure which should not only be understood as the current expenses of the functioning of the ordinary machinery of the State, but also those public expenses necessary for the effective implementation of the social State under the rule of law advocated by the Constitution, which implies, in short, the normative configuration of a welfare State.

The welfare state of which we speak refers to the state's obligation to provide services in fulfilment of social rights to all the inhabitants of a country. Throughout the second half of the 19th century, in most Western European countries, the so-called "*social question*" — expressed in the political pressure of social movements, especially labour movements — prompted governments to adapt legislation on the social status of the working class and labour, legislation that was progressively modified. Most of these measures were ad hoc and minimal in scope, with characteristics that depended on both, the history and the socio-political circumstances of each country. However, since that date it has been possible to develop a movement towards increasingly comprehensive services, giving way, over time, to the practice in Western European countries of public policies that give an active economic role to the State in order to achieve certain common social objectives (such as social welfare and economic growth).

This consensus is what came to be known as the European model of governance, based not only on the idea that society — through the state — has a responsibility for its citizens, but also that the well-being of each individual and country depends on the well-being of its neighbour, and that this common good, despite differing views and interests, can be achieved through the practice of the politics of consensus, of *“community building”*. The result of all of the above is what is known as the welfare state model.

This means that the respect, guarantee and effective enjoyment of the fundamental rights and freedoms enshrined in the Constitution — arts. 10 to 38 — as well as the guiding principles of social and economic policy — arts. 39 to 52 — must be the fundamental mantra of the development of the State’s public policies, which must be applied to the Spanish Nation — the common and indivisible homeland of all Spaniards and the nationalities and regions that comprise it — based on the principle of solidarity among all of them. This principle of solidarity implicitly includes the recognition of certain historical, social, economic, territorial and demographic singularities which particularly affect the effective enjoyment of fundamental rights and freedoms of the citizens living in each territory and which justify and require from the State to apply specific public, social, economic, investment and development policies, including financial and fiscal policies, which strengthen the Welfare State.

Hence, the Constitution itself recognises in art. 138 that the State guarantees the effective realisation of the principle of solidarity by ensuring the establishment of an adequate and fair economic balance between the different parts of the Spanish territory, without the differences between territories implying, under any circumstances, economic or social privileges. This is why the Constitution expressly states that the State will pay particular attention to the circumstances of the island situation, referring to the Canary Islands, to which it recognises in the Third Additional Provision a different economic and fiscal regime that is subsequently developed in the Fourth Additional Provision of Organic Law 8/1980, of 22 September, on the Financing of the Autonomous Communities (LOFCA), art. 3 of its Statute of Autonomy and art. 349 of the Treaty on the Functioning of the European Union (TFEU).

It is precisely because Europe has safeguarded in the TFEU the possibility for States to apply differentiated public policies in territories with special characteristics, which is why in the sections on aid granted by States (art. 107.3), economic, social and territorial cohesion policy (art. 174) and the general and final provisions of the Treaty (art. 349), the Union allows that in territories characterised by their great remoteness, insularity, small size, serious underemployment, adverse topography and climate, economic dependence on a small area, serious underemployment, adverse topography and climate, economic dependence on a small number of regions or territories with special characteristics. 349), the Union should allow that in areas characterised by remoteness, insularity, small size, serious

underemployment, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, rural areas, areas affected by industrial transition and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island regions, regions, specific measures aimed, in particular, at laying down the conditions for implementing the Treaties in those regions, including common policies, and in particular customs and trade policies, taxation policy, free zones, agricultural and fisheries policies, conditions for the supply of raw materials and essential consumer goods, state aids and conditions of access to structural funds and horizontal Union programmes, should be permitted.

In other words, taking into account the special characteristics and requirements of these regions, provided that the integrity and coherence of the Union's legal system — including the internal market and common policies — is not jeopardised, the design and application of differentiated public financial and fiscal policies is permitted. The development of the above, in Spain, is not only reflected in the differentiated economic and fiscal regime of the Canary Islands mentioned above (insularity, outermost region), It also applies to Ceuta and Melilla as provided for in the Fifth Additional Provision of the LOFCA and the Second Additional Provision of their respective Statutes of Autonomy (serious situation of underemployment), and to certain provinces classified as "c zones" or sparsely populated areas (serious demographic disadvantages), the latter being the focus of this paper.

II. THE DEMOGRAPHIC AND TERRITORIAL CHALLENGE IN SPAIN AS A DESTABILISING FACTOR OF THE WELFARE STATE: SPECIAL REFERENCE TO THE PARTICULARITIES OF CASTILE AND LEON

In previous publications we have had the opportunity to point out that Spain is one of the European countries where rural depopulation is advancing at a dizzying pace. The rural environment comprises 85 % of the Spanish territory, in which around 20 % of the population lives (35 % if peri-urban areas are included), and concentrates a large part of the nation's historical, ecological and cultural heritage. According to Report 01/2018 of the Economic and Social Council (CES) on the rural environment and its social and territorial structuring, the decline in absolute terms of the population in part of rural Spain is a problem of serious connotations, which without the implementation of specific corrective measures will lead us to demographic unviability in rural areas, to the disappearance of small municipalities in the short or medium term and their consequent suppression, which means

an enormous social, economic and environmental loss (RODRÍGUEZ PEÑA, 2020; CES, 2018; SPANISH FEDERATION OF MUNICIPALITIES AND PROVINCES [FEMP], 2017).

In provinces such as Soria, Teruel, Zamora, Avila, Burgos and Salamanca, more than 90 % of all municipalities have fewer than 1,001 inhabitants, a situation that is little better in the provinces of Guadalajara, Palencia, Zaragoza, Valladolid, Segovia, Huesca, Cuenca and La Rioja, where the rate is more than 80 %. Moreover, in some cases, such as the Ibérica — a mountainous territory that brings together 1,632 municipalities in Castile and Leon, Castile-La Mancha, Aragón, the Valencian Community and La Rioja —, more than 76 % of the localities are remote, 40 % of the municipalities are on average over 50 years old, and the average population density is 7.9 inhabitants per km². This area, together with Lapland, are the only territories in the European Union with densities of less than 8 inhabitants per km², which shows that we are not only talking about a problem of population loss but of a real destructuring of the territory (CES, 2018; RED DE ÁREAS ESCASAMENTE POBLADAS DEL SUR DE EUROPA [SSPA], 2018).

If we pay attention to the provinces or municipalities mentioned above, it becomes clear that most of them respond to a common geographical position which is agglutinated in the Autonomous Community of Castile and Leon which, as a territory, faces, firstly, the challenge of 94,219 km² which makes it the largest region in Spain and the third largest in the whole of the European Union, exceeding in extension 17 of the 27 countries which make up the European Union. Following the administrative decentralisation resulting from the 1978 Constitution, these 94,219 km² are administered by the Autonomous Community but maintain, with minimal alterations, the provincial division approved at the beginning of the 19th century. Almost 200 years after that division, the territorial structure of the nine provinces that make up Castile and Leon is made up of 2,248 municipalities, more than a quarter of all Spanish municipalities, 27.7 % of the national total, 89.4 % of which are small, with less than 1,000 inhabitants, and occupying 18.7 % of the Spanish surface area. This is therefore the highest percentage and an absolute figure that more than doubles the number of municipalities in the Community of Castile-La Mancha, the second in terms of the number of municipalities on a national scale².

2 The phenomenon of depopulation can be seen at the municipal level and is eminently rural: of the 8,131 Spanish municipalities, three quarters are losing population. In Spain, there are 6,827 municipalities with no more than 5,000 inhabitants and 5.7 million people, 12 % of the total population. In the last decade, eight out of ten have lost population, so that, overall, these municipalities have 410,000 fewer people than ten years ago. In municipalities with less than 1,000 inhabitants, depopulation has reached 86 % of the almost 5,000 municipalities, which have lost more than 200,000 inhabitants in the last decade. In addition to these municipalities, there are those municipalities which, having exceeded this threshold of 5,000 inhabitants, have a population of up to 20,000 people,

Various studies which analyse and characterise the population of Castile and Leon, including from different perspectives, identify a continuous loss of inhabitants since the middle of the last century, which has been accentuated with the arrival of the new millennium. The consequences of this population decline are manifested in a negative natural growth rate, age destructuring which increases the rate of old age and a weak occupation of the territory as a result of an imbalance in the geographical distribution of the population. As the geographers of Castile and Leon themselves state, the hopes frustrated by the lukewarm contribution of the flows of immigrants and returnees and the continued outflow of young people consolidate in the collective memory a pessimism about the demographic future of Castile and Leon. This Community has lowered its demographic participation rate by one point compared to the national average. It has gone from 6.03 % in 2001 to 5.03 % in 2021. The region has reduced its municipal census by 96,286 inhabitants, which represents a decrease of 3.88 % in these first two decades of the 21st century in a national context of a gain of 15.25 % (HORTELANO MÍNGUEZ, 2022)³.

In demographic terms, one of the relevant factors explaining this fall in the population register of Castile and Leon is the negative natural growth, with more deaths than births, which is not able to compensate for the weak migratory balance. According to data from 2020, Castile and Leon was the Autonomous Community with the worst natural increase in Spain, with a decrease of 22,543 people, as a result of 13,634 births and 36,177 deaths. These figures demonstrate the devastating consequences of the economic crises in the region plagued by an atmosphere of economic uncertainty that makes it impossible for young couples to expand their families. This

are located outside urban areas and all their singular population entities have a population of no more than 5,000 inhabitants, which means that they can be considered rural nuclei. The number of municipalities that meet these criteria, non-urban municipalities with rural nuclei, is 147 municipalities and they concentrate 2.2 % of the population. In this way, "demographic challenge municipalities" are defined as municipalities with up to 5,000 inhabitants and non-urban municipalities with up to 20,000 inhabitants in which all their singular population entities have up to 5,000 inhabitants. Adding both typologies, there are 6,974 municipalities in the national territory that meet the above characteristics and represent 14 % of the total population (MARTÍN JIMÉNEZ *et al*, 2007).

- 3 He also states that even within Castile and Leon "Demographic regression has affected all provinces and, on a local scale, most of the 2,248 municipalities unevenly. The different rhythms translate into a marked provincial and zonal imbalance within the Autonomous Community. The only provinces that have mitigated the population decline in this twenty-year period, despite the losses of the last decade due to the repercussions of the 2008 financial crisis and the incidence of mortality from the Covid-19 pandemic, have been Burgos, Segovia and Valladolid due, in the case of Segovia, to its proximity to Madrid [...] and the high-speed train connection [...] and, in contrast, Burgos and Valladolid due to the weight of the secondary and services sector. At the other extreme, with a sharp decline, are the three western provinces of the region (León, Salamanca and Zamora) and Palencia, which account for 71.48 % of the loss of inhabitants in the region in the last four decades".

circumstance is accompanied by the high rate of ageing which nourishes the birth rate, and thus a disastrous rate of vegetative growth. Hence, the reduction in the number of inhabitants since the beginning of the new millennium is marked by a generalised devitalisation, by the increase in life expectancy related to high health and care standards, and by the departure of young people in search of job offers that only deepen the age imbalance caused by marked ageing.

On the other hand, and from the administrative point of view, it is evident for those of us who live in the Communities and rural territories most prone to the demographic challenge, that in recent years we have witnessed an unprecedented reduction in the provision of public administration services in rural areas, leading to a concentration of more and better public facilities and services in urban areas, a constant that represents (to a large extent) the essence of the Spanish socio-economic development model. This deprivation of essential services in the rural areas of Castile and Leon has ended up affecting issues as relevant as compulsory public education, health, social services, territorial connectivity, among other services which, despite representing first-order needs to guarantee the dignity of those who daily struggle to develop their life project in rural areas and despite having high levels of demand but too dispersed, have seen how the increase in costs has led to an increase in the number of people living in rural areas, have seen how the increase in costs has been juxtaposed with a reduction in public spending which has resulted in the reduction and spatial concentration of basic and essential public services in the large population centres, a policy based on the criteria of efficiency and economy of public spending as set out in art. 31.2 EC, de facto discarding the state's obligation to ensure a welfare state for all the inhabitants of its territory, not only for those located in urban areas (ESPON, 2018).

The European Spatial Planning Observatory Network (ESPON) also identifies limited access to public services and quality housing, low accessibility of the territory in terms of infrastructure and digital services, lack of competitiveness and economic innovation, and poor governance as the major challenges encountered in rural regions. It is recognised that these are, in fact, both the causes and the symptoms of demographic decline, which correlated with each other have triggered a vicious circle of population decline, a *"perfect storm"* for depopulation that has turned Spanish rural territories into true *"interior peripheries"* (DOMÍNGUEZ ÁLVAREZ, 2021c: 47 *et seq.*).

To all this must be added the paradox of the over-regulation of rurality (caused by the expansive tendency that beats in the very essence of Administrative Law) which has meant that in recent years we have witnessed the multiplication of problems derived from the rigid application of an excessive regulatory tangle, which in many cases arises from a total ignorance of the reality that is the object of regulation. On the one hand, this excessive proliferation of regulatory instruments results in a marked interventionism

in the actions of rural communities, largely due to the establishment of an exacerbated regulatory framework (conceived from an urban and capitalist point of view) capable of hindering any initiative aimed at boosting the local economy, making it difficult to satisfy the essential needs of the population of this environment or of those who would like to be part of it, and challenging the traditional uses and customs, the logic and the popular knowledge of the people who populate rural Spain. And, on the other hand, this over-regulation of the rural reality, far from guaranteeing a greater and better organisation of rural societies, has the opposite effect, a marked deregulation resulting from the impossibility of these regulatory texts to achieve the objective that motivated their promulgation, as they do not contemplate the casuistry of rural life⁴.

In line with the above, the European Rural Youth Parliament in the Declaration 2019 identified the most urgent challenges facing young Europeans to make rural areas a better place to undertake their economic and life project. This Declaration aimed at raising awareness of the importance of sustainable rural development, demonstrates that young people are willing to stay in rural areas or move to reside in rural areas, provided that there are public policies, regulatory measures and supportive financial and fiscal systems that create a favourable environment for undertaking a viable economic and life project in rural areas (ERP, 2019).

It seems to be accepted at the European level that rural youth face specific challenges in access to education, employment and housing, as well as fewer opportunities than their urban peers to participate in public and political life (HERNÁNDEZ DÍEZ, 2023)⁵. This points to the need for the implementation of better public policies including financial reforms and certain fiscal incentives aimed at fostering accessibility and quality of essential public services, accessibility to quality housing, diversification of economic activities, infrastructure and digital connectivity and the promotion of a sustainable agriculture and food system in the Spanish territory in general and in Castile and Leon in particular.

In short, what is advocated is the establishment of a *rural proofing* or rural guarantee mechanism, understood as a commitment by governments to review and examine all public policies to try to ensure that they do not harm rural areas, to help promote rural revitalisation, guaranteeing that all

4 On the unequal access of the rural population to essential public services and the need to promote a specific regulation adapted to the vicissitudes of rural Spain (DOMÍNGUEZ ÁLVAREZ, 2021a: 107-129 and 227-250; DOMÍNGUEZ ÁLVAREZ, 2021b: 73-120; DOMÍNGUEZ ÁLVAREZ, 2020: 217-243; DOMÍNGUEZ ÁLVAREZ, 2020b; DOMÍNGUEZ ÁLVAREZ, 2019; DOMÍNGUEZ ÁLVAREZ and BUENAVENTURA CALVO, 2020).

5 The author also refers to the recent positions of the Congress of Local and Regional Authorities of the Council of Europe. GC (2022)42-15 final and rural youth policies in European law.

relevant policies beyond rural development are adjusted to rural needs and realities. A rural guarantee mechanism that is also supported by the serious demographic singularities referred to in the Treaty on the Functioning of the European Union.

III. APPLICATION OF RURAL PROOFING TO CASTILE AND LEON TAX LEGISLATION AND TO SPANISH REGIONAL FINANCING

It is a fact that we are facing a problem that requires urgent action on the part of public administrations to prevent the loss of human resources necessary to promote any kind of social, economic and political development in rural territories, since below a minimum population it is impossible to maintain a dignified social and economically viable activity (CES, 2018: 31 *et seq.*).

It is in the search for these legal solutions that Financial and Tax Law stands out as one of the ways of escaping from this State problem. It is completely understandable to hear phrases of indignation, weariness and frustration from those who have legitimately decided to develop their life project in the rural world, in their villages, clinging to their roots, who, seeing themselves almost abandoned by the State, cry out for a “*different tax burden*” to that of urban areas which do not suffer the deficiencies in the provision of essential public services which are the daily life of the rural world, which experience the absence of basic social and health services, the scarcity of water, the lack of transport connections that condemn them to geographical isolation, or of internet that leads to technological backwardness, or the lack of leisure and access to culture, and the lower endowments of human capital and employment opportunities, which entail an immense social and economic decline (FERNANDO PABLO, 2019)⁶.

However, considering the establishment of an “indiscriminate” “positive fiscal discrimination” in favour of the Spanish rural environment, as a panacea against depopulation (SSPA, 2019), does not mean *per se* the achievement of the equality deserved and longed for by the rural environment. In addition to the premises set out in the first section of this paper, it should be noted that we must never lose sight of the fact that taxes are instruments in the hands

6 Where the author points out that “[...] that is what it is about: the perspective of people who do not want to give up their roots, but are forced (by an almost perfect system of semi-feudal dyes of income extraction) to subordinate their life project by the lack of services (transport, water, functional access to internet..., leisure and culture, education and health) or by the bureaucratic asphyxiation of distant and unfathomable covachuelas to any business initiative, to decisions in which positive legal discrimination in favour of the rural environment is not contemplated”.

of the State to obtain the necessary resources to sustain public expenditure (MARTÍN QUERALT⁷ *et al*, 2018: 67 and following; ESEVERRI MARTÍNEZ⁸, 2020: 84 and following), as established in art. 2.1 of the Ley General Tributaria (LGT)⁹ and the jurisprudence of the Constitutional Court (TC)¹⁰, these taxes are conditioned by the constitutional principles of tax justice enshrined in art. 31 CE — and reproduced in art. 3.1 LGT —.

This is where the Constitution imposes the general duty to contribute to the support of public expenditure through a tax system which, taking into account the economic capacity of each taxpayer, achieves — as a whole — the higher value of justice and is inspired by the principles of equality and progressiveness, with the absolute limit of its non-confiscatory scope. This implies that in a society such as ours, in which the principle of equality of citizens before the law is already an inalienable conquest, this is not only postulated with respect to the enjoyment of rights but also the fulfilment of obligations, and when it is intertwined with the principle of generality of taxation, it means that we are all called upon to contribute to the raising of public burdens without privileged situations being able to arise when

7 In their doctrinal analysis of the concept of taxation, the authors point out that one of the most significant features of this concept is that “Taxation is today the source of the most typical exponent of public law revenue”.

8 Those who add that “taxes are resources consisting of pecuniary benefits..., with the primary purpose of obtaining the revenue necessary to sustain public expenditure. [...] in effect, as economic resources, taxes form part of the assets or constituent elements of the Public Treasury together with revenue from public debt and property income [...] they are] public revenue under public law. Taxes are levied by a public administration, which confers on them the character of public revenue, the proceeds of which cannot be used to enrich anyone in particular, but to contribute to defraying the expenses inherent to the community”.

9 Art. 2.1 of Law 58/2003 of 17 December 2003 on General Taxation, published in the Official State Gazette No. 302 of 18 December 2003, which states that “Taxes are public revenues consisting of monetary benefits demanded by a public administration as a consequence of the occurrence of the event to which the law links the duty to contribute, with the primary purpose of obtaining the necessary revenue to support public expenditure”.

10 STC 276/2000, of 16 December, FJ 4, where this high Court illustrates that “taxation, from a strictly constitutional perspective, constitutes a coercive economic benefit which is paid, directly or indirectly, to public bodies with the aim of contributing to the support of public expenditure (SSTC 182/1997, of 16 October, FJ 15 and 233/199, of 16 December, FJ 18), to public bodies with the aim of contributing to the support of public expenditure (SSTC 182/1997, 28 October, FJ 15 and 233/199, 16 December, FJ 18), and levies a tax on an assumption of fact or “taxable event” (Article 28 LGT) revealing economic capacity (Article 31.1 EC) fixed by Law (article 133.1 E)”;

in the same sense STC 193/2004, of 4 November and more recently STC 53/2014, of 10 April, where the TC literally states the following: “Consequently, it is inherent to the constitutional concept of taxation, which requires that in its taxable event there is a source of economic capacity, that it always also pursues a revenue-raising purpose”.

applying the law¹¹. The principle of generality combats the establishment of tax benefits that can be considered discriminatory, which occurs when two identical factual situations are legally treated differently and when such inequality is not objectively and reasonably justified and is therefore disproportionate (MARTÍN QUERALT *et al.*, 2018: 103 *et seq.*)¹².

However, having established these general bases, which we cannot lose sight of, it is necessary to introduce certain nuances. Our legal system, aimed at achieving the welfare state, as mentioned above, allows the tax system to be used for extra-fiscal purposes, although this is not expressly recognised by the Constitution, it is provided for in art. 2.1 LGT¹³, allowing taxes to be used as instruments of economic policy, if and only if they are aimed at achieving the principles and purposes contained in the Constitution. It is therefore recognised that taxes can also be aimed at satisfying other public objectives with constitutional protection and relevance and serve purposes that are not strictly revenue-raising, recognising their extra-fiscal nature beyond their primary purpose, which is to enable the financing of state public spending¹⁴ — understood in a broad sense —.

-
- 11 Where the authors, with regard to the principle of generality of taxation and the principle of equality, state that “The constitutional principle of generality constitutes a requirement directly addressed to the Legislator to comply with a requirement: to classify as a taxable event any act, fact or legal transaction that is indicative of economic capacity [...] thus combating the granting of radical exemptions that have no *raison d’être*”.
 - 12 In this regard, it is necessary to refer to the jurisprudence of the TC, which highlights the connection of the principle of generality with other constitutional principles, and especially with the principle of equality, thus *vid.* STC 96/2002, 25 April 2002, FJ 7, where it states that “the expression *todos* absorbs the duty of any person, natural or legal, national or foreign, resident or non-resident, who through their economic relations with or from our territory (principle of territoriality) externalise manifestations of economic capacity, which also makes them, in principle, the holders of the obligation to contribute in accordance with the tax system. In the end, it is a question of the equality of all before a constitutional requirement — the duty to contribute or solidarity in the levying of public burdens — which implies, on the one hand, a direct demand on the legislator, obliged to seek wealth wherever it is found, and, on the other hand, the prohibition on granting discriminatory tax privileges, that is, tax benefits which are unjustified from a constitutional point of view, as they constitute a breach of the generic duty to contribute to the support of State expenditure”. In the same sense, see SSTC 193/2004, of 4 November, and 10/2005, of 20 January.
 - 13 Art. 2.1 LGT, which states that “Taxes, in addition to being a means of obtaining the resources necessary to sustain public expenditure, may serve as instruments of general economic policy and contribute to the realisation of the principles and purposes contained in the Constitution”.
 - 14 It is important to bring to light five dissenting opinions made to STC 53/2014, of 10 April, where TC Magistrates, with regard to taxes without a revenue-raising purpose, pointed out that “extra-fiscal purposes cannot absolutely exclude revenue-raising purposes, which are essential in the constitutional conception of the power to establish taxes in accordance with the Constitutional Court’s own judgments 53/2013, FJ 6.c); 19/2012, 15 February, FJ 3.a); 37/1987, 26 March, FJ 13; and 221/1992, 11 December, FJ 4”.

We see that the creation of taxes for extra-fiscal purposes and/or the establishment of tax benefits — even when this implies a reduction in public revenue — can be materially legitimate when, despite favouring people with sufficient economic capacity to bear the tax burden, the legislator exempts them from paying taxes in order to satisfy certain constitutionally covered purposes (MARTÍN QUERALT¹⁵ *et al.*, 2018: 105-106; ESEVERRI MARTÍNEZ, 2020: 157-160). In the present case, and referring to the guiding principles of social and economic policy set out in Chapter III of Title I of the Constitution, the justification for the non-abusive use (GUERVÓS MAÍLLO, 2005: 321-322)¹⁶ of tax benefits as a complementary mechanism in the fight against depopulation of rural areas is to be found in Articles 41.1 and 53 EC, which link the actions of the public authorities to promoting favourable conditions for the social and economic progress of all Spaniards and a more equitable distribution of regional and personal income, with the aim not only of retaining the existing population in rural areas — contributing to improving their well-being and quality of life, and allowing them access to essential public services on equal terms with the rest of the residents of Spanish territory — but also helping to fix the population and economic activity in depopulated territories. This justification is also echoed in the articles of the TFEU, which recognises the demographic challenge as a territorial singularity capable of affecting the social and economic development of population groups deserving of the application of differentiated financial and fiscal policies.

15 The authors state that “The tax system is increasingly moving in an economic context that obliges the State to use taxation as a means of economic policy. An economic policy in which the State has assumed a decisive leading role and which has produced important mutations in the general legal system, ranging from the overcoming of classic Administrative Law, conceived on the basis of the police State [...] In conclusion, the granting of tax benefits, which will only be enjoyed by a part of those who are subject to the tax in question, may be materially justified — and constitutionally legitimate — provided that it is a means of achieving objectives which enjoy constitutional backing”. On the recognition of the constitutional compatibility of tax benefits, *see*. Rulings of the Constitutional Court (SSTC) 37/1987, 26 March; 197/1992, 19 November; 186/1993, 7 June; 134/1996, 22 July; 179/2006, 13 June; 10/2005, 20 January; 19/2012, 15 February; and 196/2012, 31 October.

16 With regard to the use or abuse of tax incentives, the author points out that “The search for a fair tax system in which “all” citizens contribute to sustaining public expenditure clashes with tax benefits. What benefits some is detrimental to others, and what they do not pay is returned to the pockets of others. For this reason, this technique should be used with greater caution to prevent it from being abused by those who are more clever or who have more financial means to take advantage of its benefits. In favour of this technique is its suitability for the promotion of certain activities and sectors that at certain times are considered necessary to carry out certain economic or social policies. But despite this, not every tax benefit can be accepted uncritically. The end does not always justify the means, sometimes they are not the most appropriate, on other occasions they favour the interests of pressure groups”.

The TC has ruled in this respect, recognising that Personal Income Tax (IRPF), for example, is a suitable instrument for achieving the objectives of income redistribution and solidarity that the Constitution advocates, and which give content to the social and democratic State of Law proclaimed in art. 1.1 EC (STC 40/2000, 17 February). Thus we see how the approval of tax benefits in rural areas — for the purchase or rental of a primary residence, or for the undertaking of economic activity and/or job creation, or for childbirth and childcare services — in the form of deductions from the regional tax liability based on criteria of low income and age, has been the path followed by the regional legislator in recent years¹⁷, and in our opinion, ideal, although there is room for improvement, mainly with regard to the amount of the deductions¹⁸.

It is a fact that not all rural communities have the demographic problems and challenges faced by Castile and Leon. The above-mentioned data clearly demonstrate, with little room for error, that the demographic challenge facing Castile-Leon or that which Asturias, Extremadura, Galicia, Aragon, Castile-La Mancha, Cantabria or La Rioja (mentioned in order of population loss) is not the same as that faced by other Autonomous Communities such as the Valencian Community, Madrid or Andalusia, to give just one example. Some of them, as is the case of the Valencian Community, have made important regulatory efforts in terms of depopulation (Law 5/2023, of 13 April, comprehensive measures against depopulation and for territorial equity in the Valencian Community).

Although this is not the place to deny that these territories may present demographic challenges, it is only fair to point out that these should be understood differently from the risks and challenges faced by regions such as Castile and Leon. Hence, in the absence of its own specific regulations to address the demographic challenge, or of a Strategy for the demographic challenge, making use of the powers granted by art. 46 of Law 22/2009 regulating the system for the transfer of taxes from the State to the Autonomous Regions under the common regime, it has configured a moderate tax policy in the tax sphere, with low taxes oriented towards the

17 We will not go into this issue in depth in this chapter as it has already been brilliantly developed and analysed in this work by my teacher LAGO MONTERO, J.M., to whose chapter I refer.

18 One of the last and very poor regional deductions approved in our legal system is the one approved by the Community of Asturias, which in art. 37 of the Law of the Principality 8/2019, of 30 December, on General Budgets for 2020, introduced an amendment to the Consolidated Text of the legal provisions of the Principality of Asturias on taxes ceded by the State, approved by Legislative Decree 2/2014, of 22 October, creating three new deductions on the full amount of the regional personal income tax. Specifically, new tax benefits are defined for births after the second child (100 euros), for taxpayers who start an economic activity (1000 euros) and for transport and mobility expenses (50 euros) for taxpayers residing in rural areas at risk of depopulation.

demographic challenge. In particular, it has established certain tax benefits in such important taxes as Personal Income Tax (IRPF), Inheritance and Gift Tax (ISyD) and Transfer Tax and Stamp Duty (ITPyAJD), mainly aimed at protecting the economy of young and low-income taxpayers, particularly more intense in rural areas.

1. TAX BENEFITS IN PERSONAL INCOME TAX TO ENCOURAGE THE SETTLEMENT OF YOUNG PEOPLE IN RURAL AREAS

In this section we must remember the words of Professor LAGO MONTERO (2020: 68) when he reminds us that “only increasing public budgets for the provision of essential public services — health, education, social services, nurseries, old people’s homes — and basic infrastructures — transport, housing, internet, environment — can help to improve living conditions in the rural world. Without differentiated budgetary allocations aimed at achieving these objectives, it is very difficult to reverse the trend towards deterioration that brings with it the progressive abandonment of residence in rural areas in favour of a compulsive flight to the cities.”

Indeed, to propose the establishment of an excessive system of positive tax discrimination in favour of rural areas as a solution to all the ills afflicting depopulated rural areas, without knowing the convoluted twists and turns that characterise the Spanish tax system, in addition to presenting numerous legal (RODRÍGUEZ PEÑA, 2020: 316) and economic¹⁹ that significantly question its viability, is, in itself, a risky task, which hides hints of recklessness as it may do a languid favour to the noble task of revitalising depopulated Spain²⁰.

19 It is necessary to refer to the report published by the SSPA (2019: 51-58) where the authors of this proposal calculate what LAGO MONTERO, IGLESIAS CARIDAD and RODRÍGUEZ PEÑA, have described as the “enormous” fiscal cost of reducing by 50 % the tax rate on the full amount of a tax as important as personal income tax. According to the SSPA’s own calculations, this fiscal cost amounts to 252.1 million euros per year, and this only in the three provinces analysed in the report (Soria, Cuenca and Teruel), leaving out of the calculation the economic impact of the rest of the reduction measures that they suggest adopting in other taxes. We can therefore see that the implementation of this type of tax benefits represents a very high cost for the State Budget which requires responsible reasoning when considering the effective application of this type of proposals, especially because they contemplate a spatial scope of implementation that goes beyond the geography of Soria, Cuenca and Teruel, reaching provinces such as Zamora, Burgos, Avila, Salamanca, Palencia, Segovia, Valladolid, Zaragoza, Guadalajara, Huesca, León, La Rioja, Lugo and Orense, to name but a few.

20 It is illustrative to recall what we have been defending regarding the minimal use of the tax system for extra-fiscal purposes as a flag in the fight against the depopulation of the Spanish countryside, in this sense we point out that “... without the application of reasoned and adequate criteria of need, age and income to justify the implementation

Therefore, before beginning the development of these headings, we must not lose sight of the fact that taxes are instruments used by the State apparatus to obtain the necessary resources to sustain public expenditure, as established in art. 2.1 of the General Tax Law (LGT)²¹ and the case law of the Constitutional Court²². It is even more important to remember that these taxes are conditioned by the constitutional principles of tax justice enshrined in art. 31 CE²³ — and reproduced in art. 3.1 LGT —. This is where the Constitution imposes the general duty to contribute to the support of public expenditure through a tax system which, taking into account the economic capacity of each taxpayer, achieves the higher value of justice and is inspired by the principles of equality and progressivity, with the absolute limit of its non-confiscatory scope.

However, these approaches do not in any way prevent the establishment of specific measures to combat depopulation in financial and tax policies through the inclusion of extra-fiscal taxation objectives, as long as they are acted upon with responsibility and knowledge (IGLESIAS CARIDAD, 2020: 115). While it is true that our Magna Carta does not expressly contemplate the use

of tax benefits in favour of demographic regeneration aimed at young people, women and young families, we could encourage the creation of internal tax havens which, far from attracting and fixing population or economic activity in rural areas, would instead generate a tide of fictitious transfers of residence by those who cunningly wish to take advantage of the tax benefits. In addition, there would be a consequent reduction in public revenue in the coffers of the State in general and of local administrations in particular — the latter being very undernourished — and possible penalties for State Aid at the hands of the institutions of the European Union. We would thus be moving away from the primary objective we are pursuing, which should be none other than to encourage the real return of young people to rural areas, the revitalisation of their economy, the maintenance and improvement of essential public services and the quality of life of rural residents" (RODRÍGUEZ PEÑA, 2019: 306).

- 21 Article 2.1 of Law 58/2003, of 17 December, General Taxation, provides that "[t]axes are public revenues consisting of pecuniary benefits demanded by a public administration as a consequence of the realisation of the event to which the law links the duty to contribute, with the primary purpose of obtaining the necessary revenue to support public expenditure".
- 22 STC 276/2000, of 16 December, where the High Court established that "taxation, from a strictly constitutional perspective, constitutes a coercive economic benefit that is paid, directly or indirectly, to public bodies with the aim of contributing to the support of public expenditure (SSTC 182/1997, of 28 October, FJ 15 and 233/199, of 16 December, FJ 18), and is levied on an assumption of fact or "taxable event" (Article 28 LGT) revealing economic capacity (Article 31.1 EC) fixed by Law (article 133.1 E)"; in the same sense STC 193/2004, of 4 November and more recently STC 53/2014, of 10 April, where the TC literally states the following: "Consequently, it is inherent to the constitutional concept of taxation, which requires that in its taxable event there is a source of economic capacity, that it always also pursues a revenue-raising purpose".
- 23 According to the text of Art. 31.1 EC, "[e]veryone shall contribute to the support of public expenditure in accordance with their economic capacity by means of a fair tax system inspired by the principles of equality and progressiveness which, in no case, shall be confiscatory in scope".

of the tax system for extra-fiscal purposes, our legal system does provide for this formula in art. 2.1 LGT²⁴, allowing the use of taxes as instruments of economic policy, if and only if they are aimed at achieving the principles and purposes contained in the Constitution. It is therefore recognised that taxes can also be aimed at satisfying other public objectives with constitutional protection and relevance and serve purposes that are not strictly tax collection purposes, recognising their extra-fiscal nature beyond their primary purpose, which is to enable the financing of state public spending²⁵ — understood in a broad sense (RODRÍGUEZ PEÑA, 2020: 307) —.

This means that the creation of taxes for extra-fiscal purposes and/or the establishment of tax benefits — even if they imply a reduction in public revenue — can be materially legitimate when, despite favouring people with sufficient economic capacity to bear the tax burden, the legislator exempts them from paying taxes in order to satisfy certain purposes covered by the Constitution²⁶. In the present case, and referring to the guiding principles of social and economic policy set out in Chapter III of Title I of the Constitution, the justification for the non-abusive use²⁷ of tax benefits as a complementary

24 Art. 2.1 LGT, which states that “Taxes, in addition to being a means of obtaining the resources necessary to sustain public expenditure, may serve as instruments of general economic policy and contribute to the realisation of the principles and purposes contained in the Constitution”.

25 It is important to bring to light five dissenting opinions made to STC 53/2014, of 10 April, where TC Magistrates, with regard to taxes without a revenue-raising purpose, pointed out that “extra-fiscal purposes cannot absolutely exclude revenue-raising purposes, which are essential in the constitutional conception of the power to establish taxes in accordance with the Constitutional Court’s own judgments 53/2013, FJ 6.c); 19/2012, 15 February, FJ 3.a); 37/1987, 26 March, FJ 13; and 221/1992, 11 December, FJ 4”.

26 In this regard, it should be recalled that the majority doctrine states that “[t]he tax system is increasingly moving in an economic context that obliges the State to use taxation as a means of economic policy. An economic policy in which the State has assumed a decisive leading role and which has produced important mutations in the general legal system, ranging from the overcoming of classic administrative law, conceived on the basis of the police State (...). In conclusion, the granting of tax benefits, enjoyed by only some of those who are subject to the tax in question, may be materially justified — and constitutionally legitimate — provided that it is a means of achieving objectives which enjoy constitutional backing”.

27 In this sense, Professor GUERVÓS MAÍLLO (2005: 321-322) points out, in relation to the use or abuse of tax incentives, that “[t]he search for a fair tax system in which “all” citizens contribute to sustaining public expenditure clashes with tax benefits. What benefits some is detrimental to others, and what they do not pay is passed on to others. For this reason, this technique should be used with greater caution to prevent its abuse by the more astute or by those who have more economic means to take advantage of its benefits. In favour of this technique is its suitability for the promotion of certain activities and sectors that at certain times are considered necessary to carry out certain economic or social policies. But despite this, not every tax benefit can be accepted uncritically. The end does not always justify the means, sometimes they are not the most appropriate, on other occasions they favour the interests of pressure groups”.

mechanism in the fight against depopulation of rural areas is to be found in Articles 41.1 and 53 EC which link the actions of the public authorities to promoting favourable conditions for the social and economic progress of all Spaniards and a more equitable distribution of regional and personal income, with the aim not only of retaining the existing population in rural areas — contributing to improving their well-being and quality of life, and allowing them access to essential public services on an equal footing with the rest of the residents of Spanish territory — but also contributing to fixing young people and economic activity in depopulated territories (RODRÍGUEZ PEÑA, 2020: 308).

It is in development of the above, and making use of the powers granted by art. 46 of Law 22/2009, which regulates the system of transfer of taxes to the Autonomous Communities of the common system, as we have already pointed out, that the Spanish autonomous legislator has configured certain tax benefits in personal income tax in the form of deductions in the full regional tax liability, mainly aimed at protecting the economy of young and low-income taxpayers. The Constitutional Court has recognised that personal income tax, for example, is a suitable instrument for achieving the objectives of income redistribution and solidarity that the Constitution advocates, and which give substance to the social and democratic rule of law proclaimed in art. 1.1 EC (STC 40/2000, 17 February). Similarly, tax doctrine recognises its unquestionable role as a vehicle for implementing the principles of tax justice established in art. 31.1 EC, provided that the tax benefits articulated through it are aimed at the “situations most worthy of protection” (GARCÍA BERRO, 2022: 79-122). Thus, tax incentives are, in our opinion, a suitable and complementary instrument in the face of the demographic challenge, protecting and allowing young and low-income taxpayers settled or wishing to settle in rural areas to better face some of the obstacles they face when residing in depopulated rural communities, without detriment to strengthening the harmonisation and the amount of these deductions, many of which have a very weak economic impact.

1.1. Deductions in the regional tranche aimed at facilitating access to permanent housing for young people in rural areas of Castile-Leon

In Spain, it is the Autonomous Communities who have exclusive competence for spatial planning under art. 148.1.3 EC, which is crucial for tackling the problems of internal demographic imbalances and lesser social and economic development in some of their areas. However, most of them have limited themselves fundamentally to developing the more technical functions — urban planning, housing, transport — and their aspects of day-to-day management, without integrating them into strategic plans with other more far-reaching measures (PINILLA, 2017).

The Highlands and Islands of Scotland, on the other hand, base their strategy against depopulation on a holistic approach, where housing policy takes on significant importance. Thus, it aims to correct the failures and imbalances in the rural market, guaranteeing access to affordable, quality housing that will ultimately prove to be a competitive factor in maintaining the population and attracting new settlers to rural areas, especially young people.

In order to achieve the desired balance, art. 2.2.f of Law 45/2007, for the sustainable development of rural areas (LDRS)²⁸ establishes that one of the objectives of sustainable rural development policies is to facilitate access to housing in rural areas. Thus, article 33 sets out the measures to be implemented by the public administration in terms of urban planning and housing, indicating that public protection regimes should be adapted to the singularities of rural areas, paying specific attention to young people, women and people with disabilities.

Within this framework, the Castilian legislator has developed deductions in the regional personal income tax for the acquisition, investment, renovation or rental of the main residence, based on low-income criteria and/or the maximum value of the home, in order to help stimulate the real estate market, all in the absence of a comparable measure in the state section of personal income tax.

The tax legislator in Castile and Leon has decided to include among its autonomous deductions four deductions dedicated to housing and aimed at the acquisition or rehabilitation of the habitual residence in rural areas, which are articulated in art. 7 of Legislative Decree 1/2013 of 12 September, approving the revised text of the legal provisions of the Community of Castile and Leon regarding its own and assigned taxes.

Both the renting of primary residences and their acquisition and/or rehabilitation in rural areas are subject to deductions in other Autonomous Communities such as Extremadura and La Rioja, but unlike these, Castile and Leon incorporates in a novel way the rehabilitation of these second or third homes, which fathers and mothers have inherited from grandparents or even great-uncles and uncles, and which abound in all the villages of Castile and Leon, are closed, unfit and therefore inaccessible for renting.

28 This law has established general legal guidelines in Spain to be implemented by public administrations in order to pursue the desired sustainable rural development. These are specified in the establishment of specific support programmes for local rural development initiatives, preferably for priority rural areas with a high degree of dispersion and depopulation, with priority beneficiaries being women, young people, people with disabilities, agricultural professionals, cooperatives and agricultural associations. Either through a regulatory development adapted to the reality and needs of the rural environment, through direct public investment, or through the establishment of administrative, professional or economic incentives, including tax incentives.

The first deduction is regulated in section 1 of art. 1 of Legislative Decree 1/2013, with a deduction percentage of 15 % applied to the acquisition or refurbishment of the taxpayer's main residence under the age of 36 when the home has a value of less than 150,000 euros, is their first home and is located in rural areas with no more than 10,000 inhabitants, in general, or 3,000 inhabitants, if it is less than 30 kilometres from the capital of the province, with a maximum deduction base of 10,000 euros per year, including the amounts paid for the acquisition or refurbishment of the home 3,000 inhabitants, if it is less than 30 kilometres from the capital of the province, with a maximum deduction base of 10,000 euros per year, including the amounts paid for the purchase or renovation of the home, the expenses incurred which have been paid by the purchaser and, in the case of third-party financing, the amortisation, interest, the cost of the instruments for covering the risk of the variable interest rate of the mortgage loans.

The second deduction is regulated in section 2 of art. 7 of Legislative Decree 1/2013, with a deduction percentage of 15 % applied to housing rehabilitation actions, whether or not they are located in rural areas. The investments must be destined to the installation of solar panels, any improvement in the thermal installation systems that increase their energy efficiency or the use of renewable energies, the improvement of the supply installations and the installation of mechanisms that favour water saving, as well as the creation of separate sanitation networks in the building that favour the reuse of grey water in the building itself and reduce the volume of discharge into the public sewage system, and the adaptation works and installations necessary for accessibility and sensory communication to facilitate the dignified and adequate development of one or more occupants of the dwelling who are disabled, provided that these are the taxpayer or their spouse or a relative, in direct or collateral line, by blood or by affinity, up to and including the third degree. The base for this deduction has a maximum limit of 20.000 euros.

The third deduction is regulated in section 3 of article 7 of Legislative Decree 1/2013, with a deduction percentage of 15 % when the rehabilitation of second or third homes is rented to persons other than the spouse, ascendants, descendants or relatives up to the third degree of kinship of the owner of the home. Although this deduction is not specifically aimed at young people, it does have a direct impact on them by stimulating the rural real estate market and also regulating its price, since in order to benefit from the deduction it is established that the rent cannot exceed 300 euros per month and that the legal rental deposit must be deposited in accordance with the applicable regulations.

And the last deduction is regulated in section 4 of art. 7 of Legislative Decree 1/2013, and is aimed at the taxpayer/tenant for renting the main residence when the latter is under 36 years of age. However, the percentage will be 25 % with a limit of 612 euros when the main residence is located in a municipality or in a smaller local entity of the Community that does not

exceed 10,000 inhabitants, in general, or 3,000 inhabitants, if it is less than 30 kilometres from the capital of the province.

1.2. Deductions in the regional tax bracket aimed at promoting the birth rate in rural areas and facilitating the reconciliation of work and family life in young families

As we have already mentioned, Europe recognises that “sparsely populated areas” and “regions with low population density”, which are mostly identified with rural areas, face a series of serious problems for both their economies and their social structures. The most important of these is the decline in the number of young adults residing in rural areas and the consequent gradual ageing of the rest of their population structure. An ageing population brings with it a declining birth rate which generates an imbalance in age and gender, and an increase in the need for the provision of social and health care services, not only because of the age range susceptible to care but also because of the dispersion of the population centres. This entails an increase in the costs of providing essential public services by the public administration (CES, 2016).

It is due to the above that the LDRS seeks to improve the socio-economic situation of the population in rural areas and access to sufficient and quality public services, paying particular attention to women and young people, sectors of the population on which the increase in the birth rate and the dynamisation and diversification of the rural economy, or, in other words, the future of the rural environment, largely depend. All of this explains the need to articulate public policies to promote the birth rate and encourage work-life balance in rural areas, which are once again proliferating rapidly and with great variety in regional legislation but not in state legislation.

Castile and Leon, in art. 4. of Legislative Decree 1/2013 sets up a deduction for birth or adoption. In section 1, it establishes a general deduction for each child born or adopted for each child born or adopted during the tax period that generates the right to the application of the minimum amount per descendant, generally 1,010 euros for the first child, 1,475 euros for the second child, and 2,351 euros for the third or successive children. Castile and Leon has the particularity that in section 2 of the same article it intensifies the general deduction for those births or adoptions occurring in rural areas. Thus it establishes that taxpayers resident in municipalities with less than 5,000 inhabitants may deduct the following amounts for each child born or adopted during the tax period that generates the right to the application of the minimum per descendant: 1,420 euros for the first child, 2,070 euros for the second child, and 3,300 euros for the third child. This represents an increase of approximately 40 % in each of the amounts of the general deduction,

which can be made compatible with other percentages of deduction in the case of multiple adoptions or births, births or adoptions with disabilities and adoption expenses.

This group of deductions is also complemented by the deduction established in art. 5 of Legislative Decree 1/2013 for the care of minor children applicable to taxpayers who, for reasons of work, whether employed or self-employed, have to leave their minor children in the care of a domestic employee or in nurseries or schools. Thus, it allows the deduction of 30 % of the amounts paid to the person employed in the household, with a maximum limit of 322 euros and 100 % of the expenses paid for pre-registration and enrolment, as well as the costs of attendance during general and extended hours and food expenses, provided that they have been incurred for full months, in schools, centres and nurseries in the Community of Castile and Leon, registered in the register of centres for the reconciliation of work and family life, with a maximum limit of 1,320 euros. This deduction aims to facilitate the reconciliation of work and family life, which is crucial for young people in rural areas who are thinking of starting a family, without this meaning that one of the members of the couple (which almost always falls to the woman) has to give up their career aspirations.

1.3. Income tax deferral of aid for the incorporation of young farmers and/or stockbreeders

The Community of Castile and Leon has declared that one of the priorities for action in the Rural Development Programme to 2025 is to improve the competitiveness of agricultural holdings by creating jobs with a special focus on young farmers, modernisation of agricultural infrastructure and irrigation. In order to achieve this objective, in addition to the measures that give continuity to the rural development policy that has been carried out by the Junta of Castile and Leon, new actions are incorporated such as investments in new irrigation systems, greater support for the incorporation of young people into the agricultural sector, training, innovation and the application of new environmentally sustainable agricultural practices, which will improve the competitiveness of our farms. In this context, a series of aids co-financed by the EAFRD, the General State Administration and the Autonomous Community are being developed in Castile and Leon.

Despite the fact that these direct aids managed by Castile and Leon are not in the nature of regional deductions that we have been analysing in this section, we consider it necessary to analyse, albeit briefly, the new state-level regulation introduced by Law 8/2020 of 16 December, adopting certain urgent measures in the area of agriculture and food, due to the benefits it entails for young farmers in Castile and Leon.

The confluence of various factors, such as the sustained fall in prices received by farmers; the increased frequency of damage caused by extreme weather events — particularly in recent months when they have occurred almost continuously; trade tensions; the volatility of commodity prices; the increase in the costs of agricultural and livestock inputs, such as energy; the growing momentum of production requirements; and the lack of balance in the setting of agricultural and livestock input costs, such as energy; the growing momentum of production requirements; and the lack of balance in the setting of prices; the volatility of commodity prices; the increase in the costs of agricultural and livestock inputs, such as energy; the growing momentum of production requirements; and the lack of balance in pricing in the food chain have led to an unprecedented crisis situation in the Spanish agricultural sector. This has forced the public authorities to intervene urgently with the approval of Law 8/2020, of 16 December, adopting certain measures in the field of agriculture and food. For the matter that concerns us, which is none other than Financial and Tax Law, the approval of Law 8/2020 is important insofar as it includes a modification that affects the taxation of these activities, specifically by modifying Law 35/2006, of 28 November, on Personal Income Tax (LIRPF).

As the legislator rightly points out in the Preamble to Law 8/2020, there is widespread concern in the sector about the current tax treatment of aid for the incorporation of young people into agricultural and livestock farming activity — one of the essential lines of the policy of renewal of the primary sector and one of the axes on which the new Common Agricultural Policy (CAP) will be based — with regard to its temporary imputation in the personal income tax period. The change in the tax classification of subsidies for the incorporation of young farmers derived from the National Framework for Rural Development (MNDR) promoted by the Ministry of Agriculture, Fisheries and Food has made it difficult for a large number of farmers and stockbreeders to access these subsidies, causing a disincentive to these essential measures, on the one hand, in the process of generational renewal of the agricultural and stockbreeding production chain and, on the other, to combat the depopulation of the Spanish countryside.

While the 2007-2013 NRDF provided for aid for the incorporation of young farmers as measures aimed at investments and installation costs, the 2014-2020 NRDF makes it directly conditional on the development of a business plan. Consequently, for tax purposes, they have gone from being considered — capital subsidies — to — current subsidies — as income support, which obliges the recipient of the aid to have to pay the entire tax in the first tax period, without the possibility of paying in instalments. Consequently, in many cases the situation led to the payment of personal income tax on aid not yet received by the taxpayer.

Consequently, the personal income tax regulations are adapted to allow in this case, as is already the case in other similar cases, the tax to be paid

in instalments over several tax years. Thus, Article 14(1)(b) of the LIRPF introduces the general rule of temporary imputation for the income and expenses that determine the income to be included in the tax base, now establishing that public aid for the first installation of young farmers provided for in the MNDR may be imputed in quarters, in the tax period in which it is obtained and in the following three. Similarly, letter c) is modified and letter l) is added to section 2 of article 14 LIRPF which regulates the special rules to be applied to determine the temporary imputation of capital gains derived from public aid which in the general case are imputed to the tax period in which they are received.

Now, in the case of public aid for the first installation of young farmers provided for in the NRDF which is intended for the acquisition of a stake in the capital of agricultural companies, it can be allocated in quarters, in the tax period in which it is obtained and in the following three periods.

This reform is of great importance for the taxation of the agricultural and livestock sector and undoubtedly responds to one of its traditional demands, which advocates the incorporation of young people into the primary sector. Its effects are very relevant, however, it has a zero cost for the public coffers as it allows the payment of the tax to be deferred over the years of execution of the aid, without reducing the final volume of public revenue, but adjusting it to the time frame in which the aid is received (RODRÍGUEZ PEÑA, 2021, 332-333).

2. TAX BENEFITS IN ISyD AND THEIR IMPACT ON AGRICULTURAL FARMS

Although the latest figures show that the average area per farm in Castile and Leon has increased from 56.58 hectares in 2009 to 63.02 hectares in 2020, the largest average size in Spain, in reality more than 10,000 farms have been lost in eleven years.

The number of farms with land registered in Castile and Leon fell by 10.9 % between 2009 and 2020, from 95,248 to 84,865, as shown in the final data of the 2020 Agrarian Census published by the National Statistics Institute (INE). In Spain as a whole, the number of farms fell by 7.6 % in the same period, to 914,871.

This census also shows that the total area occupied by agricultural holdings in the Community decreased by 21 % between 2009 and 2020, from 6.68 million hectares to 5.28 million hectares.

As for the average size of farms, in 2020 Castile and Leon continues to be the region of Spain with the largest average area, with 63.02 hectares, 11.4 % more than in 2009, when the average size was 56.6 hectares and well above the volume recorded in the country as a whole, where it increased by 7.4 % in this period to 26.4 hectares. Hence, in the ISyD, Castile and

Leon has for years been incorporating into state legislation reductions in the rates of these taxes for the acquisition of housing, business and agricultural exploitation, which together help to maintain the settlement of young people in rural areas and economic activity if it is there where it is located.

Without entering into the doctrinal discussion on the weakening and emptying of ISy D by the Autonomous Communities and the suitability of its harmonisation by the State, Castile and Leon, in its line of taxation oriented towards the demographic challenge, has improved the state reductions mainly for young people under 21 or under 36, as the case may be, for the acquisition of agricultural holdings and for the constitution or expansion of a company or family business that directly benefits young people and the generational replacement in the economic activity of the rural environment.

2.1. Inheritance tax

With regard to "*mortis causa*" acquisitions of descendants and adoptees, spouses, ascendants and adoptive parents, art. 13 of Legislative Decree 1/2013 provides for a reduction of 60,000 euros in the case of descendants and adoptees, spouses, ascendants and adoptive parents aged 21 or over, spouses, ascendants and adoptive parents, 60,000 euros, and in the case of descendants and adoptees under the age of 21, 60,000 euros plus 6,000 euros for each year under 21 that the taxpayer is under 21 years of age.

In the case of the acquisition of agricultural holdings, art. 16 of Legislative Decree 1/2013 provides for a reduction of 99 % when the taxable base of the acquisition includes the value of a farm located in the territory of Castile and Leon, or of usufruct rights over the same, when the deceased, on the date of death, had the status of professional farmer, the acquisition corresponds to the spouse, descendants or adopted children, ascendants or adoptive parents and collateral relatives, by blood relationship, up to the third degree of the deceased, and the acquirer maintains the holding in his estate for five years following the death of the deceased, unless the acquirer dies within this period.

Article 17.1 of Legislative Decree 1/2013 also provides for a reduction in the acquisition of individual companies, professional businesses and shares in entities located in Castile and Leon, also imposing the condition that the acquirer must keep the acquisition in his or her estate for five years following the death of the deceased, unless the acquirer dies within this period.

In addition, in 2021, art. 17 bis was incorporated which establishes a rebate on the ISyD tax liability derived from lucrative acquisitions *mortis causa* and from amounts received by beneficiaries of life insurance that are accumulated to the rest of the assets and rights that make up the inherited portion, a 99 % rebate will be applied provided that the acquirer is the spouse, descendant or adoptee, or ascendant or adoptive parent of the deceased.

2.2. Gift Tax

Donations, art. 19 of Legislative Decree 1/2013 establishes a reduction for donations for the acquisition of a primary residence, by means will apply a reduction of 99 % of the amount of the donation, provided that the donee is under 36 years of age and the donation consists of money destined for the acquisition of the first primary residence made by ascendants, adoptive parents or by those persons who have made a permanent or pre-adoptive family foster care. The maximum amount of the donation with the right to reduction will be 180,000 euros, in general, and 250,000 euros when the donee is legally considered to be a person with a disability of 65 % or more.

Equally important is the reduction for donations for the constitution or expansion of an individual company or professional business regulated by Article 20 of Legislative Decree 1/2013, which provides for a 99 % reduction in donations made by ascendants, adoptive parents or collateral relatives up to the third degree by blood or affinity for the constitution or expansion of an individual company or professional business, imposing the condition that the individual company or professional business is maintained for five years following the date of the public deed of donation.

As in the case of inheritance, in 2021 art. 20 bis was incorporated, which regulates a rebate on the ISyD tax liability derived from inter vivos acquisitions for profit, a 99 % rebate will be applied provided that the acquirer is the spouse, descendant or adoptee, or ascendant or adopter of the donor.

3. TAX BENEFITS IN THE ITPyAJD IN KEY LEGAL BUSINESSES IN RURAL ENVIRONMENTS

For its part, the ITP and AJD have also incorporated for some time now tax rebates in the tax rates for the acquisition of primary residences by large families, by young people, by people with disabilities or in subsidised housing, especially if it is in rural areas for people under 36 years of age and with low income.

Castile and Leon has incorporated reduced and super-reduced rates for certain key legal transactions in rural areas, such as the transfer of movable and immovable property, the acquisition of a primary residence by young people under 36 years of age in small rural areas, the transfer of property belonging to companies or family businesses with fiscal or social domicile in rural areas, property transfers aimed at the modernisation of agricultural holdings and the leasing of rural land to professional farmers who are owners of a priority agricultural holding.

3.1. Transfer tax

For the transfer of real estate, as well as in the constitution and transfer of rights in rem over real estate, except for rights in rem of guarantee, art. 24.1.a of Legislative Decree 1/2013 provides for a reduced rate of 8 %.

Article 24.1.b of Legislative Decree 1/2013 establishes a reduced rate of 5 % for the transfer of movable and immovable property, as well as for the creation and transfer of rights in rem over the same, except for rights in rem of guarantee.

A reduced rate of 4 % will be applied to the transfer of properties that will constitute the main residence when all the purchasers are under 36 years of age in accordance with the provisions of art. 25.3 of Legislative Decree 1/2013.

Article 25.3 of Legislative Decree 1/2013 stipulates that a reduced rate of 0.01 % shall be applied to transfers of properties that are to constitute the habitual residence, provided that the following requirements are simultaneously met: a) That all purchasers are under 36 years of age on the date of accrual of the tax. b) That the property that is to constitute the habitual residence meets the requirements established in section 1.c) of Article 7, which refers to dwellings located in rural areas.

For its part, Article 25.6 of Legislative Decree 1/2013 for transfers of real estate that will constitute the registered office or work centre of companies or professional businesses, a reduced rate of 2 % will be applied in the following cases: a) That the company or professional business has its tax and registered office in one of the municipalities or minor local entities provided for in Article 7, which refers to dwellings located in rural areas.

In the transfer of assets for valuable consideration referred to in articles 9, 10 and 11 of the Law on the Modernisation of Agricultural Holdings, and provided that the reductions set out therein are applicable, a reduced rate of 4 % will be applied to the resulting taxable base in accordance with the provisions of article 25.7 of Legislative Decree 1/2013.

In addition, the incorporation of Article 27 bis provides for a 100 % tax relief on the tax liability for the lease of rural properties, applicable to the transfer of assets for valuable consideration to property leases, provided that the lessee is a professional farmer and is the owner of a priority agricultural holding to which the leased items are attached.

3.2. Stamp Duty (Impuesto sobre Actos Jurídicos Documentados)

Article 26.3 of Legislative Decree 1/2013 establishes a reduced rate of 0.01 % for the first copies of deeds and notarial deeds documenting the acquisition of dwellings that are to be the main residence, when all the purchasers are under 36 years of age and the dwelling is located in rural areas.

4. THE PROBLEM OF REGIONAL FUNDING: THE SCANT OR NON-EXISTENT ASSESSMENT OF THE DEMOGRAPHIC CHALLENGE IN THE DISTRIBUTION OF PUBLIC FUNDS

The Salamanca study of Financial and Tax Law has not hesitated to write that Castile and Leon does not have the financial muscle to tackle the demographic challenge. Castile-Leon is a territory with a meagre level of autonomous financing which generates serious problems of public investment deficit in rural areas (seen from a holistic point of view) unless funding is obtained from other sources, particularly European ones. The budget of the Autonomous Community has remained practically unchanged for many years (around 10,000 million euros) and has only recently increased slightly, and to a large extent, thanks to the extraordinary receipt of the Recovery, Transformation and Resilience Funds, of which so much is said, but little is implemented.

Leaving aside the Next Generation Funds, for decades the EU has opted for direct community spending, through budgetary law as a mechanism for aid and development of depopulated territories through the Economic, Social and Territorial Cohesion Plan established in Article 174 TFEU. This requires it to propose action plans to reduce the disparities between the levels of development of the various regions and the backwardness of the least favoured regions, within which it requires special attention to be paid to rural areas, areas affected by industrial transition and regions which suffer from severe and permanent natural or demographic handicaps, such as the northernmost regions with a low population density and island, cross-border and mountain regions.

It is in development of this mandate that we have at Community level a series of rules aimed at regulating European aid policy for rural areas, among which the following stand out: Regulation (EC) 994/98, on the application of certain categories of horizontal state aid — which allows aid for small and medium-sized enterprises, aid for employment, and aid that complies with the map approved by the Commission for each Member State for the granting of regional aid to be declared compatible with the internal market; Regulations (EU) 1301/2013 and 1303/2013 establishing the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development, the European Maritime and Fisheries Fund — all of vital importance for the Member States, as they represent a fairly significant injection of financial resources for the development of vulnerable territories such as rural areas at risk of depopulation, e.g. the European Regional Development Fund has an amount allocated to European territorial cooperation for the 2014-2020 budget period amounting to EUR 9.3 billion; the European Regional Development Fund

has an amount allocated to European territorial cooperation for the 2014-2020 budget period amounting to EUR 9.3 billion. 9.3 billion; Regulation (EC) 1059/2003 establishing a legal recognition of the NUTS territorial typologies determining regions' access to the allocation of European regional aid funds; the Commission Communication (2013/C209/01) setting out the Guidelines on national regional aid for 2014-2020 which aim to update and simplify the possibility for Member States to grant operating aid to enterprises in the outermost regions and sparsely populated areas; Regulation (EU) 651/2014 declaring certain categories of aid compatible with the internal market — allowing regional aid; aid to small and medium-sized enterprises (SMEs) in the form of investment aid; operating aid and aid for SME access to finance to be declared compatible with the internal market; aid for the recruitment and employment of disadvantaged workers; social transport aid for residents in remote regions; aid for broadband infrastructure; and aid for local infrastructure; and Regulation (EU) 2017/1084, which amends regional operating aid schemes.

We therefore see that the EU's main commitment to the fight against depopulation in rural areas focuses more on the introduction of differentiated financial policies than on the establishment of differentiated tax regimes, from which we have seen that certain things can be done to complement the fight against depopulation with the application of certain radical benefits based on criteria of low income and age, but on which neither all the weight nor all the focus of attention should fall.

On the other hand, it is in the allocation of public funds for investment, development and the improvement of essential public services for the rural environment that public administrations should focus their efforts; in the restructuring of the criteria for the distribution of state public funds that truly empowers Local Authorities, which are those who are fighting on the front line to alleviate the demographic drain and the social and economic debacle that it entails.

In Spain, the criteria for the distribution of state public funds that constitute the hard core of regional financing are structured without taking into account the *rural proofing* that is currently proclaimed, i.e. those determining factors linked to rurality, to the dispersion of the territory and population centres or to low demographic density. Thus, for example, the Fund for the Guarantee of Fundamental Public Services enshrined in art. 158.1 CE and 15 LOFCA, prioritises population with 97 % and dispersion with only 0.6 %; the Inter-territorial Compensation Fund established in art. 158.2 CE and 16 LOFCA weights population and dispersion with only 0.6 %; the Inter-territorial Compensation Fund established in art. 158.2 CE and 16 LOFCA weights population with 97 % and dispersion with 0.6 %.² EC and 16 LOFCA gives 6.9 % weighting to dispersion and 87.5 % to population, and in the State Revenue Sharing Funds (PIE), which are the main mechanism for financing local treasuries, the criterion of dispersion or low population density is

not weighted at all. Thus we see how the criterion of population, which is undoubtedly very important for financing current public spending, continues to play a hegemonic role in the distribution of public funds earmarked for investment, where priority should be given to those criteria of need that respond to the fragile reality of the territory and its population, especially in the rural areas of Castile and Leon where the cost of providing essential public services under equal conditions is much more expensive than in urban centres (RODRÍGUEZ PEÑA, 2020: 299-230; RODRÍGUEZ PEÑA, 2022; LAGO MONTERO, 2020; IGLESIAS CARIDAD, 2020; LAGO MONTERO and IGLESIAS CARIDAD, 2020).

Faced with this complex situation, public policies aimed at establishing a rural guarantee mechanism take on transcendental importance as they become the ideal vehicle for the adoption of measures to boost the local economy, provide basic social services to the regions most affected by depopulation, guarantee local autonomy or develop new initiatives to fix the population in rural areas, including taxation, especially providing young people with opportunities for the future that will help to achieve, once and for all, a model of rural development that will allow the rural areas to become more dynamic, guaranteeing local autonomy or developing new initiatives that allow the population to settle in rural areas, including tax initiatives, especially providing young people with future opportunities that contribute to achieving, once and for all, a sustainable land-use planning model in which the survival of the small municipalities that make up Castile and Leon is boosted.

IV. FINAL REFLECTIONS

Since the Salamanca firm began to investigate the challenges of the demographic challenge in Castile and Leon from a *legal* perspective and specifically from the financial and taxation branch, starting in 2019 and despite the doctrinal vacuum existing to date, there have been many regulatory advances made by the Junta of Castile and Leon and the Autonomous Parliament, both in administrative and tax regulations. Important modifications have been incorporated, applicable as of the 2022 and 2023 tax periods, mainly in a series of aspects of Personal Income Tax (IRPF).

The most important change is the reduction by half a percentage point of the first bracket of the regional tax scale applicable to personal income tax from 9.5 % to 9 %, the tax bracket where the majority of young people's income is taxed as a result of the systemic precariousness of wages applied to this group of the population.

We also consider positive the increase in the deductible amounts for birth or adoption applicable to taxpayers residing in municipalities of less than 5,000 inhabitants, which have risen by 10 % compared to the rules applicable

in previous tax periods, as well as an improvement in the deductions for large families and for the acquisition or renovation and rental of primary residences by young people in rural areas.

However, there is a need to incorporate more measures favourable to rural youth, which to date have been absent in Castile and Leon, such as those aimed at promoting entrepreneurship and the creation of youth employment, which have been incorporated in Autonomous Communities such as Asturias and Cantabria. The diversification of economic activities, in view of the gap between living and working conditions in rural and urban areas, means that agriculture and rural tourism are no longer sufficient to sustain the economy in rural areas. Research and development and diversification of the economy have become more urgent and pressing. Social exclusion, an ageing population, gender inequality and unemployment are tangible challenges in rural areas that make them marginalised areas, limiting the progress of entrepreneurial initiatives. Without sufficiently dynamic companies, capable of innovating and successfully adapting to the demands of the global market, without diversified economic activities that generate added value and employment — not only sufficient but also quality employment — and without an economic policy that recognises the particularities of the rural environment and is capable of rebalancing the territory, the economic, social and demographic viability of the depopulated rural environment is in doubt. A territory that does not offer job opportunities in tune with the current socio-economic context is a doomed territory, incapable of maintaining and attracting population. It is therefore necessary to increase the entrepreneurship and motivation of young people living in rural areas through education, training, lifelong learning and labour exchanges that promote social inclusion and ensure environmental protection. Creating a favourable environment for rural businesses by improving financing opportunities, creating support schemes for high-risk projects and fostering cooperation between the private and public sectors should be a priority.

The articulation of financial and fiscal policies aimed at supporting the emancipation of young people in rural areas is also lacking, as is the case in regions such as Asturias, La Rioja and Galicia. In the last decade, with the arrival of the economic crisis, Spain has become the portrait of a youth that does not manage to become independent. According to the latest Emancipation Observatory of the Spanish Youth Council, the lack of employment and the difficult access to housing hinder the possibility of young people to leave the family home before the age of 30, causing only one in five to do so. In rural areas, in addition to the above, there is a lack of infrastructure connectivity and digital connection, which, according to the ESC, are among the main areas for public investment in the coming years. Regional mobility and connectivity in terms of information and communication technologies will lead to a Spain that is more social and closer to its citizens, promoting integrated and sustainable development in rural areas and local initiatives. For this reason, in

articles 2.2.c, 18, 23 and 26, the LDRS gives priority to providing rural areas, and in particular their population centres, with the necessary infrastructure and basic public facilities, especially in terms of transport, energy, water and telecommunications. Undoubtedly, one of the ways to make rural areas attractive to young people is to guarantee accessibility to these services, especially those related to the deployment of digitalisation, public transport and roads, the latter being essential for the mobility of rural inhabitants. In contrast, we find a rural environment lacking the most basic infrastructures, technologically abandoned and digitally disconnected. In Spain, the take-up of ultrafast broadband is lagging far behind the Europe 2020 targets, making it urgent to increase public and private investment in the expansion of broadband and the physical infrastructure connecting them, in order to ensure equal access to public services and support entrepreneurship. Although they do not constitute deductions of substantial amounts, Asturias, La Rioja or Galicia have set up regional deductions in personal income tax that include issues such as deductions for public transport expenses for young people with habitual residence in rural communities, deductions for electricity and gas supply expenses for domestic use for the habitual residence of young people or in internet access contracts, among others.

The political and regulatory advances that have taken place in Castile and Leon show us that we are not mistaken in advocating the establishment of public policies and regulations at the regional level to restore the welfare state in these discriminated communities and abandoned rural territories. Placing the debate on the different dimensions of the demographic challenge on the Spanish public agenda, but also on the academic agenda, requires conceiving it as a true State Policy that demands the commitment and coordinated action of all public administrations, all from a multidisciplinary perspective. For this reason, the establishment of a legal system adapted to the needs and specific characteristics of rural communities that establishes the creation of public policies aimed at promoting the revival of the rural environment, development and innovation in the territory, equal rights and opportunities for women and young people in rural areas, and the promotion of youth entrepreneurship and generational change in agricultural and livestock farming activity, among others, requires the incorporation of measures to combat rural depopulation in financial and tax policies that should be aimed both at alleviating the public investment deficit suffered by abandoned rural territories, and at establishing objective and proportionate tax benefits that allow us to position ourselves as a State against allowing territories that do not matter to exist.

V. BIBLIOGRAPHY

ECONOMIC AND SOCIAL COUNCIL, "El medio rural y su vertebración social y territorial", in *Colección Informes*, no. 1, 2018.

DOMÍNGUEZ ÁLVAREZ, J.L.:

- *Comunidades discriminadas y territorios rurales abandonados. Políticas públicas y Derecho Administrativo frente a la despoblación*, Thomson Reuters-Aranzadi, 2021a.

- "Internet y nuevas tecnologías como punta de lanza para la revitalización de territorios rurales despoblados: La necesaria reconstrucción de la idea de servicio público", in *Revista Digital de Derecho Administrativo*, núm. 26, 2021b, pp. 91-124.

- "La importancia del municipalismo para la consecución del nuevo resurgencia de la ruralidad: la disyuntiva entre devolver el alma a los pueblos o abandonar el territorio", in *Revista jurídica de Castilla y León*, núm. 53, 2021c, pp. 73-120.

- "El desigual acceso de la juventud rural a los servicios públicos: la necesidad de impulsar la educación en la España vaciada", in *Cuadernos de Investigación en Juventud*, núm. 8, 2020a.

- "El agotamiento de las políticas públicas relacionadas con el desarrollo rural" in FERNANDO PABLO, M., DOMÍNGUEZ ÁLVAREZ J. L. (dirs.), *Rural Renaissance: derecho y medio rural*, Thomson Reuters-Aranzadi, 2020B, pp. 217-243;

- "La despoblación en Castilla y León: políticas públicas innovadoras que garanticen el futuro de la juventud en el medio rural" in *Cuadernos de Investigación en Juventud*, núm. 6, 2019.

DOMÍNGUEZ ÁLVAREZ, J.L. and BUENAVENTURA CALVO, A., "¿Reinventarse o morir? Municipalism as a cornerstone of the longed-for sustainable rural development. San Martín del Castañar, una referencia al sur de la provincia de Salamanca", in FERNANDO PABLO, M., DOMÍNGUEZ ÁLVAREZ J. L. (dirs.), *Rural Renaissance: derecho y medio rural*, Thomson Reuters-Aranzadi, 2020, pp. 145-165.

ESEVERRI MARTÍNEZ, E., LÓPEZ MARTÍNEZ, J., PÉREZ LARA, J.M. and DAMAS SERRANO, A., *Manual práctico de Derecho tributario, Parte General*, Tirant LoBlanch, Sixth edition, Valencia, 2020.

EUROPEAN RURAL PARLIAMENT YOUTH (ERP), *European Rural Youth Declaration of 6 November 2019*, 2019.

EUROPEAN SPATIAL PLANNING OBSERVATION NETWORK (ESPON), *Fighting rural depopulation in Southern Europe*, 2018.

FERNANDO PABLO, M. M., "Devolver el alma a los pueblos: el encuentro "Rural Renaissance"", in *Ars Iuris Salmanticensis: AIS: revista europea*

e iberoamericana de pensamiento y análisis de derecho, ciencia política y criminología, vol. 7, núm. 2, pp. 11-13, 2019.

GARCÍA BERRO, F., in **PÉREZ ROYO, F.** (Dir.). *Curso de Derecho Tributario, Parte Especial*, Madrid, Tecnos, 2022.

GUERVÓS MAÍLLO, M.A., "Beneficios fiscales: ¿uso o abuso?", in MARTÍN DÉGANO, I., VAQUERA GARCÍA, A. and MENÉNDEZ GARCÍA, G., (Coord.), *Estudios de derecho financiero y tributario: en homenaje al profesor Calvo Ortega*, vol. 1, Lex Nova, Valladolid, 2003, pp. 317-350.

HERNÁNDEZ DÍEZ, E., "Las reglas para las políticas rurales de juventud: marcos europeos y concreciones regionales en España", in FERNANDO PABLO, M., DOMÍNGUEZ ÁLVAREZ, J.L. (Dirs.), *Rural Renaissance: territorio, precio y valor*, Thomson Reuters-Aranzadi, 2023, pp. 150-173.

HORTELANO MÍNGUEZ, L.A., "Propuesta de diseño y elaboración de la estrategia autonómica frente al reto demográfico de Castilla y León", in **FERNANDO PABLO, M.M.**, Domínguez Álvarez, J.L. (Dirs.), *Rural renaissance: acción, promoción y resiliencia*, Thomson Reuters-Aranzadi, 2022, pp. 147-164.

IGLESIAS CARIDAD, M., "El reto demográfico desde el municipalismo. Medidas tributarias locales favorecedoras del emprendimiento y del empleo", in FERNANDO PABLO, M., DOMÍNGUEZ ÁLVAREZ, J.L. (Dirs.), *Rural Renaissance: derecho y medio rural*, Thomson Reuters-Aranzadi, 2020, pp. 113-143.

LAGO MONTERO, J.M., "El derecho financiero frente a la despoblación en el ámbito rural", in FERNANDO PABLO, M., DOMÍNGUEZ ÁLVAREZ, J.L. (Dirs.), *Rural Renaissance: derecho y medio rural*, Thomson Reuters-Aranzadi, 2020, pp. 65-90.

LAGO MONTERO, J.M. and **IGLESIAS CARIDAD, M.**, "La Hacienda pública ante el reto demográfico, en particular en Castilla y León", in *Revista Española de la Función Consultiva (Monográfico "Reto demográfico y función consultiva")*, núm. 33, 2020, pp. 167-214.

MARTÍN QUERALT, J., **LOZANO SERRANO, C.**, **TEJERIZO LÓPEZ, J.M.**, **CASADO OLLERO, G.**, *Curso de Derecho Financiero y Tributario*, Tecnos, twenty-ninth edition, Madrid, 2018.

MARGARAS, V., *Sparsely populated areas and regions with low population density*, European Parliamentary Research Service (EPRS), 2016.

MARTÍN JIMÉNEZ, M.I., **HORTELANO MÍNGUEZ, L. A.** and **PLAZA GUTIÉRREZ, J. I.**, "Cooperación territorial y gobierno del territorio en Castilla y León", in *Estudios geográficos*, vol. 68, no. 263, 2007, pp. 547-574.

NETWORK OF SMALLLY POPULATED AREAS OF SOUTHERN EUROPE, A differentiated taxation for the progress of depopulated territories in Spain: Justification, assessment and socio-economic impact, 2019. Retrieved from <https://rb.gy/ay5m7z>.

PINILLA, V., SÁEZ PÉREZ, L. A., “La despoblación rural en España: génesis de un problema y políticas innovadoras”, in *Informes CEDDAR*, núm. 2, Centro de Estudios sobre Despoblación y Desarrollo de Áreas Rurales (CEDDAR), 2017.

RODRÍGUEZ PEÑA, N.L.:

- “¿Es posible el establecimiento de un régimen tributario favorable para el medio rural en España?”, in FERNANDO PABLO, M., DOMÍNGUEZ ÁLVAREZ, J.L. (Dirs.), *Rural Renaissance: derecho y medio rural*, Thomson Reuters-Aranzadi, 2020, pp. 299-320.

- “Fraccionamiento en el IRPF de las ayudas a la incorporación de jóvenes agricultores y/o ganaderos”, in *Ars Iuris Salmanticensis AIS: revista europea e iberoamericana de pensamiento y análisis de derecho, ciencia política y criminología*, vol. 9, núm. 1, 2021, pp. 332-333.

- “Ayudas económicas de finalidad regional como palanca transformadora de las áreas rurales con desafíos demográficos”, in FERNANDO PABLO, M., DOMÍNGUEZ ÁLVAREZ, J.L. (Dirs.) *Rural Renaissance II: acción, promoción y resiliencia*, Thomson Reuters-Aranzadi, 2022, pp. 241-278.

SPANISH FEDERATION OF MUNICIPALITIES AND PROVINCES, *Action Document: List of measures to fight depopulation in Spain*, Madrid, 2017. Retrieved from <https://rb.gy/1qgd0e>.

CHAPTER V

SECURITY MANAGEMENT IN RURAL AREAS WITH DEMOGRAPHIC CHALLENGES: ANALYSIS OF PUBLIC CRIME PREVENTION POLICIES FROM THE PERSPECTIVE OF FORMAL SOCIAL CONTROL

ALICIA RODRÍGUEZ SÁNCHEZ

*Predoctoral Research Fellow¹
University of Salamanca*

SUMMARY: I. INTRODUCTION. II. SPECIAL PROTECTION FOR SAFETY AND GUARANTEE OF PREVENTION. 1. *Determinations of the security concept.* 2. *Where does security for society originate from? Security as a right.* III. PREVENTION AS A POLICY IN FAVOUR OF SECURITY THROUGH FORMAL SOCIAL CONTROL. IV. RURAL SECURITY IN THE PUBLIC AUTHORITIES' ROAD MAP. V. FORMAL SOCIAL CONTROL OF THE POLICE IN RURAL ENVIRONMENTS AS A GUARANTOR OF SECURITY. 1. *Are sparsely populated areas safe? Current security management.* 2. *Examples and good practices to consider.* VI. FINAL REFLECTIONS: LACK OF DATA AN INSURMOUNTABLE GAP FOR EFFECTIVE CONCLUSIONS. VII. BIBLIOGRAPHY. VIII. ANNEX I.

I. INTRODUCTION

Concern for the aforementioned *empty Spain* and its many synonyms, while bridging the differences, is now being presented with ease not only in academia and the press, but also forms part of the political agenda at

1 Contract funded by the University of Salamanca and Banco Santander.

regional and national level. However, it is the theoretical and not very practical tendency that leads me to point out these lines.

Undeniably, the concern about the loss of population is significant when in the period 2010-2019, 6232 municipalities have lost population (out of a total of 8131 municipalities in Spain) which refers to almost 80 % of the total and which is aggravated in municipalities with less than 1000 inhabitants². It is also undeniable that the lack of services such as health, education, housing or public transport, which has led to citizen protests without much consequence, has marked a gap between what seems to be first and second class citizens. These issues, together with many others (many of which are dealt with in this work as a whole), augur badly for the future of our lands without the appropriate decisions being taken. If it seems that the political agenda wants to take up the baton for what we hope is not too late; but in this maelstrom of problems, there is one that I find has not been worked on very much. Security in rural areas. It is not said that rural areas are unsafe, but neither can we say that they are safe. The data we find on population loss, social welfare resources and loss of public and social services are not available for security. A simple review of the cyber world leads us to data on larger population centres, to mayors who exhale a lack of response due to a lack of personnel and the difficulties of responding to what we understand from criminological science and as a hypothesis to be added as the difficulty of reporting, the absence of belief in a fair result, lack of knowledge, the feeling of security... is security a *new* challenge for the rural agenda?

II. SPECIAL SECURITY PROTECTION AND GUARANTEE OF PREVENTION

Criminal policy is currently — and hopefully will continue to be — one of the most important and significant issues for the criminal and criminological study of any issue of importance. The preventive and intimidatory intention is at the top of the theoretical and practical questions, but does not always produce the desired results; the second aspect of criminal policy acts by providing answers to the criminal phenomenon (ZUÑIGA, 2001: 22-25) and invokes security through punishment and the clarification of facts.

Security has not been a subject that has been exempt from evolution and change, which has forced criminal policy to prosper in relation to it. Despite the fact that security is one of the reasons for the existence of the state itself, its concern and care seems to be something new and even debatable if we are talking about a legal good, and beyond that — specifically — about a

2 Data provided by the General Secretariat for the Demographic Challenge under the Ministry for Ecological Transition and the Demographic Challenge. Available for consultation at: <https://acortar.link/KIbbHU>

legal-criminal good³. It does not seem unwise to grant security this category, since it not only safeguards citizens, but at the same time enhances the use and enjoyment of the rights and freedoms enshrined in the current social and democratic rule of law. It would seem that security without further indications, without limits, curtails rights and freedoms insofar as it restricts the possibilities of the subjects themselves; however, it would not be possible to enjoy them without the minimum guarantees of protection, and it is here where the implications of security are the basis for restrictions.

Security is nothing more than the protection and avoidance, as far as possible, of the risks that modern society brings with it. There are many instances of protection, as well as preventive and organisational public policies. Security policies are defensive mechanisms in the face of security breaches, and only in the case of the most serious offences, and when previous mechanisms are lacking, do they degenerate into criminal law.

The unforeseen developments and the dizzying pace of change, technologies and new forms of criminality, *per se*, imply a complete relationship between individuals and the environment, in which there are inevitably risks, but which are curbed and mitigated by security. The problem is not security in itself, but the feeling or perception of it, the expectations and situations of insecurity that taint the social and political reality and cloud the situation.

Internal and external threats, the evolution of crime and new forms of crime through little explored channels make it difficult for political and social structures to design effective response and protection strategies. While the internationalisation and convergence of problems is increasing, the monopolies of state powers make it impossible to achieve the accelerated pace at which new challenges are being created.

1. DETERMINATIONS OF THE SECURITY CONCEPT

We refer to a concept under construction and in continuous change, forced to advance with social, cultural, political transformations... (LORENZO-PENALVA, 2017). Consequently, when we try to define security, we are faced with the complex task of delimiting a multitude of contexts. The definitions that we discover in this sense are miscellaneous, ranging from the maintenance of measures to protect a process against hostile acts, to the human ecosystem in which it can exercise all its functions normally (COLINA, 2018: 41-60).

Security is achieved through policies, strategies, security structures and means that aim to maintain or achieve the same objectives (GOVERNMENT OF SPAIN, 2021). In the first case, these are defensive policies, strategies and structures, and in the second, offensive ones. The reality is that most

3 The differences between legal goods and criminal legal goods have been developed by a multitude of authors, many of them placing the key point on the maximum protection for the latter in this sense (DÍEZ, 1997: 10-19; BALMACEDA, 2022: 24-48 and ESPINOSA, 2022).

security policies, strategies and structures are both defensive and offensive in nature. Security is nothing more than the protection at all times, places and circumstances of the process of activities to maintain and achieve a nation's objectives; it is a permanent process (OBRADOR, 1992: 37).

2. WHERE DOES SECURITY FOR SOCIETY COME FROM? SECURITY AS A RIGHT

Security is constitutionally protected in Spain under Article 17.1 of the 1978 text, as well as Article 5.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 9.1 of the International Covenant on Civil and Political Rights.

It is from the Charter of Fundamental Rights of the European Union of 2000 that the effective protection of goods such as security gives freedom its full meaning⁴. The security state is the accommodation of diverse and complex factors such as, for example, technological developments that have created a risk society⁵. From this constant danger of the risk society, the culture of fear⁶ is inferred, increasingly widespread according to sociologists over the years, in which a context of uncertainty and social insecurity is created, increasing a fear of the insecurity of everything that comes and that is beyond one's control as a social consequence of various processes (USECHE, 2008). The security state is not a form of political organisation, but a social process adopted by states for the sake of legitimisation. Security is a guarantee of social stability (MARTÍNEZ DE PISÓN, 2006: 70) and the freedom of its citizens.

III. PREVENTION AS A POLICY IN FAVOUR OF SECURITY THROUGH FORMAL SOCIAL CONTROL

When we talk about prevention, we are dealing with models and strategies, as well as measures, that seek to significantly reduce the risks of offences

4 The United Nations Charter of 1945, for example, reiterates the concept of security from the preamble to a dozen articles, and the idea is reinforced with the creation of the Security Council. The UN defends security as a condition for the preservation of life, The Brussels Treaty of 1948, mutual assistance in maintaining international peace and security. The 1949 North Atlantic Treaty of 1949, in its preamble, augurs collective defence, the preservation of peace and security. The Southeast Asia Treaty of 1954, collective defence and international security, The Warsaw Pact of 1955, advocates a system of collective defence to ensure international security.

5 The "risk society" that Beck scrutinises is a society exposed to imminent danger. In it, all "risk calculation" has been lost and everything becomes unintelligible. It is a society in which human beings find themselves in a completely polluted environment that threatens the security of their existence (BECK, 1998).

6 It consists of the constant perception of fear and social insecurities of a permanent and often unfounded nature.

and their harmful effects on individuals in particular and on society in general, including the fear of crime and combating it from its multiple causes (UNITED NATIONS, 2002: 2-3). Socially, we aspire, firstly, to the eradication of all crime — a utopian thought for the sciences dedicated to the study of crime — or else for the rates to be minimal, thereby limiting feelings of insecurity and guaranteeing stable areas and, secondly, and only if the preventive mechanisms fail, for the social and personal consequences derived from crime to be negligible. However, the reality is far from this trend.

The aforementioned approach is multi-causal and comprehensive, bringing with it different models to enhance prevention as opposed to punishment and retribution. The so-called mechanical model, the social model, the situational model and the community model are relevant here, which, although powerful, do not have to be used unanimously or uniformly, but rather according to the needs of the areas under discussion.

The social model aims, through advertising campaigns, posters, demonstrations, digital media, social networks or any other means of dissemination, to inform us of different possible ways to protect *ourselves* against crime and to cooperate in preventing it by knowing how to identify it. However, there is a debate about the absolute tendency not to educate to protect, but to educate not to commit transgressive behaviour.

The community model focuses on cooperation between the population and the state security forces. This raises community awareness of the need for their *role* in working effectively with the police. Furthermore, many crimes could be prevented if citizens were aware of the number and consequences of criminal activities taking place in their physical environment. Accordingly, community crime prevention measures place police and policing situations, environmental design, deterrence and opportunity reduction at the heart of primary crime prevention.

The situational model focuses specifically on situational prevention, the maxim of the model is to reduce the opportunity to commit crimes in specific spaces and places using different mechanisms, however, the most common techniques are surveillance and deterrence. In this way, the perception of insecurity by the population is also reduced through strategies aimed at identifying physical and spatial risk conditions for the population, through policies and actions oriented to the protection of the area, as well as the design of the designated environment. This is one of the main models since it restricts the opportunities for offending by making it more difficult for criminal behaviour to develop in particular areas, which will require the offender to increase his efforts (SUMMERS, 2009). In addition, it increases the possibility of being caught by displaying their activity (JENDLY *et al*, 2008).

The context and the existing environment at the time of the potential offending behaviour are determinant for the circumstances in which the offence is intended. If they reduce the opportunities and increase the

perception of risk for the offender, the safety of users is increased as a direct and inverse consequence, as the imaginary environment in which crime could be committed disappears (VEGA, 2017).

Finally, through the mechanical model, new physical protection structures are designed in new spaces of greater or lesser size such as cities, neighbourhoods, areas or properties with the aim of making crime in the area more difficult and impossible by means of cameras, improved lighting, etc.

These preventive models — and there are many others — are interrelated with formal and informal social control since these are the bodies in charge of carrying them out. Formal social control is really relevant at the moment, given that in order to try to determine rural security we need mechanisms such as laws, the police more than the activity carried out by families or schools.

Formal social control is exercised by the state through public bodies and actions designed to define, individualise, detect, manage and repress prohibited behaviours (GABALDÓN, 1987) and should only be applied under the ruling of informal control (family, friends, school...). Although laws — criminal in their preventive role — may contain restrictive consequences of rights, formal control is significantly focused on previous steps in which the care and maintenance of basic social rules is guaranteed as a means and means for public and social security and peace. Also, this policing function is performed by neighbours through patrols in the community (a more informal perspective of control), but with a state model such as the current one, it must be the one who regulates and performs the aforementioned actions. The police are deployed as an arm of the state for internal order and the maintenance of internal order⁷, with limited authority.

With “prevention” and “control” they develop a series of separate and interdependent strategies that facilitate the idea of reducing criminality prior to possible criminal behaviour, and not through the post-crime penitentiary methodology of the offender who has already been created (VEGA, 2017: 192).

IV. RURAL SECURITY ON THE PUBLIC AUTHORITIES’ ROADMAP

In recent times, the different public administrations have made countless efforts to promote agendas, guidelines, strategies, reports or plans with the aim of articulating an orchestrated response to face the demographic and territorial challenge in a clear attempt to put a stop to the population drain

7 Under pressure from rising crime, the police are trying to gain effectiveness and legitimacy by seeking increased community collaboration. It even supports some citizen initiatives such as neighbourhood patrols. In turn, the police are sensitive to the decisions of Thursdays, the initiatives of politicians or the treatment of the media (TORRENTE, 2001: 76).

and the progressive emptying of large regions of the peninsular geography. At the same time, although to a lesser extent, various territories have launched the enactment of regional laws of a sectoral nature proclaimed for the same purpose (DOMÍNGUEZ, 2020: 95).

Indeed, after a long journey, the demographic and territorial challenge has finally permeated the roadmap of public authorities to the point of becoming an essential element of administrative action with the aim of alleviating the traditional situation of institutional neglect to which, until not so long ago, rural communities had been subjected.

Thus, on 29 March 2019, the Council of Ministers approved an important Agreement on the General Guidelines of the National Strategy against the Demographic Challenge, drawn up by the Government Commissioner for the Demographic Challenge, attached to the Ministry of Territorial Policy and Public Function. This programmatic document conceives security as “a basic social right, essential for the free exercise of citizens’ rights and for the social and economic progress of our country” (GOVERNMENT OF SPAIN, 2019: 67). For these reasons, security is a priority on the public policy agenda of the public authorities, understood as an essential prerequisite for making effective the commitment that no citizen, whatever their social or economic situation or the territory (rural or urban) in which they live, should be deprived of the right to be and feel safe; and, therefore, be deprived or excluded from the right to be and feel effectively free.

In this respect, it should be remembered that security in the Spanish countryside is conditioned by the specific characteristics of this environment, and in particular by its large territorial extension and decreasing population density, as well as by the limited infrastructure and means of transport, the importance of agricultural, livestock and hunting activities, the environmental wealth, less connectivity, a scattered municipal structure with a limited presence and organisation of local police forces, etc.

Having said this, it should be pointed out that the current regulatory framework configures a security system in rural areas that is mainly the responsibility of the Guardia Civil, a police force that operates in 83.1 % of Spanish municipalities, where 35 % of the population resides, through almost 2,000 posts or barracks. This broad territorial deployment makes this Corps a reference element and the backbone of the State’s presence and response in rural areas, facilitating a close and direct relationship with the citizens, with the Town Councils, with the Municipal Services and with the existing associative fabric in this environment (GOVERNMENT OF SPAIN, 2019).

Therefore, enhancing citizen security as an essential public service to create favourable conditions that favour the economic-social and, therefore, demographic development of the rural environment⁸, becomes a priority and

8 In this regard, it should be recalled that Law 45/2007, of 13 December 2007, for the

strategic objective to guarantee the well-being of rural communities, which requires strengthening and updating the territorial deployment of the Guardia Civil, an issue that must necessarily be accompanied by the deployment of a system of incentives to strengthen the roots of these public servants in rural territories, in such a way that allows them to continue providing a quality public security service (ECONOMIC AND SOCIAL COUNCIL, 2018: 137), adapted to the current context of the rural environment and based on close contact with citizens that guarantees the pulse of social reality and, therefore, is able to ensure a timely and adequate response to the needs of the population in our villages.

For its part, the Plan of Measures against the Demographic Challenge “Towns with a Future”, adopted on 16 March 2021 by the Delegate Commission for the Demographic Challenge, a planning instrument through which it is intended to promote 130 strategic active policies to combat depopulation, grouped into 10 major axes⁹, involving an investment of 10.10 billion euros aimed at rural areas and small municipalities, with the aim of reinforcing the commitment of public administrations to the necessary guarantee of social and territorial cohesion, within the framework of the National Strategy for the Demographic Challenge (MINISTRY FOR ECOLOGICAL TRANSITION AND THE DEMOGRAPHIC CHALLENGE, 2021: 76).

sustainable development of the rural environment already provided for the strengthening of measures to increase public safety in rural areas, and in particular those aimed at protecting the conservation of the natural environment. Without going any further, art. 27 of the aforementioned regulatory text stipulates the following: “[i]n order to increase the safety of citizens in rural areas, the Programme may provide for measures to: (a) promote concerted action plans to guarantee the free exercise of rights and freedoms and citizen security specifically referring to the rural environment, facilitating the cooperation of the Guardia Civil with the Local Police Corps, and of these with each other; (b) improve the presence of the Security Forces and Corps to maintain an adequate level of security for the population in rural areas; (c) implement a comprehensive plan aimed at the construction, rehabilitation and extension of Guardia Civil Barracks, taking into account the population it serves in the rural environment; (d) strengthen the Guardia Civil’s information and communications systems for operational management, in order to improve the level of services provided to citizens in rural areas; (e) increase actions to protect the rural environment, reinforcing the interventions of the Guardia Civil’s Nature Protection Service and promoting collaboration instruments between the different competent public administrations; and (f) promote the development of plans to prevent and protect against gender violence and mistreatment of women in rural areas”.

- 9 These 10 main lines of action correspond to: (i) boosting the ecological transition; (ii) digital transition and full territorial connectivity; (iii) development and innovation in the territory; (iv) boosting sustainable tourism; (v) equal rights and opportunities for women and young people; (vi) fostering entrepreneurship and business activity; (vii) strengthening public services and boosting decentralisation; (viii) social welfare and care economy; (ix) promoting culture; and (x) regulatory and institutional reforms to address the demographic challenge.

The Plan is oriented towards a broad set of objectives to promote equal opportunities and territorial structuring, through the economic diversification of the most disadvantaged areas. Among these objectives, the following stand out:

- a) Stimulating innovation;
- b) Full digital connectivity;
- c) Strengthening the rural-urban partnership;
- d) The enhancement of the territory and its endogenous possibilities for growth;
- e) Adequate provision of basic services; or
- f) The incorporation of the demographic perspective in the government's decision-making process.

With the aim of achieving all these ambitious objectives, the Plan articulates a shock plan for social facilities, a plan for housing rehabilitation and urban regeneration, a shock plan for the care economy and the reinforcement of equality and inclusion policies, a pact for science and innovation and the reinforcement of the capacities of the national health system, as well as the modernisation of public administrations (ECONOMIC AND SOCIAL COUNCIL, 2021: 101). It also includes a series of important provisions on other key issues for the promotion of territorial cohesion, such as the extension of ultrafast broadband to those areas that currently do not have it, the promotion of the deployment of 5G networks or digital inclusion actions by strengthening digital training in areas of demographic decline (DOMÍNGUEZ and TOMÉ, 2022: 411).

Similarly, there are plans to promote public services in rural areas, such as municipal justice offices, and to improve security in these areas. There are also plans to bring vocational training closer to the centres at risk of depopulation as part of the modernisation of vocational training envisaged in the Plan, actions to conserve and restore the natural and cultural heritage in areas with a demographic deficit, a boost to sustainable forest management and the deployment of the bioeconomy, and, finally, a Just Transition Strategy. The aim is to promote employment and the creation of activity in the territories affected by the energy transition, so that people and regions can make the most of the opportunities of this transition.

The document also includes a series of specific proposals aimed at strengthening citizen security. This list of actions includes a series of measures aimed at bringing the services managed by the Ministry of the Interior closer to citizens, such as:

- The issuing and renewal of ID cards and passports;
- Administrative control of arms and explosives (licences, licences, registration certificates, etc.);

- Receipt of complaints;
- Authorisations for minors to go abroad; or
- The processing of activities relevant to citizen security through mobile posts or offices in areas with low population density.

However, the commitment of public institutions to strengthening citizen security in rural areas with demographic challenges transcends the contours of the measures listed above. Thus, Axis 7 of the Plan of Measures to Meet the Demographic Challenge, under the heading “Strengthening public services and promoting decentralisation”, considers the need to rethink the provision of basic public services to the entire population, without distance or demographic weaknesses being a reason for reducing their quality and accessibility; this is an essential objective of equity. For this reason, the Plan recovers the presence of the General State Administration in rural areas, especially in areas such as security and protection, and reinforces the provision of services in rural areas.

Furthermore, the Plan advances in the decentralisation of public activities and infrastructures in the territory, helping to halt or reverse the trend towards concentration in large urban areas, and to generate innovation, activity and employment in areas affected by demographic decline.

- Improving the face-to-face delivery of basic services to people in rural areas.
- Strengthen security and improve civil protection mechanisms.
- Promote the decentralisation of public services and infrastructure to provinces in demographic decline.

To achieve these ambitious goals, the Plan proposes, first and foremost, to boost public security in rural areas with demographic challenges:

- a) The improvement of the coverage rate of the Units located in the Spain of the Demographic Challenge¹⁰.
- b) Increasing the capacity for action, both preventive and assistance, of the Guardia Civil units.
- c) The visibility of the Guardia Civil as a professional alternative for young people living in these areas.

Similarly, funds from the European Union’s Recovery and Resilience Mechanism will be used to improve the infrastructure (energy efficiency, sustainability, connectivity, habitability, etc.) of the Guardia Civil’s small units and the renewal of the vehicle fleet in depopulated areas with the aim of:

10 To this end, it is foreseen to sustain, for at least 5 years, the increase in the number of Civil Guard personnel to be dedicated to these areas, by means of Public Employment Offers that increase the ordinary needs associated with replenishment by at least 10 %.

- Improve assistance to citizens who go to official Guardia Civil offices.
- Increase the assistance and preventive capacity of the Guardia Civil posts.
- Improve the living and working conditions of civil guards.
- Strengthen the security of civil guards serving in these areas.
- To have more sustainable infrastructure and vehicles.
- Promote increased economic activity in the areas where these activities take place.

Similarly, the need to promote R&D projects in the field of security through the application of new technologies (such as the use of drones) to improve security in rural areas and care for the rural population is also proposed¹¹. The aim is to boost efficiency in the use of human capital, provide greater security in rural areas with demographic challenges and improve services to citizens, facilitating their attendance at Guardia Civil offices or avoiding unnecessary journeys.

Finally, the articulation of operational plans oriented towards the specific security problems existing in these areas and related to their main economic drivers is foreseen, as well as the adaptation of other general plans to the characteristics of these areas, prioritising attention to action plans for the protection of the most sensitive or disadvantaged groups (women, minors, the elderly, immigrants, hate crimes, etc.) (GOVERNMENT OF SPAIN, 2021: 88).

V. FORMAL SOCIAL CONTROL OF THE POLICE IN RURAL AREAS AS A GUARANTOR OF SECURITY

As security (not national security — which is also the case — but the personal security of each individual) deserves clear recognition as a legal good protected by the state, the most serious violations will be assessed by our law of last resort, but first we will find sufficiently useful mechanisms to ensure that these transgressions are kept to a minimum, taking prevention through control and vigilance as an example of one of the possible criminal policies to be developed.

Crime prevention has been the main focus of criminological science since its beginnings, given that one of its scientific motives in the genesis of

11 In this regard, the Guardia Civil and CDTI Project (2020) to improve the response in rural areas in several areas: theft of agricultural material, crowd control at festivals and popular festivities, and detection of drug plantations. Equally noteworthy are other initiatives such as the Prior Appointment Projects, On-Site Reporting, Electronic Reporting and SIGO Mobility.

knowledge of crime and the answer to the whys and wherefores, is to be able to provide social, legal, political and economic mechanisms to curb crime rates to the minimum possible and tolerable in the interests of a safer society, with free spaces in which the population does not present those means that were developed in the first notes of the text, but public services are focused on this in unequal ways.

One of the main forms of security control are police and law enforcement actions that act not only as surveillance, but also as deterrence and prevention.

In large population areas, in conflict zones, at times of risk or high influx, under threat and many other examples, these mechanisms, investments and police presence are visible and undeniable, but is it the same in rural areas?

1. ARE SPARSELY POPULATED AREAS SAFE? CURRENT SECURITY MANAGEMENT

In our country, and specifically in Castile and Leon, the issue *seems to* be very well studied, leading to the belief that rural areas are safe and crime-free zones, but these same notes are confronted with an infinite absence of data on crime in rural areas. While for cities we find maps with percentages of crime even by neighbourhoods, by areas according to per capita income, statistics on the number of police officers per population and a long etcetera; when we look for these data — or some of them — with reference to rural areas, the absence is both absolute and alarming, presenting a desolate panorama that worsens the lower the population rate of the municipality¹².

Consequently, with scarcity and under the belief more than consolidated by criminological science, without empirical data, we do not know the reality, so the question is clear; where do we get the certainty of security?¹³

And in the same direction we are faced with more questions, as we also do not know whether current public policies on security and prevention are even accurate in rural areas. A decadent panorama in which to operate is complicated by the fact that we need to know the real scenario. From this fact — and many others — we can see a lack of interest on the part of — at least certain — political operators in knowing what is happening in the less populated areas that cover around 80 % of their territory, as is the case in

12 I invite the reader to quickly type in an internet search engine on the question and they will see the ease of data the larger the city and the low possibility of a serious study when we reduce the searches to municipalities of less than 5000 inhabitants.

13 Mention should be made of criminological theories which point out that areas with less control are less safe, as crime is displaced to them. These trends remind us that we cannot take for granted that being areas with small populations or free of major conflicts will make insecurities disappear, as these may be the very reasons for the proliferation of insecurity.

Castile and Leon. And it is this constant absence of concern for protecting our land and those who inhabit it that leads me to wonder whether this is the prologue to the total abandonment of rural areas.

It is true that, on the other hand, there is a growing concern for rural areas on the part of social and legal executors, which is leading researchers to develop a framework for action and shortcomings for rural areas, as well as a continuous struggle for essential services such as health, education, economy and mobility, but isn't security important for the correct development of all of the above and to guarantee their development in freedom?

The problem is that there is a lack of data that does not allow us to know whether these areas are safe, need other resources or new targets.

While it is true that collaboration between different police forces, perseverance in the prevention of gender violence or even the approval of plans such as the Guardia Civil's Rural Security Plan¹⁴, which is in force throughout Spain, have been steps towards the anticipated progress of actions, many other necessary policies are forgotten in order to continue guaranteeing the life of the villages and to be able to placate depopulation¹⁵.

Taking into account the current model we are facing in Castile and Leon, circumscribed in the province of Salamanca, which has 362 municipalities of which 352 have less than 5,000 inhabitants¹⁶ and represent about a third of the total population of the province with an aging territory and with special and unequal needs to those of the large population centres, we find in a differentiated manner the presence of Local Police, Civil Guard and National Police — leaving out of analysis the urban core of Salamanca — . This distribution can be seen visually in the map in Annex I, which forces us to question the large territorial extension that is left to the asylum of each Civil Guard post — which is almost absolutely responsible for deploying troops in these areas and is in charge of security.

The area of land assigned to each Guardia Civil post forces them to cover large tracts of land — even too much — with the troops they have available,

14 The Action Plan "Security in the face of the Demographic Challenge" develops one of the 12 lines of action of the Guardia Civil's Strategic Plan 2021-2024, specifically, the line that refers to "Modernisation, public value and contribution in the face of the Demographic Challenge".

15 The "Security in the face of the Demographic Challenge" Action Plan has the essential objectives, among others, of maintaining objective security and improving subjective perception. This is presented from an optimistic point of view, but requires technical, economic and human resources and an in-depth analysis of the reality. Undoubtedly, the hope to work on this issue is to be admired, but we cannot fall into the mistaken belief that it is enough.

16 Data extracted from La Diputación de Salamanca "núcleos de población", data updated through the Instituto Nacional de Estadística. Available at: <https://acortar.link/Ck4bo0>

which are meagre for the current situation, due to the fact that the areas are generally poorly connected and the terrain is rugged.

And although we are unaware of the real crime situations, we are aware of the shortages and the large areas of land that the few troops have to cover, and we are also faced with the problem of time, which makes it impossible to provide a rapid response.

2. EXAMPLES AND GOOD PRACTICES TO CONSIDER

While the official data is frankly bad, there are some isolated studies that call for Castile and Leon to plagiarise the practice. Since this Autonomous Community represents the total of 8131 municipalities with 2248, almost 30 % — data that are maintained if we work with municipalities of less than 5000 inhabitants — should be at the top of the list of proposals, but since this is not the case, we have to take examples that can be at least practical *a priori*.

A few months ago, the *Justice of Aragon*, which is one of the four basic institutions of the Autonomous Community of Aragon, published a report in which it stresses that crime in villages has increased in relation to crimes against property and agricultural and livestock farms and notes “a feeling of insecurity”. The I Special Report of the Justice on security in rural areas for Aragon concludes that the model of security forces and bodies has become obsolete and recommends a model that facilitates the filing of complaints, while pointing out that a real and complete study of criminality is needed¹⁷, however this report is triggering the first consequences as a series of meetings of the sub-delegation with the Guardia Civil and the mayors of the municipalities to draw lines of crime prevention in rural areas.

The data provided by the quarterly crime balance sheets of the Ministry of the Interior indicate guidelines for municipalities with more than 20,000 inhabitants, however, what is indicated for rural areas is everything that does not fall within the capital, which is derived from journalistic sources, so that there is nothing concrete for rural areas specifically, when at present, we have new problems such as the displacement of practices related to organised crime to rural areas of the Mediterranean coast which are less controlled areas than large cities.

VI. CONCLUDING REFLECTIONS. THE LACK OF DATA AN INSURMOUNTABLE GAP FOR EFFECTIVE CONCLUSIONS

Security as a legal concept of special protection obliges the legislator to regulate its content and to guarantee its protection, urging all operators to

17 The report, related information and conclusions are available and open access at: <https://acortar.link/3gckz5>

maintain it as a source of protection for another series of rights and guarantees. Security is not only a generic concept at the state level, but without losing its content, it is transferred to each individual subject, and must also take into account the environment. Consequently, there is always an individual and a collective security that is worked on together with that of the territory.

The needs of the rural environment change over time and the most relevant area is the differences that we can locate with the big cities, assuming logically that the guarantee of security will not be the same in both areas.

In order to deal with security, we must first deal with it from a preventive point of view and then from the point of view of control, investigation and clarification of criminal forms. In both cases there is a double problem for rural areas. The first is the lack of research focused on the security needs of small municipalities or sparsely populated areas and, secondly, the shortage of manpower for the large areas that make rapid operations impossible.

- The absence of data coupled with the widespread belief that rural areas are safe leads to the situation of security inadequacies as a purely investigative but necessary matter.
- the real conclusion is that we must know the reality of our towns and villages and their needs, know the number of personnel per area of territory and the number of known and solved crimes, comparing them with the perception of security, the belief in the ability to report and act, as well as the population's confidence in the actions of the police or the Civil Guard. All of the above, in addition to establishing different guidelines and mechanisms for summer periods, which require new needs that do not necessarily coincide with those of the rest of the months, as well as knowing and differentiating needs according to the terrain, the quality of the infrastructures, the real population, etc., gives rise to the obligation to carry out a quantitative study of security in rural areas in order to be able to show the seriousness of the problem and draw up a rural security strategy based on a real reality.

VII. BIBLIOGRAPHY

BALMACEDA QUIRÓS, J.F., "Bien jurídico penal. Contenido procedimental y contenido material", in *Revista de Investigación de la Facultad de Derecho Católica Santo Toribio de Mogrovejo*, vol. 1, núm., 2022.

BECK, U, *The Risk Society. Towards a new modernity*. Barcelona: Paidós, 1998.

COLINA RAMÍREZ, E I., "La seguridad como bien jurídico", in *Cuadernos de la Guardia Civil: Revista de seguridad pública*, núm. 56, 2018.

ECONOMIC AND SOCIAL COUNCIL:

- *Report 01/2018 on "El medio rural y su vertebración social y territorial"*, Madrid, 2018. Available at: <https://acortar.link/hIO7qH>

- *A living and sustainable rural environment. Report 02/2021, approved at the extraordinary plenary session of 7 July 2021, Madrid, 2021.*

DÍEZ RIPOLLÉS, J. L., “El bien jurídico protegido en un Derecho Penal garantista”, in *Jueces para la democracia*, núm. 30, 1997.

DOMÍNGUEZ ÁLVAREZ, J.L., “Algunos apuntes acerca de la necesidad de repensar el ordenamiento jurídico y la técnica normativa como premisas para afrontar el reto demográfico y territorial”, in *Revista Española de Función Consultiva*, núm. 33, 2020, pp. 93-119.

DOMÍNGUEZ ÁLVAREZ, J.L. and **TOMÉ DOMÍNGUEZ, P.M.**, “La conectividad de los territorios rurales como premisa para el fomento de la dinamización y la sostenibilidad de las áreas con desafíos demográficos: más allá de brechas y promesas”, in RODRÍGUEZ ESCANCIANO, S. and ÁLVAREZ CUESTA, H. (Coords.), *La economía social y el desarrollo sostenible*, Colex, A Coruña, 2022.

ESPINOSA LEAL, I., “Evolución histórica de la teoría del bien jurídico penal”, in *Archivos de Criminología, Seguridad Privada y Criminalística*, vol. 19, 2022.

GABALDÓN, L., *Control social y Criminología*, Caracas, Venezuela: Editorial Jurídica Venezolana, 1987.

GÁMEZ, M., *Jornada - Presentación “La Seguridad en el Mundo Rural”*, Villasana de Mena, Federación Española de Municipios y Provincias, 2022.

GOVERNMENT OF SPAIN:

- Presidency of the Government, *Estrategia de Seguridad Nacional*, 2013.

- *General Guidelines of the National Strategy against the Demographic Challenge*, Madrid, 2019. Available at: <https://acortar.link/TPKHv2>

- *Plan de Recuperación 130 Medidas frente al reto demográfico*, Madrid, 2021. Available at: <https://acortar.link/RNL4aA>

JENDLY, M., SAGANT, V., and **SHAW, M.**, “International Report on Crime Prevention and Community Safety: Trends and Perspectives”, in *International Centre for the Prevention of Crime (ICPC)*, USA, 2008.

LORENZO-PENALVA LUCAS, J., “El concepto de seguridad. Importancia relativa de las dimensiones de la seguridad en Europa y sur del Mediterráneo”, in *Instituto Español de Estudios Estratégicos (ieee.es)*, núm. 83, 2017.

MARTÍNEZ DE PISÓN CAVERO, J.M., “Las transformaciones del Estado: del Estado protector al Estado de seguridad”, in AA. VV., *La tensión entre*

libertad y seguridad: una aproximación socio-jurídica, Colección jurídica 22, 2006.

MINISTRY OF DEFENCE, *National Security Strategy*, 2021.

MINISTERIO PARA LA TRANSICIÓN ECOLÓGICA Y EL RETO DEMOGRÁFICO, *Plan de recuperación. 130 medidas frente al Reto Demográfico*, Madrid, 2021.

OBRAADOR SERRA, F., "Análisis del concepto de seguridad, Cuadernos de estrategia", in *Issue dedicated to: Factores de la estructura de seguridad europea*, núm. 49, 1992.

UNITED NATIONS ORGANISATION, *Measures to Promote Effective Crime Prevention [2002/13]*, New York, 2002.

SUMMERS, L., "Las técnicas de prevención situacional del delito aplicadas a la delincuencia juvenil", in *Revista Derecho Penal y Criminología*, UNED, núm. 1 (3.º época), 2009.

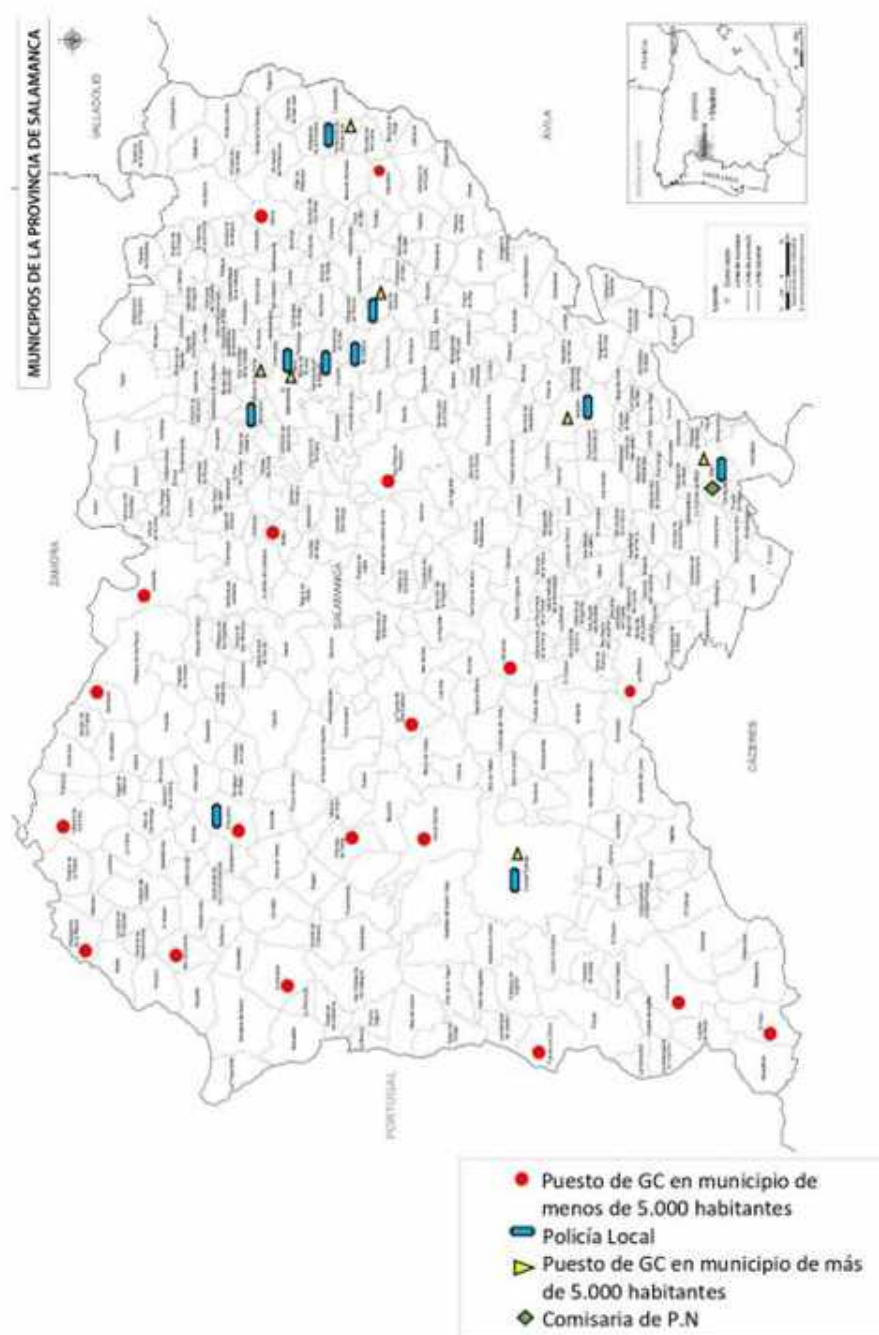
TORRENTE, D., *Desviación y delito*, Alianza editorial, 2001.

USECHE ALDANA, O., "Miedo, seguridad y resistencias: el miedo como articulación política de la negatividad", in *Polis: revista iberoamericana*, Vol. 19, 2008.

VEGA FERNÁNDEZ, E., "El control y la prevención del delito como objeto de la criminología", in *Miscelanea Comillas*, núm. 146, 2017.

ZÚÑIGA RODRÍGUEZ, L., *Política Criminal*, Colex, 2001.

VIII. ANNEX



CHAPTER VI

AGRI-FOOD SECTOR AND RURAL ENVIRONMENT

PILAR TALAVERA CORDERO

*Research Staff in Training
University of Salamanca*

SUMMARY: I. INTRODUCTION. II. THE AGRI-FOOD SECTOR AND THE EU. 1. *EU Agri-Food and Environmental Policies.* 1.1. *Biodiversity Strategy.* 1.2. *"From Farm to Fork" Strategy.* III. COMMON AGRICULTURAL POLICY. 1. *Pillar I.* 2. *Pillar II: special attention to the "LEADER" program.* IV. FOOD CHAIN LAW. 1. *Situation of primary producers in the food chain.* 2. *Directive (EU) 2019/633 of the European Parliament and of the Council, dated April 17, 2019, on unfair trading practices in relationships between businesses in the agricultural and food supply chain.* 3. *Spanish Food Chain Law.* 3.1. *General provisions.* 3.2. *The food contract.* 3.3. *The price.* V. SHORT SUPPLY CHAINS. 1. *European regulations.* 2. *Spanish regulations.* 3. *Regional regulations.* 3.1. *Sales modalities.* 3.2. *Types and quantity of products.* 3.3. *Administrative and health requirements.* 3.4. *Promotion measures.* VI. CONCLUSION. VII. BIBLIOGRAPHY.

I. INTRODUCTION

It cannot be denied that in Spain and other EU countries, the agricultural sector, and in general, rural areas, are tired of bearing the consequences of market globalisation. There is a latent discontent that has materialised in numerous, more or less explicit, protests, both from farmers and breeders, and from the rural population as a whole.

The Spanish agri-food sector has been the protagonist of numerous demonstrations in recent years. Under the slogan "Farmers on the Edge", farmers and breeders demanded a more equitable distribution of the value of the food chain at the end of 2019 and the beginning of 2020. In these protests, they pointed out that consumers paid up to eight times more than what producers received. They also demanded measures to prevent unfair

competition from the marketing of agricultural products from third countries that do not meet European quality and environmental requirements (ARNAU MOYA, 2020: 113). These protests were met by the Spanish government with successive modifications to the Food Chain Law; however, its inefficacy led to these demonstrations recurring throughout 2022 and 2023.

Rural society has also demanded institutional abandonment in rural areas in the so-called "The Revolt of empty Spain" from which political parties like Soria Ya! or Teruel Existe have emerged. This situation is not exclusive to Spain, as it is replicated in neighbouring countries; "Aree interne" in Italy, "municipalities do interior" in Portugal, or "lonely places" according to the Joint Research Center of the European Commission. This is unsurprising, as rural areas face an unprecedented demographic and territorial challenge, demanding, among other things, a coordinated response from public administrations (DOMÍNGUEZ ÁLVAREZ, 2020).

A reflection of this general problem in rural areas is the gradual abandonment of agricultural activities, caused by the ageing of producers, the absence of generational succession, limited use of technological means, declining profits due to the hegemony of distribution, among others (GÓMEZ LÓPEZ, 2004: 74). These circumstances negatively affect the demographic and economic revitalization of rural areas.

These two realities are closely related since the abandonment of agricultural activities leads to population decline, loss of economic dynamism, and also direct negative effects on the environment (AMAT LLOMBART, 2015: 10). Farmers and breeders are among the most significant conservationists of the territory.

The agri-promote the agri-food sector as a resource to address the Demographic food sector has a dual role in rural areas: productive and protective of the environment (GARCÍA AZCÁRATE, 1994: 22). Therefore, it is essential to undertake measures that Challenge.

The EU itself has echoed this sentiment in the document approved by the Commission titled "Long-term Vision for the EU's Rural Areas." This document represents the long-term vision that the EU wishes to maintain to create stronger, more connected, more resilient, and more prosperous rural areas. Thus, within the scope of "Resilient Rural Areas," there is an obligation to preserve natural resources, restore landscapes, ecologise agricultural activities, and shorten supply chains (DOMÍNGUEZ ÁLVAREZ, 2022: 117).

In this work we will analyse the main legal-administrative tools and policies, both at the community and national levels, which affect the agri-food sector and rural areas. Given that the territorial problem is primarily a legal issue, it falls within the domain of regulating relationships not only between individuals but also between public powers and citizens and between individuals and the environment (FERNANDO PABLO, 2019: 12).

Firstly, a characterization of the operation of the EU's agri-food sector will be presented, where market internationalisation and the dominance of distribution prevail. Secondly, the main regulations governing the food chain will be outlined, whose primary objective is to rebalance the operators of the food chain. Thirdly, the new stage of the Common Agricultural Policy and its impact on the agri-food sector will be analysed. Finally, we will address a type of marketing that remains marginal today: short supply channels. However, these channels emerge as a solution to both the environmental and social challenges of the European agri-food sector. Analysing the agri-food sector is crucial to address the Demographic Challenge, as it is one of the most important economic sectors in rural areas.

II. THE AGRI-FOOD SECTOR AND THE EU

The current configuration of the agri-food sector in Europe leads to numerous inefficiencies that negatively impact the environment, rural areas, and value distribution within the chain. Firstly, due to the sector's orientation towards global markets and commercialization through large distributors, the sector's environmental footprint significantly increases due to the distances food has to travel.

Value distribution is uneven among chain operators due to the inherent configuration. The production side is fragmented, atomized (more than three-quarters of its companies have fewer than ten employees) (TRIGUERO CANO, 2023: 221) and lacks efficient negotiation methods to face the dominance of the distribution side, as they depend on one or two buyers (RUIZ PERIS, 2016: 13). In contrast, the distribution side, being large companies with greater bargaining power, distribute their risks and costs among various producers from different countries (PABLO-ROMERO GIL-DELGADO, 2013). Additionally, following the consolidation of hypermarkets and supermarkets replacing traditional retail, distributors have a greater market share (SÁNCHEZ HERNÁNDEZ, 2020: 230).

This system is deeply inefficient, leading to the approval of various instruments to transition to more environmentally respectful agri-food models that are beneficial to rural areas and farmers' income. Therefore, efforts should be made towards shaping a sustainable food system with short and seasonal distribution channels. However, this maxim is far from being achieved, even though various policies and regulations have been approved to move in that direction.

This transformation is essential to ensure and consolidate the European agri-food sector, as it is a primary source of employment in many regions. Within the sector, numerous companies coexist, prominently featuring SMEs and agri-food cooperatives, which are the main economic drivers of many towns and contribute to retaining the rural population (TRIGUERO CANO, 2023: 231).

1. EU AGRI-FOOD AND ENVIRONMENTAL POLICIES

Climate change is a problem widely acknowledged by the population, public authorities, and the scientific community. In this context, the European Union has positioned itself as a political leader in adopting environmental commitments. To achieve this, the EU must transform production and consumption models (DE SADELEER, 2023: 3).

This European environmental commitment materialised in the global objective for all EU Member States to reduce net greenhouse gas emissions by at least 55 % by 2030, aiming ultimately for climate neutrality by 2050. This represents one of the most significant environmental political milestones.

To achieve this ambitious goal, the EU introduced the European Green Deal in 2019, setting out the initial roadmap for key policies and measures to progress towards a greener future. All these political promises have been transformed into a binding legal obligation following the approval of the European Climate Law.

In these environmental policies, the agri-food sector plays a crucial role since it is one of the most polluting sectors, with a growing carbon footprint, which has increased from 1.5 to 3.5 tons of CO₂ *per* capita from 1960 to 2010. Therefore, to move towards a climate neutral Europe, agroecological systems must be consolidated (AGUILERA, 2020). This requires a comprehensive transformation of the food chain, including production, processing, distribution, and consumption.

The EU has long taken steps towards a European model of sustainable production based on strict quality requirements and environmental protection, such as the Biodiversity Strategy and the “Farm to Fork” Strategy. However, tangible results from this transition are still pending, as there has not been a transformation across all links in the chain, as we will see below.

Furthermore, the European Green Deal also includes numerous references to the rural world due to its close relationship with environmental conservation (FERNÁNDEZ DE GATTA SÁNCHEZ, 2022:73). Rural areas will fulfil a dual purpose: preserving ecosystems related to agriculture and forestry and promoting the transformation of the agricultural, food, and forestry sectors. In summary, rural areas and agriculture must go hand in hand in the green transformation of the EU.

1.1. Biodiversity Strategy

On May 20th, 2020, the Commission approved the EU Biodiversity Strategy for 2030, under the title “Bringing Nature Back into our Lives.” The main objective is the recovery of all ecosystems to ensure they are resilient and adequately protected.

To achieve this, as outlined in the document, legislative measures are necessary, but it also requires actions from citizens, businesses, the scientific community, and associations. The document also highlights that the five primary direct factors leading to biodiversity loss are: changes in land and sea use, overexploitation, climate change, pollution, and invasive alien species, as they are causing rapid natural depletion.

In order to reach this objective, the primary sector plays a pivotal role. It is both a significant conservation agent for biodiversity and sometimes the cause of its loss. The communication states that they are among the first sectors to feel the consequences of biodiversity loss but also to benefit from its recovery.

One of the critical factors for ensuring the health of agroecosystems, agricultural production and food security is pollination. Its alarming decline needs to be reversed. The strategy aimed for, at least, 10 % of agricultural land to be covered with diverse landscape elements by 2020. However, this target has not yet been achieved¹.

This includes protective strips, lands taken out of production based on rotation or not, hedges, non-productive trees, terrace walls, and ponds. All these elements help increase carbon capture, prevent soil erosion and depletion, filter air and water, and facilitate adaptation to climate change.

Furthermore, the strategy sets a goal for at least 25 % of EU agricultural land to be dedicated to organic farming by 2030. It emphasises that agroecology is more productive, provides healthier food, enhances soil fertility, reduces the carbon footprint of food production, and offers between 10 and 20 % more jobs than conventional agriculture. To achieve this goal, the Strategy mandated the approval of a European Action Plan on Organic Farming and the inclusion of measures in national strategic plans of the CAP, both of which have been approved. In terms of figures, according to Eurostat, the lands dedicated to organic farming increased from 5.9 % in 2012 to 9.1 % in 2020 (EUROPEAN COURT OF AUDITORS, 2023).

1.2. The “Farm to Fork” Strategy

To propose the policy strategy that laws and measures in the agri-food sector should follow, the “Farm to Fork” Strategy was approved. This strategy aims to create a fair, healthy, and environmentally friendly food system².

1 This can be verified on the website created by the European Commission to monitor the actions of the EU Biodiversity Strategy. Available at: <https://acortar.link/FUIQb1> (Last accessed on 08/11/2023).

2 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: “Farm to Fork” Strategy for a fair, healthy, and environmentally-friendly food system. COM (2020) 381 final.

It is a programmatic document with the objectives of establishing a food chain that benefits consumers, producers, climate, and the environment. To achieve this, it sets goals and action lines at all stages of the chain, namely: production, transformation, distribution, marketing, and consumption.

In terms of production, the Strategy emphasises the need to reduce dependence on pesticides and antimicrobials, decrease excessive fertilisation, promote organic farming, enhance animal welfare, and reverse biodiversity loss. The Strategy states that incentives will be provided for producers to be more sustainable, primarily through the Common Agricultural Policy (CAP).

Among the measures it includes, we can highlight: carbon capture by farmers and foresters as a business opportunity, a bio-based circular economy, linking farms with renewable energy production from livestock waste or solar panels on infrastructure roofs (e.g., barns), reducing pesticide use, protecting biodiversity, introducing more sustainable and innovative feeds, reducing antimicrobial use, enhancing animal welfare, promoting seed diversity, and finally, improving competition standards.

The second stage, transformation, also deserves attention in this document. Food processing companies, food service operators, and retailers shape the market and influence consumers' chosen diets through the types of foods they produce and their nutritional composition, the suppliers and production methods they choose, and their packaging, transportation, advertising, and marketing practices.

The food industry and the retail sector should lead the way by increasing the availability and affordability of healthy and sustainable food options to reduce the overall environmental footprint of the food system. To achieve these objectives, the Commission commits to approving the following measures: an EU code of conduct for responsible business and marketing practices, accompanied by a monitoring framework; measures in advertising to ensure food prices do not undermine citizens' perception of food value; packaging reduction in line with the Circular Economy Plan; influencing nutritional profiles to restrict the promotion (claiming nutritional or health benefits) of foods high in fats, sugars, or salt; and enhancing corporate governance framework, marketing standards, and others.

In distribution, the EU aims to shorten supply chains. The Commission will support reducing dependence on long-distance transportation (in 2017, around 1.3 billion tons of primary agricultural, forestry, and fisheries products were transported by road). This is crucial as distribution is not only the most polluting part of the chain but also the most dominant, overshadowing the production side.

This hegemony of large-scale distribution was already present at the end of the 20th century and continues with even greater force in the 21st century (LANGREO and GERMÁN, 2018). A role that was once held by producers before the sixties, who lost strength as agriculture modernised and the economy diversified (SANZ-CAÑADA, 1997).

Regarding commercialization, the strategy emphasises the increasing decision-making power of consumers. Clear information diffusion to facilitate healthy and sustainable diet choices will benefit their health and quality of life. Among the tools it plans to use is sustainable labelling that includes nutritional, climate, environmental, and social information on food products. Additionally, it will explore new ways to provide consumers with information through various means, including digital ones, to improve accessibility, especially for visually impaired individuals.

In the final link, consumption, the strategy emphasises the need for a dietary shift to achieve ecological transition without compromising food security. The document stresses the need to address consumption patterns and food waste.

Approximately 20 % of produced food is wasted, and obesity rates are also on the rise. Over half of the adult population is overweight, leading to a high prevalence of diet-related diseases (like various cancers) and increased healthcare costs. Hence, the strategy emphasises reducing overweight levels by promoting diets richer in vegetables, less red and processed meat, and more fruits and vegetables.

Overall, European diets do not align with national dietary recommendations, and the “food environment” does not ensure that the healthy choice is always the easiest. Aligning European diets with dietary recommendations would significantly reduce the environmental footprint of food systems.

In summary, the strategy addresses various stages of the agri-food system to advance EU climate objectives. In some cases, it materialises its intentions through tangible legislative measures, such as reducing packaging with the Circular Economy Law. However, in other areas, it merely states intentions, especially concerning changing citizen consumption patterns.

Nevertheless, the strategy has significantly influenced the shaping of the Common Agricultural Policy (CAP), which focuses on the production part of the agri-food system. But transforming just one link of the chain is not fair: without changes in distribution and consumption models, alterations in production will not steer the system towards sustainability.

What is happening is that EU products are becoming less competitive compared to third country products. As a result, distribution further lengthens its supply chains and consumption remains unsustainable. This leads to the abandonment of farms, a loss of European food supply capacity, and consequently, the loss of economic assets derived from the primary sector in rural areas.

III. THE COMMON AGRICULTURAL POLICY (CAP)

Currently, the agricultural model is geared towards global markets, leading to a gradual abandonment of local agriculture that helps structure rural

areas. This transformation is happening hand in hand with CAP. While CAP encourages strong and competitive agriculture in international markets, it aims to support farm incomes through direct aid, aiming to maintain territorial cohesion and a decent standard of living for farmers. However, reality shows that these objectives are not being met, and our rural areas are becoming increasingly depopulated. Indeed, farmers see how the support meant to compensate their incomes do not always benefit those working in the field or directly help the rural environment. This discourages young people from entering the sector and largely explains why there is abandonment of both the sector and the territory (BARAJA RODRÍGUEZ *et al*, 2020: 268-269).

To ensure social and territorial cohesion, we need CAP to advocate for agriculture connected to the land. The European Commission included, among its recommendations to Spain for the development of the national strategic plan, the objective of which is reducing depopulation trends in rural areas. This will be achieved by redoubling efforts to address the generational renewal challenge in agriculture, reducing entry barriers to the sector, especially concerning land access, and financing, and narrowing the gap between male and female employment.

The Commission states that it is necessary to involve young people and women in agriculture to address climate and demographic challenges. This is because data shows the need to direct policies to attract youth to rural areas, as they are proven to be the most educated and capable of achieving higher standard production and investing more in their businesses (LÓPEZ MUÑOZ, 2022: 108). Moreover, involving women is crucial as they are essential for stabilising the rural population.

In 2023, a new programming period for the CAP was approved, which will be in place until 2027. The objective of this policy is to help farmers improve their environmental and climate performance through a results-oriented model, better data usage and analysis, stricter mandatory environmental standards, new voluntary measures, and a greater emphasis on investing in ecological and digital technologies and practices. Another primary goal is to ensure a decent income for producers, enabling them to support their families and withstand various crises. To achieve this, a regulatory package has been developed in Spain, including a Law and several Royal Decrees for the implementation and management of the CAP (LÓPEZ TORRES, 2023: 74).

The CAP is structured into two pillars: the first pillar includes basic income support for sustainability and other complementary aids, while the second pillar focuses on direct aids for rural development. We will analyse the main modifications of each and their implications for shaping the new rurality.

1. PILLAR I

Within Pillar I, there are five types of aids: basic income support for sustainability, complementary redistributive income support for sustainability,

additional income support for young farmers, eco-schemes, and associated income support.

Regarding the environmental component, the new configuration has established both mandatory environmental requirements (basic income support for sustainability) and voluntary ones (eco-schemes). The latter, despite being voluntary schemes, become obligatory if one wants to maintain the economic level of aid, as they represent 23 % of the budget of the first pillar (INCOME SUPPORT SERVICE and SIGC, 2022).

The inclusion of eco-schemes is one of the main novelties of this new CAP, which, as was already being done previously, advocates for sustainable agriculture, moving away from the productive agriculture of the past. However, even though a green shift is desirable to move towards a sustainable economy, many of these commitments reduce the productivity of farms and, therefore, profitability, which is not compensated by the amount of aid provided. This has been highlighted by major representatives of farmers and livestock breeders following the approval of the new CAP³.

On paper, this new CAP has combined the need to reduce administrative procedures with a green-digital boost, ensuring a synergistic approach between them (RODRÍGUEZ-CHAVES MIMBRERO, 2022: 124). However, the demands of social movements of farmers and livestock breeders reveal that these aims do not reach the ground. This is because, despite efforts, bureaucracy remains high, and environmental requirements are difficult and costly to adapt to. Therefore, for these measures to yield positive results, the Administration would need to provide technical support and dissemination among farmers and breeders.

These farmers, who must bear higher costs, are the ones competing in the European market with food products from third countries (Lumbreras, 2021: 94). Producers from these countries face lower labour costs and have fewer health and environmental requirements, allowing them to offer lower prices in a European market characterised by international openness (MOYANO ESTRADA, 2021: 56).

Furthermore, Pillar I includes additional aids to address some of the problems of the agri-food system, such as complementary income support for young farmers. These aids are crucial since currently, only 8.7 % of farm holders in the EU-28 are under 35 years old (Eurostat, 2016). This generational replacement issue is even more pronounced in Spain, where only 6.9 % of holders are under 35 years old (CASTILLO QUERO and GUERRERO BAENA, 2019: 63).

3 This was one of the conclusions from the Analysis Conference on the CAP held at the Faculty of Law of the University of Salamanca on June 13, 2023. This conference brought together key stakeholders involved in the CAP, among which we can highlight the associations ASAJA, UPA, and the livestock group 19th April.

To reverse this situation, a series of measures and aids have been deployed for the incorporation of young people into the primary sector, present in both the first and second pillars⁴, which have existed since 1985 and have gained special relevance since 2023. Previously, instead of financing young farmers, a support system aimed at encouraging retirement was envisioned (CASTILLO QUERO and GUERRERO BAENA, 2019: 66).

Regarding CAP subsidies, a young farmer will be considered as an individual who has not yet reached the age of 40 in the calendar year of their first application. For legal entities, the effective controller of the farm must meet these criteria. The requirement of the initial application is cumulative with the age requirement; that is to say, if someone is of that age but has not recently started their involvement, they cannot benefit from the young farmer subsidy⁵. This subsidy will be granted for a maximum of five years⁶.

Although we believe that these subsidies are positive since generational renewal is crucial for both rural areas and the agri-food sector, the truth is that the aging rates within the agri-food sector continue to rise, even after almost forty years of additional support for young people.

2. PILLAR II: Special focus on the “LEADER” Program

Pillar II is dedicated to rural development, which was included in community aid following the MacSharry reform. The *raison d’être* of these aids, from their origins, was the inclusion of the environmental and social perspective hand in hand with rural territories. The rural environment is the main preserver of natural and scenic wealth (MUÑOZ GÓMEZ, 2022: 283).

Pillar II is funded by the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), which will be materialised through the Strategic Plans that each Member State must develop. This new document will replace the regional rural development programs.

In this Plan, aids are structured through so-called interventions, which include environmental and management commitments that must have a

4 In addition to this support, certain benefits are foreseen for young farmers, such as the priority use of the national ⁴ reserve. This is established in Article 26 of Royal Decree 1045/2022, of December 27, on basic aid rights for the sustainability of the Common Agricultural Policy. It states that rights from the national reserve will be allocated on a priority basis to cases outlined in Article 21.2.a) and b). Article 21.2.b) of the aforementioned law includes young farmers who have recently established themselves on a farm for the first time.

5 Article 3 of Royal Decree 1048/2022.

6 Article 22 of Royal Decree 1048/2022

positive impact on rural territories. These interventions must be included in the PEPAC, allocating them financial resources in accordance with the objectives and needs of each of the Member States.

Within the second Pillar, the funds allocated to LEADER are especially important, even more so in this new phase of the CAP, where a minimum of 5 % of the PEPAC budget must be allocated to it. The way they are structured in each of the Member States has also changed, as it will be the central power of each MS that must develop a national strategic plan outlining the distribution of LEADER funds⁷.

The methodology followed by LEADER grants is to delegate planning initiative and protagonism to Local Action Groups (GALs). These are non-profit public-private associations that, in their respective regions, tackle the challenge of addressing local issues. Through the creation of a Participatory Local Development Strategy, which involves citizen participation, it aligns with the bottom-up approach that characterises these grants.

This initiative has represented a paradigm shift in rural development grants, benefiting diverse sectors that have contributed to the economic revitalization of rural areas, mainly due to their participatory and innovative nature. In this work, we emphasise all initiatives related to the agri-food industry, as thanks to LEADER, agri-food business models characterised by sustainability and added value for both rural areas and primary producers involved have been developed (BAUTISTA ALONSO MARTÍN and TERRÓN SANTOS, 2020: 184).

At this point, it is worth noting that, in accordance with Consideration 31 of Regulation (EU) 1305/2013, *“the LEADER approach to local development has proven its effectiveness over the years in promoting rural area development, fully considering the multi-sectoral needs of endogenous rural development through a bottom-up approach. Therefore, LEADER should be maintained in the future, and its application should remain mandatory for national and/or regional rural development programs.”*

In contrast, the European Court of Auditors, in its most recent report on the matter, states that *“the LEADER approach entails higher administrative and operational costs, a slow approval process, and did not result in projects that provided demonstrable additional benefits. Overall, we conclude that there is scant evidence that the benefits of the LEADER approach outweigh the costs and risks involved”* (EUROPEAN COURT OF AUDITORS, 2022: 42).

7 The so-called “LEADER approach” refers to an investment method based on bottom-up territorial focus investments, carried out through Local Action Groups. The success attributed to this initiative is not so much due to the results derived from it but rather to the approach itself. In this approach, civil society of the territory has direct participation through its representatives in the local association (CASTELLANO ÁLVAREZ and DURÁN SÁNCHEZ, 2019).

This contrast clashes with tangible reality, as despite recognizing successful cases, the local groups themselves (Local Action Groups) feel that the grants become a bureaucratic entanglement hindering rural revitalization efforts. Therefore, to ensure the success of this initiative, a path of flexibility must be followed.

IV. FOOD CHAIN LAW

One of the consequences of the demonstrations that took place at the end of 2019 and the beginning of 2020 was the approval in Spain of the Food Chain Law. Specifically, the national law was reformed three times, under the pretext of incorporating into domestic law what was provided in Directive (EU) 2019/633. However, it contains significant novelties that go beyond what was foreseen in the community act (FERNANDO PABLO, 2022: 240).

The food chain encompasses all relationships between operators from production to the final consumer. However, the regulation only addresses relationships of operators in the production, transformation, and distribution stages. These relationships are characterised by being asymmetrical, which should be reflected in the configuration of the regulation. Specifically, the weakest link in this chain is the production stage. This is highly relevant for rural areas since, unlike other links, the benefits and location of primary operators are situated in rural areas.

1. THE SITUATION OF PRIMARY PRODUCERS IN THE FOOD CHAIN

Currently, there is an imbalance between operators in the food chain, with the production stage being the weakest link. This is detrimental not only in terms of social justice but also efficiency. As pointed out by RODRÍGUEZ CACHÓN (2020: 168), all agents within the food chain should have similar power; otherwise, asymmetries arise that negatively impact the efficiency of the agri-food sector.

Farmers and ranchers find themselves at a disadvantage compared to other operators. Their relationships with processing industries and large retailers are characterised by information asymmetry and negotiation power. This impacts their pricing agency, which is diminishing, as only a minimal part of the final price consumers pay for a product reaches the producer. Meanwhile, the profit margins of large retailers continue to grow. Additionally, producers face rising costs (fuel, seeds, fertilisers, etc.), costs that are not reflected in the prices they receive (TRIGUERO CANO, 2023: 226).

This imbalance deviates from the presumption of equal contracting parties in private law, similar to what has been observed in labour or consumer

contexts. This power dynamic leads to abusive practices against primary producers (Ruiz Peris, 2017). Moreover, this negatively affects the long-term sustainability and value creation of the sector (RODRÍGUEZ CACHÓN, 2020: 46).

Producers are in a vulnerable situation due to various factors, including low agricultural prices at the source (prices that often do not cover production costs), which continue to decrease against the backdrop of rising agricultural inputs and production costs. This results in reduced profitability for the agricultural sector, which also faces significant inherent risks (meteorological, biological or market-related) (AMAT LLOMBART, 2015: 10).

This asymmetry has bolstered the negotiating power of large retailers over their suppliers, leading to the imposition of unfair contractual conditions (including price) on other operators. To counteract this undesired situation, both the European Union (EU) and Member States (EEMM) have approved regulations aimed at rebalancing the food chain. However, these regulations have proven ineffective in preventing the growing dominance of large retailers.

2. DIRECTIVE (EU) 2019/633 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, DATED 17 APRIL 2019, ON UNFAIR TRADING PRACTICES IN BUSINESS TO-BUSINESS RELATIONS IN THE AGRICULTURAL AND FOOD SUPPLY CHAIN

On April 12, 2018, the European Commission presented a proposal for a Directive of the European Parliament and of the Council concerning unfair trading practices in business-to-business relationships in the supply chain. With this proposal, the aim was to establish a minimum standard of protection against these practices throughout the EU.

This regulation stems from European demands for a legal text specifically addressing unfair practices among different actors in the food chain. Prior to this, only Directive 2005/29/EC⁸ existed, which aimed at unfair practices but solely between businesses and consumers (AMAT LLOMBART and LÓPEZ TORRES, 2020: 12).

The Directive has a very specific scope, focusing its regulation on actions between suppliers of agricultural products and buyers of these products. As we have been analysing, these relationships are unequal. This inequality is

8 Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 on unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council, and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ("Unfair Commercial Practices Directive").

pointed out in documents produced during the directive's drafting process, such as the "Opinion of the European Economic and Social Committee on the Green Paper on unfair trading practices in the food and non-food supply chain between businesses in Europe." This document highlights significant imbalances in the food supply chain, noting that "oligopolies have bargaining power against their commercial partners, who are much more fragmented."

These indications are reflected in recital 9 of the directive, which states that "the number and size of the agents vary at different stages of the agricultural and food supply chain. Differences in bargaining power, corresponding to the economic dependence of the supplier on the buyer, are likely to lead larger agents to impose unfair trading practices on smaller ones."

What the Directive does is set objective parameters to determine this dependency situation based on the turnover of operators, allowing for the deduction of negotiation asymmetry. Therefore, the directive only regulates behaviours that occur in relationships between companies falling within these parameters (GARCÍA VIDAL, 2019).

According to Article 1.2, the Directive will apply to certain unfair trading practices related to the sales of agricultural and food products by:

- a) A supplier with an annual turnover of less than EUR 2.000.000 to a buyer with an annual turnover of more than EUR 2.000.000;
- b) A supplier with an annual turnover of more than EUR 2,000,000 and less than EUR 10,000,000 to a buyer with an annual turnover of more than EUR 10.000.000;
- c) A supplier with an annual turnover of more than EUR 10,000,000 and less than EUR 50,000,000 to a buyer with an annual turnover of more than EUR 50.000.000;
- d) A supplier with an annual turnover of more than EUR 50,000,000 and less than EUR 150,000,000 to a buyer with an annual turnover of more than EUR 150.000.000;
- e) A supplier with an annual turnover of more than EUR 150,000,000 and less than EUR 350,000,000 to a buyer with an annual turnover of more than EUR 350.000.000.

In its article 3, it lists all prohibited unfair trading practices that must be included in national legislation. It differentiates between "black" commercial practices (which are strictly prohibited) and "gray" commercial practices (which may be included if clearly and unambiguously agreed upon in the supply contract).

The black list includes prohibitions such as: late payments; cancellation of orders for perishable products within such a short period that it does not reasonably allow the producer to find an alternative; unilateral modification by the buyer of contract terms; demanding payments from the supplier unrelated to the sale of agricultural products; requiring the supplier to pay for

the deterioration or loss, or both, of agricultural and food products occurring in the buyer's premises or after ownership has been transferred; refusal to formalise contract terms in writing; illicit use or disclosure of the supplier's trade secrets by the buyer; carrying out — or threatening — commercial retaliation against the supplier when exercising contractual or legal rights; demanding compensation from the supplier for costs incurred in handling customer claims related to the supplier's products.

The black list also includes: returning unsold products to the supplier that have not been paid by the buyer; charging the supplier a fee for storage, display, or inclusion in a price list of their agricultural and food products, or making them available in the market; requiring the supplier to bear all or part of the costs of discounts provided by the producer as part of a promotion and demanding the supplier to cover certain unrelated production costs (advertising their products, marketing their products, and staff for the preparation of premises used for the sale of the supplier's products).

This directive is a minimum standard, as established in its article 9. This means that Member States may introduce stricter rules than those set out in the Directive to combat unfair trading practices.

In summary, the content of the directive focuses on listing unfair trading practices that are prohibited and, therefore, must be prosecuted. It also focuses its scope on the relationships between primary producers and other operators in the food supply chain, recognizing a dependency situation. This situation is defined by objective parameters (turnover). Finally, provisions on enforcement authorities, alternative dispute resolution, and cooperation between enforcement authorities are also included.

3. SPANISH FOOD CHAIN LAW

The national legislation expands on the contents of the European Directive, since the Directive only establishes abusive commercial practices and focuses them on the relationship between specific operators. Specifically, the Directive centers on behaviours towards primary producers with a certain turnover. However, the Spanish Food Chain Law regulates aspects that go beyond community provisions and applies to all operators.

3.1. General Provisions

The law extensively lists its objectives in Article 3⁹, which are quite ambitious when compared to the mechanisms and tools subsequently developed. The

9 The objectives of the Law are: a) To increase the efficiency and competitiveness of the food sector as a whole, as well as promote the creation or improvement of employment, given its importance for society as a whole, rural areas, and the national economy. b) To improve

main principles governing relationships between operators are balance and fair reciprocity between parties, as stated in Article 4. Achieving this principle is challenging because relationships in the food chain are characterised as asymmetrical with limited contractual freedom. In practical terms, that often happens is that the transformation-distribution link imposes contractual conditions on the weaker party (primary production). Therefore, to realise this principle, legal mechanisms need to be developed to protect the weaker party in the legal relationship.

Article 7 establishes a complementarity clause of this legislation with competition defence regulations. This means that in cases of violations classified in both legislations, the competition defence norm will take priority. Some authors point out that this could have been avoided if the transposition of unfair commercial practices, concerning the food chain, had been incorporated into the Spanish Unfair Competition Act. This would have opted for a solution similar to what is used regarding unfair commercial practices with consumers (GARCÍA VIDAL, 2019).

3.2. The Food Contract

The fundamental tool upon which the Spanish regulation is built is the food contract between operators. This is because the weak position of primary producers results in limited bargaining power, leading to the imposition of contract prices (SÁNCHEZ HERNÁNDEZ, 2022) and a series of practices, conditions, and mechanisms that can be deemed unfair, in bad faith, and even contrary to free competition (AMAT LLOMBART and LÓPEZ TORRES, 2020: 34).

These contracts must be formalised in writing and signed by both parties before the start of the services. The wording should be based on the principles

the functioning and structuring of the food chain, benefiting the operators involved in it, while ensuring sustainable distribution of added value across its sectors. c) To promote the introduction of innovation and information and communication technologies in the chain and the development of new distribution channels for food products. d) To achieve greater balance and transparency in commercial relationships among different operators, improving access to information and traceability of the food chain, regulating commercial practices, and promoting codes of good commercial practices among operators. e) To strengthen the production sector and enhance the activities of agri-food inter professional organisations. f) To improve the competitiveness, efficiency, and innovation capacity of agricultural production, industry, and food processing. g) To promote the development of tasks corresponding to distribution companies within a framework of competitiveness and respect for competition rules. h) To contribute to ensuring consumer rights regarding comprehensive and effective information about food and its quality, transparency in the operation of the supply chain, as well as the availability of sufficient and quality food. i) To guarantee market unity for improving the competitiveness of the food chain. j) To promote the generalisation of a culture of sustainability in the food chain as a factor of corporate social commitment, increased competitiveness, and contribution to improving the quality of agri-food production.

of transparency, clarity, specificity, and simplicity — Article 8 —. Except if the price is paid in cash upon delivery of the production of food products, although the parties must document such commercial relationships by issuing the corresponding invoice.

This written form requirement will not be essential for existence and validity, but its non compliance will constitute a serious offence — Article 23.2 —. This formal requirement is demanded to provide greater legal certainty and as evidentiary proof of the agreed contractual conditions (SÁNCHEZ HERNÁNDEZ, 2016: 4).

A series of minimum contents are established that must be included, in addition to those freely agreed upon by the parties, which are as follows: identification of the parties, object, price (with express indication of all payments, including applicable discounts), payment conditions, conditions of delivery and availability of products, rights and obligations of the contracting parties, duration of the contract, causes, formalisation, and effects of contract termination, systems for conciliation and conflict resolution, contractual penalties, and exceptions for force majeure (Article 9 LCA).

This list is very broad, so the parties must carefully analyse the forms and conditions of the contracts to comply with this demanding provision (PALMA FERNÁNDEZ, 2021: 371). However, it has not yet been confirmed that these minimum conditions translate into guarantees for the production link, and not just another opportunity for distribution to impose its contractual conditions.

With this latest modification, the obligation to register food contracts in the Registry created for this purpose is established — Article 11 bis —. The party obligated to register the contract will be the buyer, that is, whoever purchases from primary producers. This registry is a manifestation of the control function assigned to the administration to ensure compliance with the law.

3.3. The price

The primary sector must receive adequate compensation to ensure the viability of agricultural operations. This is essential not only in terms of population supply but also because of the fundamental role the primary sector plays in rural areas. Farmers and livestock breeders need to earn incomes similar to those of other productive sectors to prevent crop abandonment. This is key to addressing the demographic challenge since the primary sector is one of the main economic drivers in rural areas.

The income received by EU producers consist mainly of the price received and CAP subsidies, which will be discussed later. The prices received by farmers have tended to grow less than the prices paid for production means. Thus, only efficiency gains and CAP subsidies have allowed farmers to maintain a decent living (COLINO SUEIRAS, 2020: 26).

However, we believe it is crucial to ensure fair origin prices to guarantee the construction of a balanced food chain, regardless of the European aid received. Many producers are excluded from these aids. Furthermore, adequate compensation is essential for maintaining population settlement in the territory.

To ensure this, the Spanish Food Chain Law has incorporated the prohibition of value destruction in the chain in its article 12 ter, complemented by Article 9 c). These articles establish the obligation to pay the primary producer a price higher than the cost incurred in production. However, three years after the approval of this provision, Spanish farmers and breeders protested again due to the law's inefficiency in building a fairer agri-food system.

The food chain legislation must be transformed to ensure the rebalancing of food chain operators. Otherwise, adequate benefits for farmers and breeders would not be guaranteed in order to maintain their agricultural operations.

Alternatively, promoting agricultural cooperatives as a mechanism to concentrate supply and thereby have greater negotiating power. Cooperatives have proven to improve farmers' incomes, being a more effective instrument for defending farmers "and breeders" interests. These cooperatives are linked to promoting innovative rural development initiatives related to the rational use of resources and environmental protection. Moreover, an improvement in farmers' income contributes to population settlement in rural areas (GÓMEZ LÓPEZ, 2004: 74).

V. SHORT SUPPLY CHAINS

The current agricultural model, based on the internationalisation of markets, has led to a detachment of the sector from consumers, the environment, and the territory. Consequently, society increasingly demands an agri-food sector that focuses on organic products and short distribution chains. Farmers themselves advocate for this form of marketing, as it is a way to regain power for producers and enhance sustainability (TRIGUERO CANO, 2023: 228), which also positively impacts rural areas.

A report from the COMMISSION (2013) links the promotion of local products with the strengthening and development of competitiveness in rural areas. It indicates that direct sales not only contribute to improving farmers' income but also promote activities after primary production (transformation, distribution, and retail), thus acting as a multiplier effect in the local community by generating employment opportunities.

Short marketing channels are defined as those sales from the producer directly to the consumer with the involvement of one or no intermediary. Distance is not the only factor; the information reaching the consumer about the product is also essential. This channel allows consumers to establish connections and associations with the place of production and potentially understand the values of the people involved and the production methods employed (EUROPEAN COMMISSION, 2013).

Meanwhile, EU legislation first defined them in *Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of December 17, 2013, concerning support for rural development through the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No. 1698/2005*. Article 2 m) establishes that it involves a limited number of economic agents dedicated to cooperation, local economic development, and geographical and social proximity relationships between producers, processors, and consumers.

These channels represent an opportunity to build a fairer and more sustainable food chain. They can also promote rural development by energizing other sectors such as food processing, restoration, and agritourism.

However, to promote this form of marketing, we must ensure regulation that does not suffer from an urban vision but rather responds to the unique characteristics of this trade and rural areas. Law plays a fundamental role, as it regulates and legitimises more sustainable and equally safe forms of marketing and consumption. In this regard, EU legislation and its transposition into Spanish law pave the way for adaptations, flexibilities, and exceptions to facilitate the construction of agri-food systems based on proximity.

Nevertheless, this matter in Spanish law is decentralised among the Autonomous Communities, leading to heterogeneous regulatory responses. Some communities use this legislation to promote their regional products, even integrating them as another economic activity like tourism. In contrast, other communities limit the possibilities of this trade to its bare minimum, resulting in almost anecdotal and survivalist trade.

1. EUROPEAN REGULATIONS

Regulation (EC) No. 178/2002 of the European Parliament and of the Council, dated January 28, 2002, establishes the primary objective of food legislation: to achieve a high level of protection for human life and health. This regulation sets out the principles and general requirements of food legislation, establishes the European Food Safety Authority, and sets out procedures related to food safety.

The regulation also includes principles of food safety: the principle of recourse to risk analysis by competent authorities, the precautionary principle, the principle of transparency, the principle of safety, and the precautionary principle. To comply with the principles outlined in this regulation and ensure food safety throughout the chain, the EU developed the so-called "hygiene package" (RIVERA, 2005: 46), which consists of the following regulations:

- Regulation (EC) No. 852/2004 of the European Parliament and of the Council, dated April 29, 2004, regarding the hygiene of food products.
- Regulation (EC) No. 853/2004 of the European Parliament and of the Council, dated April 29, 2004, establishing specific hygiene standards for animal-origin foods.

- Regulation (EC) No. 1831/2003, setting requirements for feed hygiene.
- Regulation (EU) 2017/625 of the European Parliament and of the Council, dated March 15, 2017, regarding controls and other official activities carried out to ensure compliance with food and feed legislation and standards on animal health and welfare, plant health, and plant protection products.

These regulations commonly exempt the compliance of their provisions for direct supplies from the producer of small quantities to the final consumer or local retail establishments for the supply of the final consumer. This implies that if we meet this definition, sanitary administrative measures will be more flexible. Additionally, adaptations are included for products that use traditional methods or are located in regions with geographical constraints.

2. SPANISH LEGISLATION

To incorporate these regulatory adaptations into national legislation, as European regulations grant Member States the ability to adjust administrative requirements concerning hygiene matters, Royal Decree 1086/2020, dated December 9, was approved. This decree regulates and makes flexible certain conditions for the application of Union provisions on the hygiene of the production and marketing of food products. These flexibilities significantly facilitate local trade without compromising the hygiene objectives set out in European regulations.

The measures adopted in the aforementioned Royal Decree respond to three situations: exceptions or adaptations to relax the requirements set out in the hygiene package regulations for certain types of establishments and products; activities excluded from the scope of these regulations; and lastly, measures that contribute to the correct application in Spain of European Union legislation.

Additionally, the subject regulation is a clear commitment to integrate, simplify, and adapt national food hygiene legislation, which is dispersed across various royal decrees, most of which predates the hygiene package regulations, and are now repealed.

In summary, this regulation represents a decisive step towards modernising and transforming a legal framework: that of short agri-food marketing channels, which has been overlooked by public authorities. This positions this economic sector at the forefront of the paradigm shift in sustainable rural development policies, aiming to revitalise depopulated rural areas (DOMÍNGUEZ ÁLVAREZ, 2021:287).

3. REGIONAL LEGISLATION

However, to achieve such ambitious goals, regional legislation must incorporate these flexibilities, in addition to including promotion measures and

a clear delineation of the established requirements. Various legal-administrative instruments have been approved, differing in intensity and regulatory quality, which has ultimately resulted in significant contrasts in the dynamization of short agri-food marketing channels between different autonomous communities (FERNANDO PABLO and DOMÍNGUEZ ÁLVAREZ, 2021: 176).

In this study, we will compare two regional legislations to highlight these differences, specifically, the legislation of the Autonomous Community of Aragon and Castile and Leon, namely:

- Order SAN/1175/2014, dated December 30, which authorises and regulates the marketing of certain food products directly from the producer to retail sales establishments.
- Law 7/2017 dated June 28, on the Local Sale of Agri-food Products in Aragon.

Regional legislation will develop and define sales conditions, specifically sales modalities, product types and quantities, and sanitary administrative requirements. Additionally, in some cases, they include promotional measures.

3.1. Sales Modalities

In Aragon's law, two sales modalities are allowed: direct sales and short-chain sales. Direct sales can be conducted on the farm itself, in producer-owned establishments, at local fairs and markets, and at the consumer's own residence. Short-chain sales involve a maximum of one intermediary, which can be a local establishment, a courier company, or any established formula. This implies that this type of sale can be conducted electronically.

This breadth in sales modalities contrasts with the law of Castile and Leon, where direct supply to the end consumer and to retail establishments supplying directly to the end consumer is permitted, including collective catering, restaurants, and other similar food services.

Regarding electronic sales, it seems to exclude e-commerce since it states in Article 3 that authorization will be granted to retail establishments that supply directly to the end consumer. In fact, it expressly prohibits retail establishments from supplying these products to other food establishments. There is a significant divergence between both legislations, as the allowed sales modalities are heterogeneous. To the extent that the

Castile and Leon legislation does not allow sales through electronic means, preventing this community from harnessing the potential of digital transformation for rural areas.

3.2. Types and Quantities of Products

In Castile and Leon, this type of marketing is limited to primary agricultural and forestry products of plant origin, eggs, honey, other beekeeping products,

and certain mushroom species. In Aragon's legislation, this is expanded to include animal-origin products, self-produced processed products (such as jams), excluding hunting and fishing products¹⁰.

Regarding quantities, the regulation of Castile and Leon establishes the maximum amounts within the regulation itself, while in Aragon, it is included in a specific order approved for this purpose. It is surprising to see such different quantities allowed in each¹¹ autonomous community. To illustrate this, we will compare a series of products in this table:

	Aragon	Castile and Leon
Honey (kg/yr)	3,000	260
Eggs (unit/yr)	26,000	12,480
Potatoes (kg/yr)	30,000	1,040

In summary, there are significant differences both in the quantity and type of products permitted, which can lead to divergences in the development of local commerce in each community. Therefore, it would be necessary to consider expanding the quantities and types of products allowed in the Castile and Leon community, given that local commerce is a fundamental tool for demographic revitalization.

3.3. Administrative and Health Requirements

In both cases, producers who wish to engage in this form of commercialization must be registered in the Regional Agricultural Farm Registry. Additionally, they must maintain a record of buyers, and in the case of sales to retail establishments, these establishments must also keep such records. All of this is to ensure traceability and food safety of these products.

3.4. Promotion Measures

The Castile and Leon regulation does not include any measures or references to promoting this form of commercialization. However, the Aragon regulation stipulates that the Aragón Government and public administrations, in general, will develop measures to promote and support local sales within the framework of rural development policies. Furthermore,

¹⁰ There are legislations where the marketing of products derived from hunting and fishing is accepted, as is the case in the Valencia Community through Decree 201/2017, dated December 15, of the Consell, regulating the local sale of primary and agri-food products.

¹¹ Available at <https://acortar.link/Q8ljdF>

the Aragon Government will promote information and education programs for citizens, especially targeting children and youth, about the benefits of short distribution channels and their contribution to the local economy and sustainability.

Both regulations lack other promotional measures, such as creating logos and labels to identify these products, thus aiding their promotion. The promotion of these products through labelling is crucial as it provides an incentive in a market increasingly sensitive to environmental issues. This tool is present in other autonomous communities, as is the case in Catalonia (Decree 24/2013, of January 8, regarding the accreditation of proximity sales of agri-food products).

In summary, as observed, there are significant differences between the two regulations. The Castile and Leon regulation is very restrictive and does not embrace this form of commercialization as a dynamic lever for rural areas. In contrast, Aragon stands as an example of greater openness and promotion of short distribution channels as a tool for the rural development of its territory.

VI. CONCLUSION

The agri-food sector and rural areas are in crisis, as evidenced by the numerous protests that have taken place in recent years. These social upheavals demanded and continue to demand political will translated into laws and measures to address the dual agri-food and demographic challenge. Concurrently, the European Union has chosen to leverage the green transition and the mandates of the European Green Deal to tackle both the Demographic and Agri-food Challenges. To this end, various strategies have been approved, such as the “Farm to Fork” Strategy and the Biodiversity Strategy, which have subsequently been reflected in the Common Agricultural Policy.

Although we believe that the green transformation is desirable and necessary, the adaptation costs are being assumed solely by farmers and breeders. This is compounded by increasing bureaucracy and competition in markets with products from third countries that do not meet the environmental standards set by the EU. This results in widespread discontent within the primary sector, negatively impacting rural areas. This is because farmers are among the main conservationists of the territory in our rural environment.

Furthermore, there are other measures that are not proving to be sufficiently effective. In the case of aid for young farmers, after almost forty years of implementation, the generational renewal problem not only persists but is increasing. This, in turn, leads to a declining young population in rural areas. Similarly, the benefits from the LEADER program are not fully realized due to excessive bureaucracy and the inflexibility of the aid.

Farmers and breeders are in a critical situation regarding both the production process and the commercialization of their products. They compete in a global and international market where large-scale distribution dominates, reaping the majority of the profits from the chain. This leaves the primary sector with no bargaining power and no say over food prices, prompting a reconsideration of our regulatory framework.

In this context, initiatives such as short distribution channels become a fundamental alternative for farmers and rural areas. They are beneficial not only for increasing farmers' bargaining power but also as a multiplier effect for other sectors, which is highly beneficial for rural areas. However, once again, legislation and the absence of political measures hinder the promotion of this form of commercialization.

VII. BIBLIOGRAPHY

AGUILERA, E. et al., *Emisiones de gases de efecto invernadero en el sistema agroalimentario y huella de carbono de la alimentación en España*, Real Academia de Ingeniería, Madrid, 2020.

AMAT LLOMBART, P., "Mejoras en el funcionamiento de la cadena agroalimentaria en la unión europea y en España a partir del régimen jurídico de negociación y contratación: el contrato alimentario y el contrato tipo agroalimentario", en *Revista de Derecho Agrario y Alimentario*, núm. 66, 2015, págs. 7-50.

AMAT LLOMBART, P. y LÓPEZ TORRES, J. M., "Antecedentes de la Directiva (UE) 2019/633 del Parlamento Europeo y del Consejo, de 17 de abril de 2019, relativa a las prácticas comerciales desleales en las relaciones entre empresas en la cadena de suministro agrícola y alimentario", en MUÑOZ ESPADA, E. (Coord.), *Cambios en la Ley de Cadena Alimentaria: propuestas para la urgente transposición de la Directiva 2019/633*, Editorial Reus, Madrid, 2020, págs. 11-37.

ARNAU MOYA, F., "La insuficiente reforma de la Ley de la Cadena Alimentaria", en *Revista Jurídica Valenciana*, núm. 36, 2020, págs. 110-157.

BARAJA RODRÍGUEZ, E., HERRERO LUQUE, D. y MARTÍNEZ ARNÁIZ, M., "La política agraria común (PAC) y la desvitalización rural: el caso de Castilla y León", en *Espacios rurales y retos demográficos: una mirada desde los territorios de la despoblación: ColoRural 2020*, III Coloquio Internacional de Geografía Rural, 2020, págs. 267-286.

BAUTISTA ALONSO MARTÍN, J. y TERRÓN SANTOS, D., "La importancia de los Grupos de Acción Local para alcanzar el desarrollo rural sostenible. El caso concreto de las Sierras de Salamanca", en FERNANDO PABLO, M. M. y DOMÍNGUEZ ÁLVAREZ, J. L. (Dirs.) y TOMÉ DOMÍNGUEZ, P. (Coord.),

Rural Renaissance: derecho y medio rural, Thomson Reuters Aranzadi, Cizur Menor, 2020, págs. 183-200.

CASTELLANO ÁLVAREZ, F. J., DEL RÍO-RAMA, M. C. y DURÁN SÁNCHEZ, A., “Eficacia de la Iniciativa Leader como instrumentos de Desarrollo Rural. Estudio de Caso de Extremadura (España)”, en *Revista Portuguesa de Estudos Regionais*, núm. 5, 2019, págs. 61-78.

CASTILLO QUERO, M. y GUERRERO-BAENA, M. D., “Caracterización estructural, productiva y financiera de las explotaciones de jóvenes agricultores”, en *IREA, información técnica económica agraria: revista de la Asociación Interprofesional para el Desarrollo Agrario (AIDA)*, vol. 115, núm. 1, 2019, págs. 62-82.

COMISIÓN EUROPEA:

- *Short food supply chains and local food systems in the EU*, Bruselas, 2013.

- *Informe de la Comisión al Parlamento Europeo y al Consejo sobre la conveniencia de establecer un sistema de etiquetado para la agricultura local y las ventas directa*, 2013.

COLINO SUEIRAS, J., “El malestar de los agricultores españoles”, en *Cuadernos de Información económica*, núm. 275, 2020, págs. 23-32.

DE SADELEER, N., “El nuevo pacto por la naturaleza de la UE. De la ambición a la realidad”, en *Actualidad Jurídica Ambiental*, núm. 136, 2023, págs. 1-16.

DOMÍNGUEZ ÁLVAREZ, J. L.:

- “El desigual acceso de la juventud rural a los servicios públicos: la necesidad de impulsar la educación en la España vaciada”, en *Cuadernos de Investigación en Juventud*, núm. 8, 2020, págs. 1-18.

- “Real Decreto 1086/2020, de 9 de diciembre, por el que se regulan y flexibilizan determinadas condiciones de aplicación de las disposiciones de la Unión Europea en materia de higiene de la producción y comercialización de los productos alimenticios...”, en *Ars Iuris Salmanticensis*, vol. 9, núm. 1, 2021, págs. 282-287.

- “Hacia el diseño de nuevos instrumentos para afrontar el reto demográfico y territorial: de la potestad de planificación de las Administraciones públicas a la transformación del ordenamiento jurídico”, en FERNANDO PABLO, M. M. y DOMÍNGUEZ ÁLVAREZ, J. L. (Coords.), *Rural Renaissance: acción, promoción y resiliencia*, Thomson Reuters Aranzadi, Cizur Menor, 2022, págs. 111-146.

EUROSTAT, *Encuesta sobre la Estructura de las Explotaciones Agrarias (EEA)*, 2016.

FERNÁNDEZ DE GATTA SÁNCHEZ, D., "La nueva política de la Unión Europea sobre las zonas rurales", en FERNANDO PABLO, M. M. y DOMÍNGUEZ ÁLVAREZ, J. L. (Coords.), *Rural Renaissance: acción, promoción y resiliencia*, Thomson Reuters Aranzadi, Cizur Menor, 2022, págs. 71-96.

FERNANDO PABLO, M. M.:

- "Devolver el alma a los pueblos: el encuentro "Rural Renaissance"", en *Ars Iuris Salmanticensis: revista europea e iberoamericana de pensamiento y análisis de derecho, ciencia política y criminología*, vol. 7, 2019, págs. 11-13.

- "Ley 16/2021, de 14 de diciembre, por la que se modifica la Ley 12/2013, de 2 de agosto, de medidas para mejorar el funcionamiento de la cadena alimentaria [BOE-A-2021-20630]", *Ars Iuris Salmanticensis: revista europea e iberoamericana de pensamiento y análisis de derecho, ciencia política y criminología*, vol. 10, núm. 1, 2022, págs. 240-241.

FERNANDO PABLO, M. M. y DOMÍNGUEZ ÁLVAREZ, J. L., "Discriminación positiva como recurso contra la despoblación del medio rural: los canales cortos de comercialización agroalimentaria", en *Revista Aragonesa de Administración Pública*, núm. 57, 2021, págs. 149-190.

GARCÍA AZCÁRATE, T., "La reforma de la PAC y el desarrollo rural", en *Vida rural*, núm. 6, 1994, págs. 22-25.

GARCÍA VIDAL, A., "Prácticas comerciales desleales en la cadena de suministro agrícola y alimentario: impacto de la Directiva (UE) 2019/633 en el derecho español", en *Comunicaciones en propiedad industrial y derecho de la competencia*, núm. 88, 2019, págs. 27-37.

GÓMEZ LÓPEZ, J. D., "La reforma de la PAC y la importancia de las cooperativas en la vertebración socioeconómica y territorial del medio rural", en *Ería: Revista cuatrimestral de geografía*, núm. 63, 2004, págs. 72-90.

LANGREO, A. y GERMÁN, L., "Transformaciones en el sistema alimentario y cambios de dieta en España durante el siglo XX", en *Historia Agraria*, núm. 74, 2018, págs. 167-200.

LÓPEZ MUÑOZ, M. A., "El relevo generacional y la mujer en el medio rural", en *Revista de Administración y Dirección de empresas*, núm. 6, 2022, págs. 106-140.

LÓPEZ TORRES, J. M., "La reforma de la Política Agrícola Común 2023-2027: Derechos de ayuda básica a la renta para la sostenibilidad", en *Revista de Derecho Agrario y Alimentario Segunda Época*, núm. 82, 2023, págs. 45-74.

LUMBRERAS, C., "La nueva PAC será más verde... o no será", en *Economistas*, núm. 171, 2021, págs. 94-98.

MASSOT MARTÍ, A., "Hacia una gobernanza marco y multinivel de la Política Agrícola Común post 2023: un análisis institucionalista", en *Economía agraria y recursos naturales*, vol. 22, núm. 2, 2022, págs. 5-29.

MOYANO ESTRADA, E., "La agricultura española, entre el reconocimiento, el malestar y la oportunidad", en *Economistas*, núm. 171, 2021, págs. 55-63.

MUÑOZ GÓMEZ, M. J., "Transición ecológica y Derecho rural: ¿realidad o ficción discursiva", en FERNANDO PABLO, M. M. y DOMÍNGUEZ ÁLVAREZ, J. L. (Coords.), *Rural Renaissance: acción, promoción y resiliencia*, Thomson Reuters Aranzadi, Cizur Menor, 2022, págs. 279-293.

PABLO-ROMERO GIL-DELGADO, M. C., "Unidroit y contratos agrarios. Nueva guía modelo para el futuro de las relaciones jurídico-comerciales en el sector de la agroindustria", en *Derecho de los Negocios*, Editorial LA ley, 2013.

PALMA FERNÁNDEZ, J. L. *Derecho agroalimentario*, Boletín Oficial del Estado, Madrid, 2021.

RIVERA, S., "Paquete de higiene desde el punto de vista de la producción primaria", en *MG Mundo ganadero*, vol. 16, núm. 180, 2005, págs. 46-49.

RODRÍGUEZ CACHÓN, T.:

- "El soft law en la lucha contra las prácticas comerciales desleales en la cadena alimentaria", en MUÑIZ ESPADA, E. (Coord.), *Cambios en la Ley de Cadena Alimentaria: propuestas para la urgente transposición de la Directiva 2019/633*, Editorial Reus, Madrid, 2020, págs. 167-208.

- *Relaciones contractuales de la cadena alimentaria: estudio desde el análisis económico del derecho*, Dykinson, Madrid, 2020.

RODRÍGUEZ-CHAVES MIMBRERO, B., "Los aprovechamientos micológicos. Notas sobre su regulación y proyección en España en el contexto de la nueva estrategia forestal de la UE (2030) y de la nueva PAC 2023-2027", en *Revista Aranzadi de Derecho Ambiental*, núm. 51, 2022, págs. 85-144.

RUIZ PERIS, J. I.:

- "La Unión Europea y el mercado agroalimentario: una perspectiva jurídica", en GONZÁLEZ CASTILLA, F. y RUIZ PERIS, J. I. (Dirs.), *Estudios*

sobre el régimen jurídico de la cadena de distribución agroalimentaria, Marcial Pons, Madrid, 2016, págs. 13-41.

- "Asimetría y abuso en la cadena de distribución", en MIRANDA SERRA, L. M. y PAGADOR LÓPEZ, J. (Dir.) y SERRANO CAÑAS, J. M. y CASADO NAVARRO, A. (Coords.), *Retos y tendencias del derecho de la contratación mercantil*, Marcial Pons, Madrid, 2017, págs. 233-243.

SÁNCHEZ HERNÁNDEZ, A.:

- "Las relaciones contractuales en la ley 12/2013, de 2 de agosto, de medidas para mejorar el funcionamiento de la cadena alimentaria", en DOMÈNECH MARTÍNEZ, G., GONZÁLEZ BOTIJA, F. y MILLÁN SALAS, F. (Ed. Lit.), *Temas actuales de Derecho Agrario y Agroalimentario*, Universidad Politécnica de Valencia, Valencia, 2016, págs. 1-13.

- "¿Una cadena de suministro agrícola y alimentario más equilibrada? Especificidad del sector vitivinícola", en MUÑIZ ESPADA, E. (Coord.), *Cambios en la Ley de Cadena Alimentaria: propuestas para la urgente transposición de la Directiva 2019/633*, Editorial Reus, Madrid, 2020, págs. 229-259.

- "La contratación agroalimentaria tras las medidas de la Ley 16/2021 de 14 de diciembre para mejorar el funcionamiento de la cadena alimentaria", en *Przegląd prawa rolnego*, núm. 1, vol. 30, 2022, págs. 255-273.

SANZ-CAÑADA, J., "El Sistema Agroalimentario Español. Cambio estructural, poder de decisión y organización de la cadena alimentaria", en GÓMEZ BENITO, C. y GONZÁLEZ, J. J., *Agricultura y sociedad en la España contemporánea*, MAPYA y CIS, Madrid, 1997, págs. 355-396.

SERVICIO DE AYUDAS A LAS RENTAS Y SIGC., "La reforma más verde", en *Cuaderno de campo*, núm. 67, 2022, págs. 4-13.

TALAVERA CORDERO, P., "La nueva Política Agraria Común: avanzando hacia una Unión Europea más verde", en *Actualidad Jurídica Ambiental*, núm. 139, 2023, págs. 1-38.

TRIBUNAL DE CUENTAS EUROPEO:

- *Los auditores examinan el apoyo de la UE a la agricultura ecológica*, 2023.

- *Informe especial 2022/12: Durabilidad en el desarrollo rural*, 2022.

TRIGERO CANO, A., "La industria agroalimentaria: la apuesta por la calidad, la innovación y la sostenibilidad", en *Economistas*, núm. 181, 2023, págs. 220-233.

TÍTULOS PUBLICADOS

- 1** Marco normativo para la dinamización demográfica y territorial
- 2** Administrative rural proofing for territories with demographic challenges

DESCUBRA MÁS OBRAS EN:

www.colex.es

Editorial Colex SL Tel.: 910 600 164 info@colex.es

ADMINISTRATIVE RURAL PROOFING FOR TERRITORIES WITH DEMOGRAPHIC CHALLENGES

Since the issue of the abandonment of rural territories has been reintroduced into the agenda of national and European public policies, decisions and rules have been made with an aim that seem to be leading to an entrenchment of the conflict between the interests of the population that remains in the forgotten areas and the interests of other policies that are strongly anchored in long-term strategies.

The rules in which these strategic decisions are translated clash with territories and communities on which a decrease or a set of rules is imposed that makes it impossible for traditional activities to develop and adapt to the new times.

In this context, the citizens of remote (or, in popular Spanish terminology, 'empty') areas, who observe how other interests prevail over their demands, are confronted with a tide of 'alien' rules, imposed, experienced as 'impositions' that necessarily generate conflict, just when it seemed that positive discrimination in favour of their particular conditions would have been passed in the context of the 'European long-term strategy for rural areas'.

Against this backdrop, this collective work aims to provide an study of some of these conflicts, to balance the particular interests of rural territories with the major strategic objectives that mark the institutional agenda, and to vindicate the importance of orienting the actions of public authorities towards the ever necessary restoration of the dignity of rural communities.

AUTORES:

**MARCOS M. FERNANDO PABLO
DANIEL TERRÓN SANTOS
JOSÉ LUIS DOMÍNGUEZ ÁLVAREZ
NORA LIBERTAD RODRÍGUEZ PEÑA
ALICIA RODRÍGUEZ SÁNCHEZ
PILAR TALAVERA CORDERO**

PRÓLOGO:

FERNANDO CARBAJO CASCÓN

ISBN: 978-84-1194-501-1



9 788411 945011