Tenders for Institutional Communication Campaigns in the Spanish Autonomous Communities: Transparency or Digital Disinformation

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Abstract: With an investment of over 700 million euros, the public sector is the main advertiser in the Spanish market. Altogether, the central, regional, and local governments launch more than 5000 institutional advertising and communication contracts. In Spain, these tenders are governed by Law 9/2017 on Public Sector Contracts and Law 19/2013 on Transparency, Access to Public Information and Good Governance, in compliance with which governments have developed openly accessible websites that provide practical information on the contracts for interested individuals and companies. This paper compares all regional procurement platforms through the study of a hundred institutional communication public contracts launched in 2021, assessing the usefulness of the published content, detecting good practices, and identifying gaps and areas of improvement. The results obtained support the idea that these platforms do not provide exhaustive information on public contracts, which limits their potential as tools aimed at ensuring competition and transparency in public contracts. Based on this last criterion, a ranking is created among the regions analysed.

Keywords: transparency; institutional communication; tender; public administration

1. Introduction

When we think of big advertisers, we tend to lean towards top brands, such as Coca-Cola, Nike, Nestlé, and Adolfo Domínguez. However, it is difficult to imagine that the Government of Spain, a regional or a local government are some of the advertising leaders in Spain.

Local, regional and national governments also advertise. From the smallest local council to the largest public administration, they need to communicate with their audiences, citizens and collaborators, using the same means, tools and tactics as those big commercial brands [1].

In Spain, this activity is defined under Article 2a of Law 29/2005, of 29 December, on Institutional Advertising and Communication, as any activity aimed at the dissemination of a common message or objective, addressed to a plurality of recipients, which uses a paid or assigned advertising medium and is promoted or contracted by any identified subject.

Pursuant to the legal provision, this practice differs from commercial advertising due to its profit-making nature and is complemented by the so-called Institutional Communication: "the one that, using means of communication other than those strictly used in advertising, is hired by one of the subjects listed in Article 1 in order to disseminate a common message or objective to a plurality of recipients" (Art. 2b).

These campaigns, promoted by public powers, are carried out through contracts that must be publicly available. They are disseminated via transparency portals or other means considered more appropriate, for the sake of greater accessibility at a time of overcommunication, and at the same time, disinformation, exacerbated by a digital revolution that has changed everything.

Despite every era having its own technology, Olmo y Romero [2] recognizes that the digital revolution has boosted the production and dissemination of news on an unprecedented scale, and sometimes with a lack of good intentions. Zelenkauskaite [3] broadens the meaning of the term, arguing that many governments encourage disinformation not only when they spread biased or fake news, but also when they convey a false feeling of transparency and clarity about their day-to-day activities. When public authorities deliberately resort to this practice, they generate a "chaos online" that distorts democratic processes. Thus, companies, citizens and public administrations must be aware of the need to combine transparency with privacy, so as to avoid the harmful effects of information overload.

The present research is framed within this context of communicative maelstrom and the need to discern the information and activity of our public administrations. The analysis of Spanish regional public procurement contracts and of their compliance in terms of the principles of transparency and free competition has already been carried out by authors such as Fernández Ramos [4] or Sánchez de Diego [5], who reflect on which elements are more widely disseminated and evaluate the published information and its accessibility.

From a descriptive approach, this research seeks to answer three questions: (Q1) Is there any evidence that regional procurement platforms do not provide exhaustive information about their tenders? (Q2) Are there grounds for considering that the information provided by such platforms does not meet legal requirements? (Q3) Is it easy to access the content on such platforms from the point of view of usability and accessibility?

To that end, we will analyse the most relevant Spanish legislation in this field: Law 29/2005, of 29 December, on Institutional Advertising and Communication; Law 19/2013, of 9 December, on Transparency, Access to Public Information and Good Governance; and Law 9/2017, of 9 November, on Public Sector Contracts.

Then, we will explain the applied methodology with the aim of later providing and discussing the results obtained.

2. Theoretical Framework and Legislative Context

Public administration has been the largest advertiser in Spain for several years and has been primarily responsible for the survival of media in the current COVID context, in which advertising revenue is beginning to rise again following the decline during the pandemic period.

It is therefore important to analyse whether the contracts entered into by public administrations meet the requirements under Law 9/2017, of 9 November, on Public Sector Contracts (hereinafter, Law on Public Sector Contracts), whether they are available so that all citizens can know them, as it should result from the implementation of Law 19/2013, of 9 December, on Transparency, Access to Public Information and Good Governance (hereinafter, Law on Transparency), and, thirdly, whether that information is accessible to everyone and whether digitization (which has given rise to a network society, as Villoria and Ramírez (2013) [6], Wirtz and Birkmeyer (2015) [7] or Cohen, Mamakou and Karatzimas (2017) [8] call it, and has led the public administration to extensively use the new technologies in its internal and external relations) has succeeded in making it a more effective, collaborative, participatory and impartial public administration.

We should bear in mind that the central Government alone launched a total of 167 campaigns in 2021, with a budget of almost 150 million euros [9]. The Observatory of Advertising Tenders, in its report for that same year, highlights that the expenditure of governments (central, regional, provincial, and municipal) exceeded 738 million euros through 5402 contracts [10]. Four hundred fifty-three tenders account for the bulk of the budget, but most of the campaigns are organized through small contracts adapted to lower-value procedures or processed urgently, which allows them to "skip" certain monitoring mechanisms, leading to a "particular" effect on the relations between media and political power [11]. In addition to this source of revenue, we must mention public aid, an issue that was transferred to regional governments following Law 37/1988, "mostly oriented towards

measures to support co-official languages and implementation of new technologies [12] (p. 683).

Although institutional advertising began to stir interest in Spain in the eighties, the first regulations date back to 1995 in the regions of Andalusia and Extremadura and the national standard did not arrive until ten years later, with the abovementioned Law in 2005. At present, there are 13 regional laws, others are being processed and some regions do not have specific legislation in this field.

It does not seem necessary to focus too much on the analysis or definition, the pros and cons of institutional advertising, an issue already addressed from technical and legal perspectives. Zaitseva, Krikunov and Tolochko (2020) [13] or Urbina Fortubiel (2012) emphasize the scarce difference with commercial advertising, taking into consideration that those who prepare it follow its same strategies and recourses, which means that these institutional messages end up "constituting an advertising message which, true to its original essence, channels the reactions of the recipients through emotion and seduction" [14] (p. 659). And, from the legal point of view in the specific context of Spain, Martínez Pastor (2012) [15] anticipates the need to harmonize State and regional regulations and highlights, among other problems, the lack of transparency, the insufficiently clear funding or that it can become a propaganda instrument, an issue already raised by Moragas in 2005 and referred to by Feliu Albadejo (2009) [16] when analysing the different aspects of this type of advertising and the opportunities ahead. From a territorial point of view, Feliu García (2012) or Fernández Poyatos (2012) provide interesting surveys focused on specific areas, such as Valencia [17], Galicia [18] or Andalusia [19], among others. The research conducted by Boix and Castellanos [20], where they address the matter from the regional perspective, is more recent, while it is true that the type of contracts that are the subject of the present study are not dealt by any of the authors of the publication.

The systematic analysis of regional procurement platforms, as it is carried out in this article, does not have previous direct references, with The Observatory of Advertising Tenders (2022) being the more similar study. However, this is a sectoral report not valid for academic purposes, since it does not have a defined methodology nor pays attention to the limitations on tenders laid down by the Law on Transparency, Access to Public Information and Good Governance and the Law on Public Sector Contracts.

2.1. Law 9/2013, of 9 December, on Transparency, Access to Public Information and Good Governance [21]

This Law is not the first one in Spain dealing with issues such as the access to information by the citizens or the institutions' obligation to facilitate access to it. However, it has been a law inspired by the new co-governance models [22] and which, like many transparency laws, seeks to fight corruption [23] and to improve the relationship with citizens through the Internet and the new technologies [24].

Already its Preamble states that the existing regulations up to that moment were not enough and that the political and social situation at the time "required" increased transparency from public institutions and entities dependent on and/or linked to them, as well as an easier access for citizens. Indeed, it recognizes the existence of other sectoral regulations with a series of specific obligations on active advertising, as we will see in the case of the Law on Public Sector Contracts.

The Law on Transparency emphasizes from the beginning that, only when this type of transparency activities "are carried out and allow citizens to know how public money is spent, what are the institutions' performance criteria or how decisions are made . . . can we speak of a critical and demanding society that is calling for more involvement from public authorities". That is, the greater the transparency, the better-informed citizens are, which provides more elements to examine and monitor the actions of governments and, consequently, leads to stronger institutions, which allow further economic and social development. The Preamble states that the Law extends and reinforces the obligation of active advertising in institutional, organizational and planning information; information of

legal relevance; and the obligation to publish all the information most frequently requested by citizens.

However, Blanes Climent (2022) [25] is not wrong when he criticizes the citizens' lack of confidence in public institutions, caused precisely, on many occasions, by the lack of transparency, and which the author summarizes in eight issues: the abuse of administrative silence; the failure to comply with resolutions from oversight bodies, which have limited capacity to impose penalties; the delayed access to the information, missing the deadlines; the unreliable and also often incomplete information provided; the bureaucracy and the lack of human empathy for desperate citizens; the digital divide, which disconnects more than it connects (an aspect to be considered in this paper, since content accessibility is not as easy as it should be); the unidirectional nature of information on transparency portals; and the regulatory "maelstrom" of public institutions.

The first articles of the Law (Chapter I, Title: Transparency) define its purpose (Art. 1) and the subjects obliged to provide information (Arts. 2, 3 y 4), including "awardees of public-sector contracts under the terms set out in the respective contract". Article 5, which lays down the general principles, states the obligation to publish regular and updated information without prejudice to the regional regulations and to the limits between the right of access and the protection of personal data, the publication of information in electronic portals or websites "in a manner that is clear, structured and comprehensible for those concerned, and preferably in reused formats" (Art. 5.4).

To comply with this article (Art. 5.4), it has been necessary to modernize the administrative structures in order to provide more digital and accessible services to citizens. Several months after the entry into force of the Law on Transparency, the Ministry of Finance and Public Administration published the Guide of Digital Communication to the General State Administration [26], which recommends that public institutions' websites are properly identified with the image of the corresponding body, and that the content is legible and easily accessible, enabling the download of templates and forms. Likewise, it recommends the inclusion of a site map to facilitate the browsing and the identification of the different official languages, which should be safe, accessible, and compatible with the different browsing systems. This was an initial contribution to the new public administration model, which would be complemented, shortly afterwards, by the establishment of the Council of Transparency and Good Governance, which has promoted, since 2014, several reports on the accessibility and quality of the content provided by the websites of the different public administrations.

Turning back to the Law on Transparency, in the specific field of public procurement, it is worth highlighting, owing to its relevance for this paper, Article 8: Financial, budgetary, and statistical information. This article details the minimum information regarding the administrative actions that must be published and dedicates its first section to contracts.

Article 10 provides for the creation of a Transparency Portal by the central state administration, under the auspices of the Ministry for the Presidency, which can be completed with the measures adopted by the central state administration. All this leads currently to a broad legal context in which national regulations must coexist with regional ones (a total of 15: Galicia, Catalonia, Aragon, Andalusia, Asturias, Canary Islands, Castile and Leon, Castile-La Mancha, Navarre, Balearic Islands, La Rioja, Murcia, Valencia, Cantabria and Madrid), which regulate information through 20 transparency portals (1 national, 17 regional and 2 from the autonomous cities of Ceuta and Melilla, through the State Contracts Platform).

The different regional portals are the tool available to citizens to check whether they contain all the information to exercise the right to be informed and whether public administrations fulfil the principle of active advertising laid down in the analysed Law. We should also remember that the United Nations 2030 Agenda [27], in its Sustainable Development Goals, particularly Goals 16 and 17, outlines targets to improve institutions, promote better governance or facilitate greater transparency, which are closely linked to the context of the present research.

In the academic field, transparency issues have been widely researched by many authors from different perspectives, from more general approaches on the impact of new technologies and changes on the way public administrations interact with society, as is the case for Alt and Lassen (2006) [28], Cotino (2012) [29], Bearfield and Bowman (2017) [30], Magallón, Bolaños and Anderica (2017) [31] or, more recently, the studies of digital decmocratic transparency of Gorwa and Garton-Ash (2020) [32] or Campos-Domínguez, Eva;Díez-Garrido (2023) [33].

In the Spanish case, we can also find some specific studies on certain regions, such as the municipalities from Spain [34–36]. In all these contributions, it is evident that the information is not presented in the same way in the different regional transparency portals, and that the requirements laid down in the Law regarding the type of information and its accessibility are not met. This circumstance is exacerbated in the case of public contracts, the dissemination of which must comply with their specific regulations, more restrictive than the transparency ones.

2.2. Law 9/2017, of 8 November, on Public Sector Contracts [37]

Law 9/2017, of 8 November, on Public Sector Contracts (Law on Public Sector Contracts) was adopted in response to all the changes that have taken place within the European Union to harmonize and regulate public procurement policies, organized in different Community guidelines. This piece of legislation, as was the case with the above regulation, seeks to meet the requirements raised by contemporary society on its rulers to be held accountable for their contractual activity, and has multiple references in Europe [38], the United States [39] or Latin America [40].

But at the same time, it seeks to reconcile existing regulations with the transparency patterns set out in the Law on Transparency, in order to stimulate competition and equal treatment among tenderers for public contracts. In its Preamble, the Law on Public Sector Contracts states that its objectives are, first, to achieve greater transparency and, secondly, to improve value-for-money in public procurement, with the obligation for procuring authorities to establish awarding criteria in order to improve quality. In addition, it reduces bureaucracy and introduces more stringent provisions to avoid "extremely low" bids.

Gimeno Feliu upholds the capacity of this Law to strengthen the concept of public contract, which, "from the appropriate balance of effectiveness, efficiency and integrity, constitutes a main tool for the right to good administration" [41]. Thus, he calls for a transformation in public procurement that goes beyond the mere acquisition of works or supplies in order to better serve people, understanding it as an investment and strategic activity. That is why he argues that the challenge of this Law is to support high-quality and accessible public procurement.

From the point of view of transparency, there is progress towards what Cohen and Karatzimas call Integrated Popular Reports [42], a concept referring to the complete documentation of a dossier from its inception to its resolution. In the Spanish Law, there are a number of articles covering those aspects on which public administrations are obliged to keep record through their public procurement platforms. Articles 39, 116, 117, 135, 138, 151 and 154, for example, refer to aspects such as the minimum information that must be published on the contracts, the grounds for nullity, the dissemination of information at the launching and processing of dossiers, the tender notices, or the resolution, and notification or award of the contracts. But it is Article 63, specifically sections 63.2 and 63.3, that more clearly includes this information:

> *"63.2. The contractor profile (. . .) must contain both general information that can be used to interact with the procurement body (...).*
>
> *63.3. In the case of information relating to contracts, the following must be published at least: (a) The memorandum justifying the contract, (. . .) the special administrative clauses and the technical specifications governing the contract or equivalent documents, where applicable, and the document approving the file. (b) The detailed purpose of the contract, its duration, the basic tender budget, and the contract price (. . .). (e) The*

number and identity of the tenderers participating in the procedure, as well as all minutes of the procurement committee relative to the awarding procedure (…), the report on assessment of quantifiable awarding criteria (…) and, where applicable, the contract award decision".

3. Materials and Methods

In view of the above, three research objectives are established:

O1   To know the degree of implementation of the Spanish regulations regarding transparency among the advertising and communication contracts promoted by the regional governments.

O2   To determine whether the published content ensures equal treatment and non-discrimination of tenderers. That is, the principle of free competition that must be present in public procurement.

O3   To establish a hierarchy of content based on its accessibility.

The completion of these objectives will allow us to achieve the other three secondary objectives:

-   To identify which are the most and least widely disseminated elements.
-   To assess the relevance of the published information, identifying gaps and areas of improvement.
-   To compare the degree of implementation of transparency provisions on the procurement platforms of regional governments.

Working with these objectives will allow us to answer three questions: (Q1) Is there any evidence that regional procurement platforms do not provide exhaustive information about their tenders? (Q2) Are there grounds for considering that the information provided by such platforms does not meet legal requirements? (Q3) Is it easy to access the content on such platforms from the point of view of usability and accessibility?

Therefore, a cross-sectional research design is proposed in its descriptive dimension. This is an appropriate quantitative approach to describe a number of variables from different perspectives in a little-researched context and to specify their impact on a given population. This model is useful for the case at hand since, given that it is impossible to examine all the institutional advertising contracts promoted by the Spanish public administrations, the legislation establishes a common protocol when it comes to publicly disseminating their procedures. Evaluating the degree of compliance with these regulations allows us to validate a random sample and to identify habits and routines that facilitate (or hinder) the existence of potential tenderers.

In this case, 102 institutional communication public contracts, launched in 2021 by the 17 regional governments, were analysed. According to the Observatory of Advertising Tenders, autonomous communities (regions) are the supranational bodies with more tenders, as they publish 26.56% of the advertising tenders and mobilize 31.89% of the public investment in communication. Hence, it seems appropriate to position this research within the context of regional governments.

The analysed sample accounts for 22.52% of the contracts tendered in 2021 (which means a margin of error of 8.55%, with a level of confidence of 95%). Based on the cross-sectional nature of this paper and its descriptive purpose, the first six communication contracts published in 2021 by each regional government, in the order in which they are listed on the Spanish State Public Procurement Platform, have been systematically random sampled, considering the following variables for each one of them:

(1)   General description of the sample (investment and nature of the analysed tenders).

(2)   General information on the procedure (identifying whether the elements outlined in Article 8 of the Law on Transparency and Article 63 of the Law on Public Sector Contracts have been published or not. Its presentation is divided according to the stages of the tendering process: initial publication, period for the submission of bids, award, and execution of the contract).

(3)   Implementation of transparency provisions on the procurement platforms of regional governments (taking into consideration the differences found among territories, regarding both the publication or omission of information and the accessibility of the content).

(4)   Difficulty in accessing content (focusing mainly on the site depth, that is, the number of screens it takes to access information).

The method for collecting data has been quantitative content analysis. This technique is valid, according to Hernández-Sampieri, Fernández-Collado, and Baptista-Lucio, "to study any type of communication objectively and systematically, and consists of quantifying the messages or content in categories and subcategories and subjecting them to statistical analysis" [43] (p. 260), while Krippendorff [44] and Galletero-Campos and Álvarez-Peralta [45] consider it particularly useful when analysing the applicability of a piece of legislation to real life.

In the case at hand, the existence or absence of the aforementioned variables and the ease of access for citizens have been duly recorded. Therefore, this research has not only focused on the compliance with transparency regulations in terms of dissemination, but also on accessibility, given that the Guide of Digital Communication to the General State Administration recommended the content of public institutions' websites to be accessible within four clicks, and that, in the case of public contracts, this is one of the main shortcomings identified by the Council of Transparency and Good Governance in its 2022 annual report, where it states that "there is still a need to carry out a comprehensive review of the contents currently published" [46].

Collected data were transferred to a spreadsheet in which values were recorded in absolute terms and as a percentage. In the Results section, it will be possible to determine whether the dissemination of these issues is satisfactory and whether it is so easy to access the information so as to diagnose the degree of transparency of the communication contracts promoted by the Spanish regional governments.

4. Results

4.1. General Description of the Sample

The 102 dossiers examined amount to a total of 149,081,471.59€, with 1,461,583.05€ being the average amount for each tender. This investment is not distributed evenly throughout the territory, but there are five regions that account for 85.29% of the investment made in 2021 (Catalonia, Madrid, Valencia, Balearic Islands and Andalusia).

Table 1 shows that most of the contracts analysed correspond to the planning and purchase of advertising spaces in media (50 tenders; 49.02% of the sample); the number of dossiers related to creative and production services (18 tenders, 17.65%) is also noteworthy in this regard. Along with them, it is also worth mentioning the type of contract in which the purchase of media and creativity are tendered jointly and labelled under the generic name of "advertising services" (23 cases; 22.55%).

Table 1. General description of the sample.

Purpose of the Contract			Total Investment	Average Investment
Media Planning	50	49.02%	126,392,907.15€	2,527,858.14€
Advertising Services	23	22.55%	18,020,038.86€	783,479.95€
Creativity	18	17.65%	2,472,529.11€	137,362.73€
Others	11	10.78%	2,195,996.47€	199,636.04€
	102	100.00%	149,081,471.59€	

Source: Authors' elaboration (2022).

Eleven tendering processes (10.78% of the total) have been labelled as "other services". This is a broad concept covering actions as diverse as social media management, printing services, advertising gifts, event planning, audiovisual sponsorship, communication consultancy or market research, articulated through open tenders.

From the point of view of the investment depending on the type of contract, it can be observed that most of it is allocated to the purchase of media (126,392,907.15€; that is, 84.78% of the total investment), followed by advertising services (18,020,038.86 €; 12.09%). These two headings account for 96.87% of public communication procurement, which demonstrates the high amount or resources awarded to the purchase of advertising spaces in media (whether through direct or indirect contracts). This figure is much higher than that allocated to creativity (1.66% of the total investment) or to other related services (1.47%).

4.2. General Information on the Procedure

4.2.1. Basic Parameters of the Contract

Initially, basic information shall be provided so that tenderers can know the purpose and basic features of the service (theme, price or duration) in order to assess whether they wish to take part in it. Also, it must include a memorandum justifying the need that the public administration seeks to meet with this service and the reasons for initiating the tendering process.

Practically all the analysed contracts provide this essential information. However, it is striking that in 27 cases (26.47% of the sample), it is not possible to consult the memorandum, which is an aspect nominally required by Section 3 of Article 63 of the Law on Public Sector Contracts and which, according to the legal provision, has a particular importance. Hence, this percentage, albeit small, seems odd, since it shows that a quarter of the published contracts fail to comply with a relevant information element at an early stage of the tendering process.

4.2.2. Public Information during the Period for the Submission of Bids

The list of administrative clauses (which explain the administrative requirements of the tender and the procedure to evaluate the bids) and the list of technical specifications (which explain the specific details on the provision of the service) are two documents highly relevant to know the terms of reference and to participate in the tendering process. Without knowing them, a tenderer cannot take part, which would hinder free competition applicable to all public contracts.

Despite this, there are 14 tenders (13.73%) that do not disseminate these documents, even when the legislation strictly requires them to be published (whether as a sheet or through an "equivalent document", as indicated in Article 63.3 of the Law on Public Sector Contracts). Something similar occurs with the period for the submission of bids, another aspect that must be published, but which is not present in 15 cases (14.71%).

It is also worth mentioning what the Law on Public Sector Contracts, in its Article 63.2, calls "points of contact, telephone and fax numbers, postal and e-mail addresses", absent in 22 cases (21.57%). The percentage of cases in which the queries raised by tenderers are not published is also high (71.57%), although it may happen that, for whatever reason, a tender does not raise questions among the participating companies.

4.2.3. Public Information during the Awarding Procedure

In any case, regional governments show a reasonable degree of compliance with the transparency regulations during the first stages of the tendering process (publication of the contract and submission of bids), but that tendency is curbed in the bid evaluation process. At that point, the percentages of non-compliance are quite high (Table 2).

Table 2. Dissemination of information during the award period.

	Public	Non-Public
Schedule of the contract awarding committee	36 (35.29%)	66 (64.71%)
Identity of the participating tenderers	81 (79.41%)	21 (20.59%)
Minutes of the contract awarding committee	77 (75.49%)	25 (24.51%)
Technical reports	45 (44.12%)	57 (55.88%)
Economic reports	59 (57.84%)	43 (42.16%)
Justification for exclusions	62 (60.78%)	40 (39.22%)

Source: Authors' elaboration (2022).

The identity of the tenderers participating in a public contract is often unrevealed (it happens 21 times, that is, in 20.59% of the dossiers), and, in most cases, the schedule of the contract awarding committees is not announced in advance (66 cases; 64.71%), which indicates that such information is provided retrospectively, and not before it happens; this is an interesting fact, because many of these committees are public and open to tenderers.

In 24.51% of the sample (24 dossiers), the minutes of the contract awarding committees are not published (which makes it difficult for tenderers to be informed about the contract award and even to be able to exercise the right to appeal within the prescribed period). In almost half of the cases, neither the technical reports (57 cases, 55.88%; although it should be noted that these reports do not always exist and that there are contracts that are awarded based only on the financial bid), nor the economic reports (43 cases, 42.16%) are disseminated. This circumstance prevents tenderers from knowing how competitive their bid is compared to others and what are the reasons that lead the contract awarding committee to choose one proposal instead of another. In fact, in 40 cases (39.22%), the exclusions of some participants were not justified either.

4.2.4. Award and Execution of the Contract

This low degree of compliance with the transparency regulations can only be observed in the awarding process, because, at the final stage, when the contract is executed, it is easy to know which is the awardee company. In almost all cases (100 dossiers; 98%), this information is provided.

4.3. Implementation of the Transparency Regulations on the Regional Procurement Platforms

In addition to the foregoing, it is pertinent to mention the degree of implementation of the transparency regulations on the regional procurement platforms. To that end, the present research categorises those cases in which no more than four of the variables contained in Section 4.2 were published, under the assumption that the aforementioned threshold (25% of variables) indicates blatant transparency errors in the proper dissemination of a public contract.

Based on this premise, limited compliance can be observed in 47 dossiers (46.08% of the sample, as shown on Figure 1.).

The average number of errors of transparency among the 17 Spanish regions stands at 2.76 cases (out of the 6 cases analysed for each region). However, we should highlight the positive performance by the Basque Country and La Rioja (with no cases) and by the Canary Islands and Catalonia (with one case each).

4.4. Difficulty in Accessing Content

Regardless of the compliance or non-compliance with the strict transparency regulations, we have reviewed how easy or difficult it is for citizens and tenderers to access the information related to the communication contracts promoted by the regional administrations.
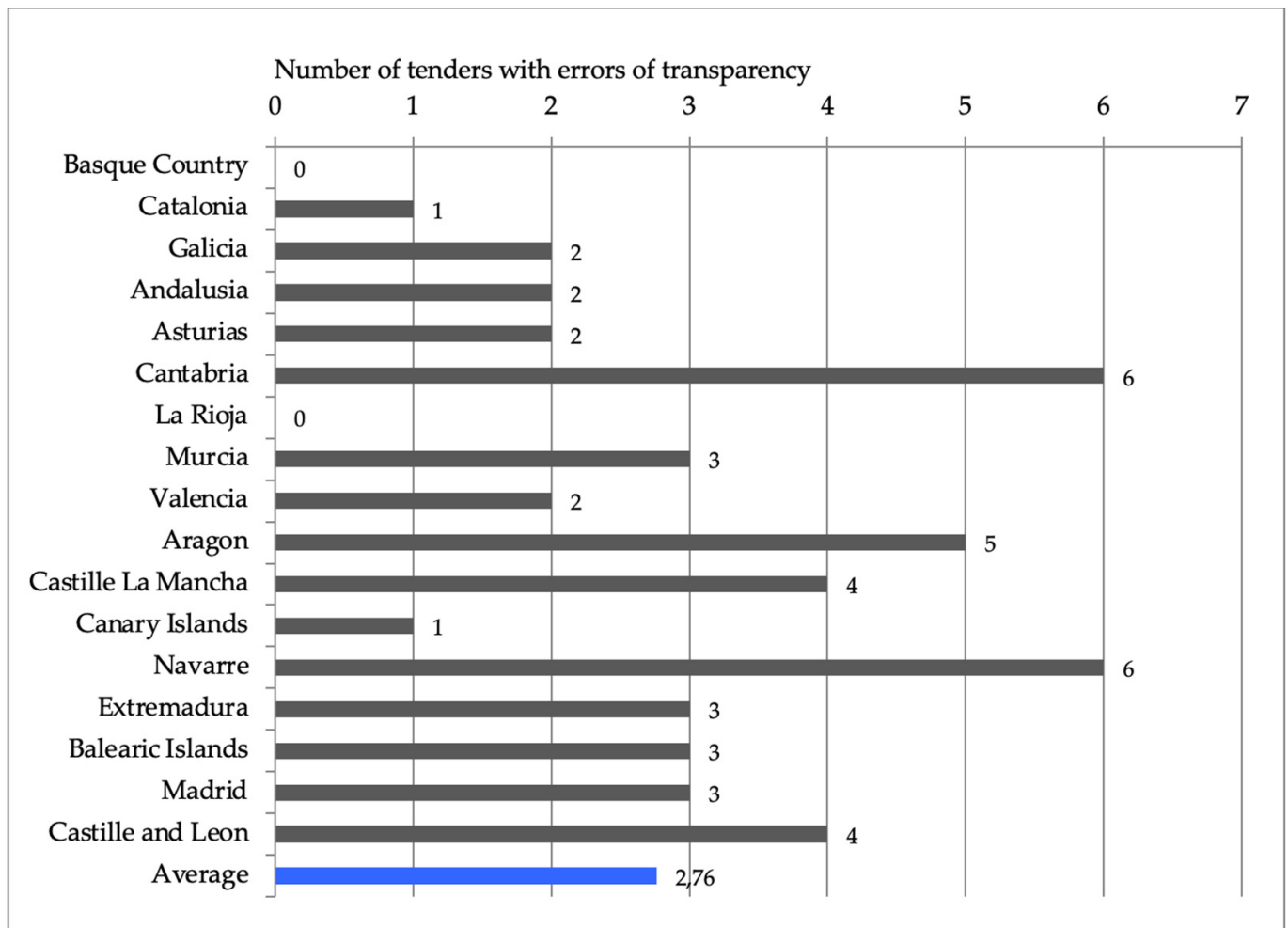
Figure 1. Analysed tenders with weak regulatory compliance.

In order to access these documents, citizens must make, on average, 4.21 clicks from the moment they enter the procurement platform of the corresponding body (that is, an average of 5.21 clicks if they are coming from a search engine like Google, which exceeds the 4 clicks recommended by the Council of Transparency and Good Governance). This percentage varies depending on the regions, with Catalonia (2.39 clicks on average), Navarre (2.51), Valencia (2.56), Andalusia (2.81) and Galicia (3.08) as the territories that make it easier to access content (Figure 2).

If we look at the tendering stages, the awarding process is, once again, the stage where it is more difficult to access information. Thus, it only takes 3.59 clicks to reach the general information on the procedure and 4.11 clicks to access the clauses, specifications, and other documents necessary for the submission of bids. However, it takes up to 5.12 clicks to obtain information about the bid evaluation process, while only 4.02 clicks on average to find out which is the awardee company.
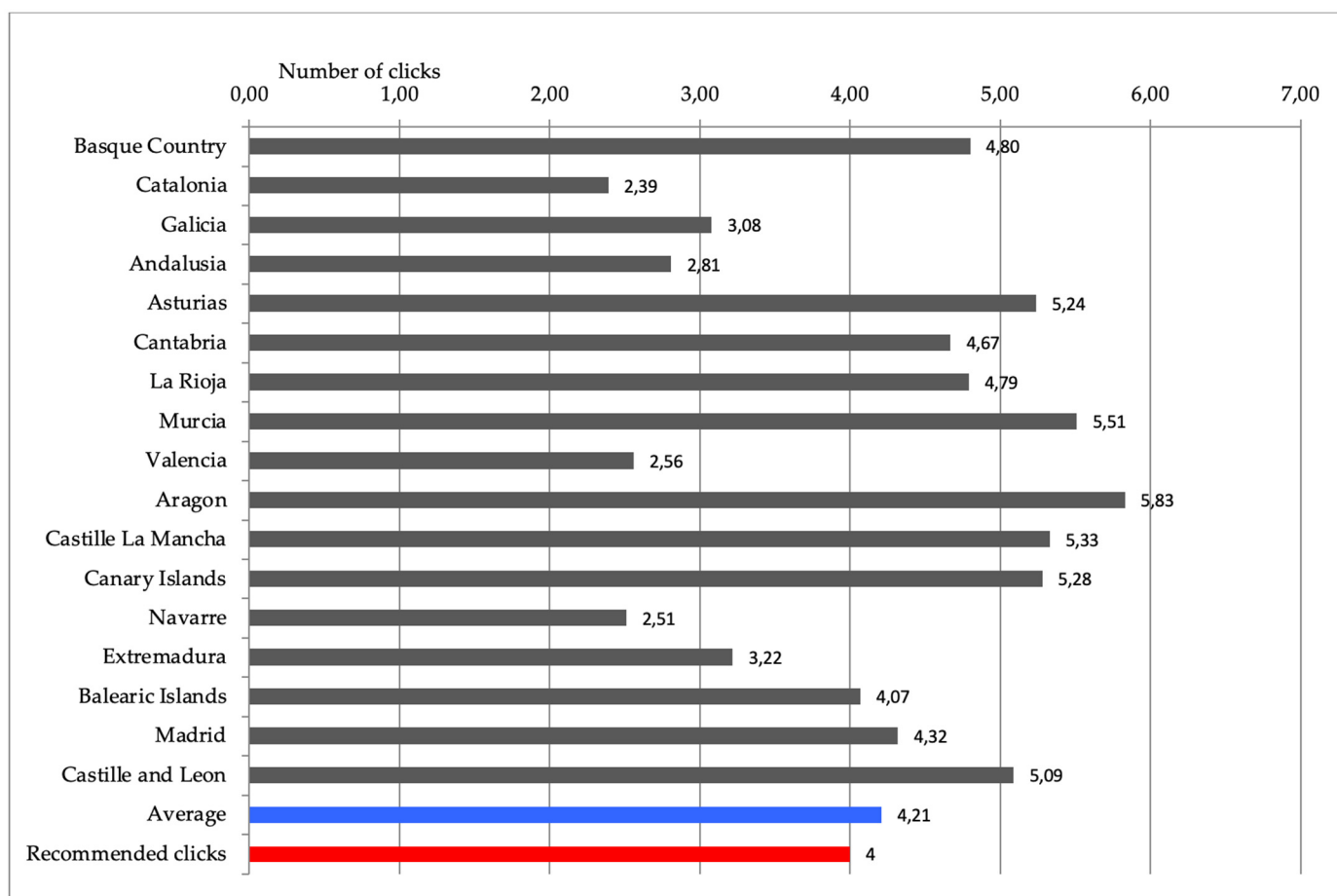
Figure 2. Difficulty in accessing content.

5. Discussion and Conclusions

Our approach to the communication contracts promoted by regional administrations agrees with the analysis made by the professional associations within the sector, through the aforementioned Observatory of Advertising Tenders (2022), both formally and in terms of perspective. From a formal point of view, we have found a high tendering activity, with an average investment of 1,461,583.05€ per contract (similar to that estimated by the Observatory, 1,454,449€). Tenders for purchasing advertising spaces in media play a highly significant role (49.02% in the present research, compared to 68.73% according to the Observatory).

Far from the descriptive nature of the present research, the aforementioned report helps the sector to criticise the breaches the Law on Transparency and the Law on Public Sector Contracts committed by public administrations in their communication contracts. The professional associations reach that conclusion without clearly explaining why, and confronting it has led us to know the degree of implementation of the Spanish transparency regulations among the advertising and communication contracts promoted by regional governments (first objective of the research).

The study of 102 tenders, by following their trail on public procurement platforms, has allowed us to confirm such irregularities, noting that 46.07% of the dossiers are not well documented. In particular, they breach transparency provisions as they fail to comply with Article 8 of the Law on Transparency and Article 63 of the Law on Public Sector Contracts.

The omission of information that is relevant in order to know the tendering process makes it impossible to ensure the principle of equality and free competition in most of the analysed contracts (second objective). This situation is detrimental not only to tenderers, as they cannot participate in a public tender on an equal footing, nor be informed about

aspects such as the evaluation of bids, the quality of their proposal compared to others, or the award schedule; but it also damages the procurement body itself, which, by not documenting its dossiers correctly, cast doubts on its management skills, which is the root cause for the citizens' lack of confidence in public institutions that Blanes Climent (2022) warned about.

In operational terms, it is possible to establish a hierarchy of content based on its accessibility (third objective), with dossiers poorly documented at the bid evaluation stage being the most common. In most cases, neither the schedule of the contract awarding committees nor the minutes of the resolutions adopted are reported. Technical and financial evaluations reports and justifications for exclusions are not published either. All these elements are essential to know what has happened with a contract and what are the reasons that led the procurement body to choose one bid instead of another.

But when it comes to establishing such hierarchy, it is not enough to talk about the nature of the content disseminated, but we must also analyse its accessibility, in terms of how easy or difficult it is to access the information requested. This is a complex circumstance, as there is a dissonance between web usability patterns, according to which, the information that is more than three clicks away is not accessible [47]. We should bear in mind that the Guide of Digital Communication to the General State Administration already assumes the difficulty in accessing the content of institutional websites by raising this threshold to four clicks.

The information related to the 102 analysed tenders has a click depth of 4.21 on average from the procurement platform (5.21 clicks coming from Google). Once again, it is easier to access the general data about a procedure than the information linked to the bid evaluation process, which takes 5.12 clicks on average (6.12 from Google); this reinforces the idea put forward by the Council of Transparency and Good Governance that the information on contracts is one of the most difficult to find on the public administrations' websites.

Overall, we note that practically all public communication contracts are accessible on a public platform open to citizens. But there are three areas of improvement: (1) the need to provide complete information about tenders; (2) the need to document those elements of the procedure that facilitate the participation of tenderers; and (3) the need to facilitate access to the published content.

With this contribution, the research questions are answered, once it has been confirmed that there is evidence that regional procurement platforms do not provide exhaustive information about their tenders, and that, by doing this, they limit competition (Q1) and violate the Law on Transparency and the Law on Public Sector Contracts (Q2). As for the information that is published, it is difficult to access, which undermines the purpose of transparency (Q3), because even if the contracts are made public, it takes certain computer skills in order to find them.

It should be noted that this statement is not valid across the whole territory since the data varies for each region. This reality, set out above, is reflected in Figure 3, showing two intertwining issues: the quality of the published information and the accessibility of the dossiers in each territory (with zero being the top rating and six the minimum score to assess the potential for transparency and the ease of access to content). Based on these criteria, eight regions stand below the average.

We should bear in mind that it is not the purpose of this paper to evaluate the regions based on how well they perform. The data provided are not representative because they are limited to a specific timeframe (2021) and to a descriptive study based on a systematic random sampling for each territory. However, it provides relevant data that could be compared to other analysis from time to time in order to verify whether such non-compliance is a one-off occurrence or becomes "normal", in the case of advertising contracts.
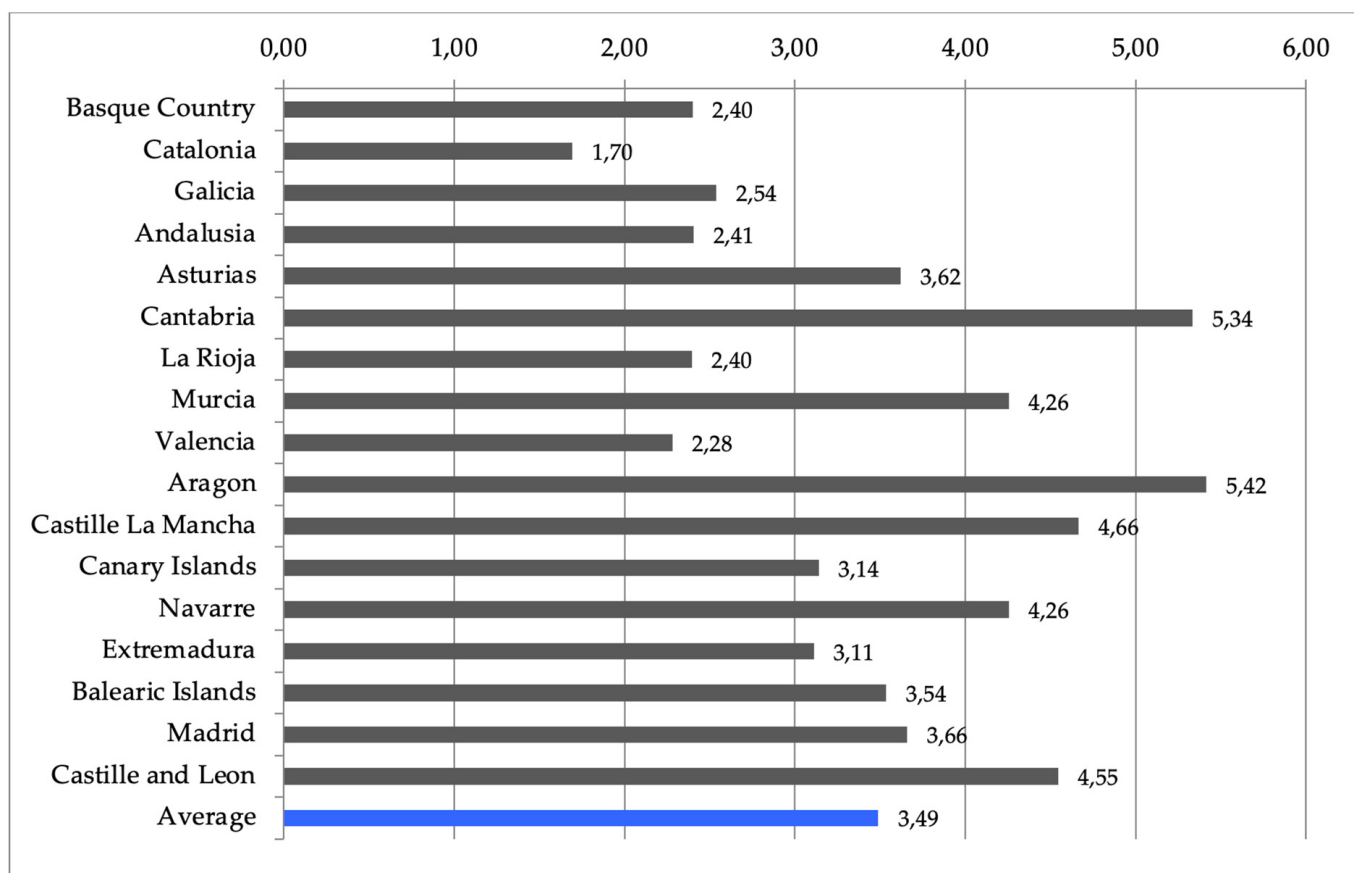
Figure 3. Transparency and ease of access to contents in the analysed regions.

Future lines of research could seek to provide a more accurate snapshot of what happens in each region drawing on inferential statistics instead of descriptive statistics or improving the sample through variables such as population, GDP, investment in communication, and so on. It would also be interesting to adopt a diachronic perspective (expanding the timeframe of the present research) or even review the situation in other countries of the European Union, given that we have mentioned the harmonization of legislation in the field of transparency within the European sphere.

One last line of research would be the incorporation of other types of information requested by citizens, beyond contracts, in order to verify whether the principles set out by the Law on Transparency regarding active advertising and the right of access to public information are actually met, or, as some authors such as Fernández Ramos (2020) or Sánchez de Diego (2022) argue, perhaps we should suggest reforming the aforementioned Law, with the perspective gained over the years during which it has been in force, considering the shortcomings identified in terms of real access for citizens.

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