The Application of In-house Procurement by Municipalities in Municipal Services Management

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Abstract

The topic of the article is the application of in-house procurement by municipalities in municipal services management. The essence of in-house contracts, also known as direct contracts, is a specific relation between the contracting authority and the economic operator. The contracting authority, which is a body governed by public law, exercises control over the economic operator, which is legally separated from its structure, similarly to the control it exercises over its own departments. Moreover, the economic operator is obliged not only to submit to this control, but also to carry out a principal part of its activities for the controlling contracting authority. It was often argued in the literature that awarding services, supplies, or works to one's own subsidiaries without following a tendering or design contest procedure may adversely affect certain economic sectors, in particular by reducing competition or deteriorating the quality of provided services. The aim of this publication is to answer the question so formulated. To do so, one has to examine how in-house contracts have been regulated in the act currently in force.

Keywords

in-house procurement; municipalities, local self-government; services management

1 Introduction

The term "in-house procurement" does not exist in the Public Procurement Act (Act of 29 January 2004). However, it is often commonly used when referring to public contracts awarded to one's "own" organisational entities.

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The essence of in-house contracts, also known as direct contracts, is a specific relation between the contracting authority and the economic operator. The contracting authority, which is a body governed by public law, exercises control over the economic operator, which is legally separated from its structure, similarly to the control it exercises over its own departments. Moreover, the economic operator is obliged not only to submit to this control, but also to carry out a principal part of its activities for the controlling contracting authority. In consequence, such arrangements are considered in-house contracts and are exempted from the application of the provisions of the PPA (Nowicki and Nowicki, 2010: 118).

Given the specific relation between the contracting authority and the entity to which a contract is awarded, the literature describes in-house contracts as internal contracts (Nowicki, 2017: 155–156). According to the law of the European Union, the internal operator can be a body governed by public or private law (e.g. a limited liability company or a joint-stock company) (Art. 2 point (j) of Regulation (EC) No. 1370/2007 of the European Parliament and of the Council).

An example of the exemption from the application of the provisions of the Public Procurement Act is the award of a contract to a public sector enterprise created by the head of any public finance sector unit identified in Art. 139 par. 2 of the Public Finance Act (*Journal of Laws,* 2017, item 2077). The Public Procurement Act does not apply to contracts awarded to a public sector enterprise by the aforementioned public authority if the following conditions are cumulatively met (Art. 4 item 13 of the PPA):

- a principal part of the activities of the public sector enterprise involves carrying out public tasks for this public authority;
- the public authority exercises control over the public sector enterprise similarly to the control it exercises over its own departments having no legal personality, in particular in the form of influencing strategic and individual decisions concerning the management of the institution's affairs;
- the subject matter of the contract is a part of the essential activity of the public sector enterprise set out in Art. 26 par. 2 item 2 of the Public Finance Act.

The municipality as a unit of the local government does not constitute an entity authorised to create a public sector enterprise. Taking this into account, it would not benefit from the exemption of the application of the PPA referred to in Art. 4 item 13 of the said act. A question should therefore be asked whether the municipality may entrust the performance of its own tasks to other, self-created organisational units, which may constitute an internal contract without the need for applying the provisions of the Public Procurement Act. To answer such a question, one must examine systemic legal regulations of the forms of municipal management.

In order to fulfill their own tasks, local government units, including municipalities, may create organisational units. According to Art. 9 par. 3 of the act of 8 March 1990 on municipal government, the forms of municipal management, including the fulfillment of public service obligations, are set out in a separate act of 20 December

1996 on municipal services management (*Journal of Laws,* 2018, item 994). Art. 2 of the Municipal Services Management Act (MSMA) provides that municipal services management can be conducted by local government units in particular in the form of local government budgetary establishments or commercial law companies (*Journal of Laws,* 2017, item 827). Moreover, local government units may entrust municipal management tasks to natural persons, legal persons, and units without legal personality. The authorities of local government units select the preferred form of carrying out their own responsibilities.

A local government budgetary establishment does not have legal personality, and therefore cannot individually participate in an economic activity. It constitutes an organisational entity created by a local government unit under the provisions of the PFA in order to carry out its own tasks in broadly defined public services.[2] When entrusting its tasks to such an establishment, the municipality merely distributes tasks without creating civil law obligations. The legal nature of local government budgetary establishments and the type of tasks assigned to them do not allow them to become a party to a contract. Therefore, they cannot be economic operators in a public contract. The basis for entrusting such tasks is an appropriate resolution of a decision-making municipal authority appointing the said establishment and also approving the statute regulating its tasks and the manner of its operation.[3]

A similar situation arises in the case where the municipality's own public service tasks are assigned to a municipal company created by the said municipality, and where such tasks simultaneously constitute statutory responsibilities of the company. Although the municipal company is a legal person, entrusting it with such tasks shall also materialise in the appropriate records of the municipal authorities (resolutions of the municipal council, ordinances of the head of the municipality, the mayor, or the president), therefore in sovereign acts which also create conditions for the meeting of the said responsibilities. In the procedure of assigning one's own public service tasks to such a company there is no place for contractual obligations under which each of the parties would obtain a specific benefit. Such relations assume ownership. It can be presumed that the fulfillment of an obligation by one's "own" organisational unit, whose subject are the tasks set out in the MSMA and which results from a legal arrangement other than a contract, determine that the provisions of the PPA cannot be applied, even when the subject matter of the obligation are services, supplies, or works. Hence, also in this case there can be no public contract involved.[4]

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2 Art. 14 of the PFA provides that local government budgetary establishments perform local government units' own tasks in the scope of 10 listed areas constituting matters of public service.

3 The Supreme Administrative Court adopted such a view in the judgment of 11 August 2005 (Ref. No. II GSK 105/05), according to which: "The fulfillment of the municipality's own municipal service tasks by an organisational unit created for this purpose does not require the conclusion of a contract."

4 However, a distinction should be drawn between entrusting one's own tasks and commissioning their performance under a contract. Such a case occurs when the municipality outsources the aforementioned responsibilities to a third party instead of its own municipal company or when the provisions of the act so require. An example of the last instance, according to Art. 6 d paras. 1

In case of both indicated forms of conducting business activity by the municipality and entrusting the municipality's own tasks referred to in the MSMA to the units it has created, it should be assumed that the assignment of the aforesaid responsibilities can be described as in-house procurement. The requirement for the municipality to exercise control over a legally separated economic operator similarly to the control it exercises over the departments of the municipal office is clearly present here, and the economic operator carries out a significant part of its activity for the controlling municipality. Therefore, such an assignment does not constitute a contract award in the meaning of the PPA. Thus, until 1 January 2017 in-house contracts in municipal management were awarded largely outside of public procurement procedures.

It was often argued in the literature that awarding services, supplies, or works to one's own subsidiaries without following a tendering or design contest procedure may adversely affect certain economic sectors, in particular by reducing competition or deteriorating the quality of provided services. The aim of this publication is to answer the question so formulated. To do so, one has to examine how in-house contracts have been regulated in the act currently in force, that is after its amendment, which entered into force on 1 January 2017 (*Journal of Laws,* 2016, item 1020) as a result of the implementation of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (also known as the "Classic Directive"). However, it is worth to first present a short analysis of the application and regulation of in-house contracts in the EU judicial practice and law.

2 In-House Contracts in the Judicial Practice of the CoJ EU and Union Regulations

The term "in-house contract" appeared in the judicial practice of the Court of Justice of the European Union (hereinafter: CoJ EU) on the basis of the provisions of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts, and public service contracts (OJ EU L 134/114), which pointed out that public procurement regulations do not apply to certain contracts concluded between bodies governed by public law. The primary judgment which shaped the regulation concerning in-house contracts was a preliminary ruling of the CoJ EU of 18 November 1999, C-107/98, *Teckal Srl* v. *Comune di Viano* and *Azienda Gas-Aqua Consorziale di*

and 2 of the Act of 13 September 1996 on keeping municipalities clean and in order (consolidated text: *Journal of Laws,* 2017, item 1289, as amended), is the obligation on the head of the municipality, the mayor, or the president to award the public contract for collecting municipal waste from households or for waste collection and management. In this case the commission of such tasks by the municipality to its own municipal company will be considered a public contract awarded by open tendering procedure, to which the provisions of the PPA shall apply.

Reggio Emilia, ECR 1999 (the so-called Teckal case) (Judgment of the Court Case C-107/98). The CoJ EU recognised in its ruling that the exemption from public procurement rules is valid only when the contracting authority:

1. exercises control over the internal operator similarly to that which it exercises over its own departments (organisational dependence);
2. the internal operator carries out an essential part of its activities for the contracting authority (economic dependence);
3. there is no private capital participation in the internal operator.

The Teckal case ruling was the first judgment concerning in-house contracts. Its delivery established an entire ruling practice on the topic. Advocates-General of the CoJ repeatedly applied the "Teckal Test", which confirmed the possibility of exemption from the provisions on public procurement only when specified conditions were met. It was predominantly verified whether an organisational and economic dependence exist between the contracting authority and the subsidiary.

Later judgments provide the exemplification of the aforesaid position held by the Court, among others, the judgment of 7 December 2000 in Case C-94/99 *ARGE Gewässerschutz* v. *Bundesministerium für Land- und Forstwirtschaft*, of 8 May 2003 in Case C-349/97 *Spain* v. *European Commission* (Nowicki and Nowicki, 2010: 119), or of 11 May 2006 in Case C-340/04 *Carbotermo SpA* and *Consorzio Alisei* v. *Comune di Busto Arsizio* and *AGESP SpA* (Judgment in Case C-340/04). In the reasons for these judgments, it was emphasised that meeting the condition regarding the control exercised by the contracting authority does not stem from the very fact that the public institution holds the entire share capital of the enterprise to which the in-house contract would be awarded, but rather from the requirement to carry out comprehensive assessment of control exercised by the contracting authority over the third party. As a result, the public institution awarding such a contract should have a decisive impact on strategic objectives and essential decisions taken by the enterprise to which the contract would be awarded. The essence of control should not be reduced only to holding 100% of the shares in the share capital, but it should rather mean that the contracting authority has appropriate authorisations allowing it to have a real impact on the activity of the said enterprise in terms of formulating strategic aims and making crucial decisions (Nowicki and Nowicki, 2010: 119). In another judgment, dated 13 October 2005 in Case C-458/03 *Parking Brixen GmbH* v. *Gemeinde Brixen* and *Stadwerke Brixen AG,* the Court laid down a list of circumstances which should not occur when the contracting authority exercises control over the enterprise to which a contract has been awarded. It means that each exemption from the provisions on public procurement should be interpreted in a restrictive way (Judgment in Case C-458/03).

The second condition that must be met in order to employ an in-house procedure is the requirement which states that the economic operator must carry out an essential part of its activities for the contracting authority. The introduction of this prerequisite entails the need to protect competition. Otherwise, such contracts may lead to

establishing a privileged position of the operator in the market, distort competition, and constitute discrimination against private enterprises which may be interested in the implementation of public procurement. The Court has repeatedly pointed out in its rulings that the regulations on public procurement are designed to ensure "free movement of services and open and undistorted competition [...] in all the Member States" (CoJ judgment C-26/03).

The judicial practice of the CoJ EU formulated in this way resulted in the introduction of Art. 12 to the Classic Directive 2014/24. It not only standardised the regulations on in-house procurement but primarily made the CoJ EU rulings prescriptive. In the rationale for the Directive, it was emphasised that the implementation of its provisions in the member states cannot lead to changes to the possibilities of awarding in-house public contracts (Pawelec, 2015: 106–107).

In the scope of Art. 12 one can list five forms of in-house public contracts:

1. contracts awarded to controlled legal persons (traditional in-house contracts);
2. contracts awarded by a controlled legal person to a legal person exercising control over it (reverse in-house relation);
3. contracts awarded between legal persons under the control of the same legal person ("sister" in-house relation);
4. contracts awarded to a legal person controlled by two (or more) controlling legal persons (in-house contract under the so-called joint control);
5. contracts in horizontal public-private cooperation.

According to Art. 12 par. 1, the Directive does not apply to a public contract if the following three conditions are cumulatively fulfilled:

a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;
b) more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority;
c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

With regard to the condition of control, the requirements formulated in the judicial practice of the CoJ EU have essentially been repeated, that is the contracting authority must exercise over a given legal person a control which is similar to that which it exercises over its own departments and that it must simultaneously exert a decisive influence on strategic objectives as well as on essential decisions of the controlled legal person. Such a control may be exercised by another legal person which is itself controlled by that contracting authority (Art. 12 par. 1 subpar. 2 of Directive 2014/24/EU). Moreover,

the control exercised by the contracting authority ought to be decisive. It should therefore be actual and indisputable (Sadowy, 2013: 85).

Another rationale exempting from the application of Directive 2014/24 is the requirement that 80% of the activities of the controlled legal person should be carried out in the performance of tasks entrusted to it by the contracting authority. The 80% criterion was recognised as the one allowing to maintain the principles of fair competition on the market. The percentage of the activity is determined on the basis of the average total turnover or another alternative measure such as costs incurred by the relevant legal person or the contracting authority – with regard to services, supplies, and works for the last 3 years preceding the award of the public contract. If because of the date on which the relevant legal person or the contracting authority was created or commenced activities or because of a reorganisation of its activities, the data on the turnover or the alternative measure based on operating costs for the last 3 years are unavailable or no longer relevant, it is sufficient to show that the measurement of activity is credible, particularly by means of business projections (Art. 12 par. 5 of Directive 2014/24/EU).

The last condition is the lack of private capital participation in the controlled legal person. This premise is not absolute. The Directive allows for the participation of private capital in non-controlling and non-blocking forms which do not exert a decisive influence on the controlled legal person, if it is required by national legislative provisions of the Member States and remains in conformity with the Treaties. However, the Directive does not address the effects of private capital participation that occurs during the implementation of a public contract.

Yet another case where the exemption from the application of the Directive is possible is the so-called reverse in-house procurement. According to Art. 12 par. 2 of the Directive, the provisions on public procurement do not have to be applied where the controlled legal person which is the contracting authority awards a public contract to its controlling contracting authority or to another legal person controlled by the same contracting authority. Additional criteria imply that there is no direct private capital participation in both the contracting authority and the legal person being awarded the public contract, with the exception of non-controlling and non-blocking forms of private capital participation, and that more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the contracting authority.

Art. 12 par. 3 of the Directive regulates the award of a public contract between legal persons controlled by the same legal person ("sister" in-house procurement). It concerns the case where at least two legal persons governed by public law do not exercise individual control over a third legal person but nevertheless influence its activity because of the existing interdependencies. The award of the public contract to that legal person can be exempted from the application of the provisions of the Directive if all additional requirements set out in par. 3 are met.

Another form of public contracts identified in the Directive are in-house contracts as part of horizontal public-public cooperation (Art. 12 par. 4). The exemption from the application of the provisions of the Directive concerns two bodies governed by public law which have no organisational or capital relations but are functionally interconnected. The use of this exemption is permissible when all criteria specified in Art. 12 par. 4 of the Directive are met. It may be assumed that the aforementioned type of contract can be used only by bodies governed by public law which cooperate directly with each other in the implementation of public services while acting solely in the public interest, and no private provider will find itself in a more advantageous position than its competitors.

Thus, the current EU regulation allows for the exemption from public procurement rules in certain contracts between bodies governed by public law, provided they fulfill the strict conditions intended for particular forms of in-house contracts (Olejarz, 2014: 37). It should be assumed that the three essential requirements are indispensable for the application of in-house contracts. Namely, the contracting authority must exercise control, the controlled legal person must carry out more than 80% of its activities for the contracting authority, and there must not be any direct private capital participation in the controlled legal person (Nowicki, 2015: 197).

3 In-House Contracts in the Polish Public Procurement Act

The regulation of in-house contracts in Art. 12 of Directive 2014/24/EU also had an impact on Polish legal regulations. Firstly, the existing exemption regarding public contracts awarded to public sector enterprises laid out in Art. 4 item 13 of the PPA remained unchanged. Secondly, a rule of the Polish legal system set out in the Municipal Services Management Act that allows local government units to entrust their own public service tasks to their own departments constituting legal forms of carrying out their services, in the so-called administrative procedure by-passing the provisions of the PPA, where the aforesaid requirements concerning the economic and organisational dependence and the lack of private capital participation in the performer are present, was kept without any modifications.

Contrary to the union regulations, in the amendment to the PPA of 2016 in Art. 67 par. 1 items 12 to 15, the Polish legislator provided the possibility of awarding in-house contracts as a rationale for the application of a single-source procurement procedure. Following the example set by EU regulations, the national legislator has made certain modifications when identifying particular types of in-house procurement.

Art. 67 par. 1 item 12 allows exclusively the contracting authorities referred to in Art. 3 par. 1 items 1 to 3a to award their contracts by a single-source procurement procedure to a legal person if all of the following three conditions are met:

- the contracting authority exercises over that legal person control similarly to the one exercised over its own departments and involving dominant influence

on strategic goals and essential management decisions; this condition shall also be fulfilled where another legal person controlled by the contracting authority exercises control in the same manner;
- more than 90% of the activity of the controlled legal person involves the execution of tasks entrusted to it by the controlling contracting authority or other controlling legal person;
- there is no private capital participation in the controlled legal person.

The modification of the Polish regulation, apart from the clearly defined entities which may award their in-house contracts by a single-source procurement procedure (Art. 3 par. 1 items 1 to 3a of the PPA), also involves:
- raising the percentage of the activity carried out by the legal person for the contracting authority from 80% required by EU regulations to 90%;
- eliminating direct private capital participation.

Raising the percentage of the activity carried out for the contracting authority means that the controlled legal person's scope of activity on the open market will be significantly reduced, in contrast to the union requirements. However, the requirement concerning the lack of direct private capital participation in the controlled legal person is not absolute, as it does not apply to legal persons with the participation of a partner selected on the basis of the act on public-private partnership (*Journal of Laws,* 2017, item 1834) or shares or stocks belonging to the employees in the amount of up to 15% of the share capital or company stocks represented at a meeting of shareholders or a general meeting (*Journal of Laws,* 2016, item 981). Making use of the exception involving the employees is not always the right solution, as their leaving the company creates private capital. Hence, the said company cannot be considered "an internal structure acting on behalf of the municipality" (Judgment C-231/03).

With regard to the possibility of applying a single-source procurement procedure to "reverse" in-house procurement (Art. 67 par. 1 item 13 of the PPA) involving the award of a contract by a legal person which is the contracting authority referred to in Art. 3 par. 1 items 1 to 3a of the PPA to another contracting authority identified in Art. 3 par. 1 items 1 to 4 of the PPA which controls the awarding contracting authority, the fulfillment of all of the three conditions laid down in item 13 points (a) to (c), which are in essence similar to the ones set out in item 12 points (a) to (c), is also required. The legislator formulated similar requirements in Art. 67 par. 1 item 14 of the PPA with regard to the award of a joint contract to a legal person by the contracting authority referred to in Art. 3 par. 1 items 1 to 3a of the PPA, together with other contracting authorities referred to in Art. 3 par. 1 items 1 to 4 of the PPA, of which in respect to at least one of the requirements set out in item 14 points (a) to (c) of the provision discussed must be collectively met. Also here the prerequisites are similar to the aforementioned ones.

The final type of an in-house contract presented in Art. 67 par. 1 item 15 of the PPA is a horizontal public-public contract. When allowing the award of a contract using

a single-source procurement procedure, the legislator requires for the contract to be concluded exclusively between at least two contracting authorities referred to in Art. 3 par. 1 items 1 to 3a of the PPA, if the conditions formulated in Art. 67 par. 1 item 15 points (a) to (c) are collectively fulfilled. It is essential for the contract to establish or implement cooperation between the participating contracting authorities in order to provide public services for the achievement of common goals. Further prerequisites provide that the implementation of this cooperation should be connected solely with public interest and that the collaborating contracting authorities carry out less than 10% of the activity subject to cooperation on the open market.

The conditions that must be met in order to apply a single-source procurement procedure have been formulated by the legislator in a very strict way. The implemented solution is far more complex than in the classic EU Directive. The Polish municipal companies were surprised by it, as from 1 January 2017 (date of entry into force) it was required that in the 3 years preceding the award of the contract they carried out more than 90% of their activities for the contracting authority. According to Art. 67 par. 8 of the PPA, the calculation of the percentage of activity referred to in Art. 67 par. 1 items 12 point (b) 13 point (b) 14 point (b) and 15 point (c) of the PPA takes into account the average revenue generated by the legal person or the contracting authority within the aforementioned 3-year period with regards to services, supplies, and works. Art. 9 of the provision in question states that if because of the date on which the legal person or the contracting authority was created or commenced activities or because of a reorganisation of their activities, the data on the average revenue for the last 3 years preceding the award of the contract are unavailable or inadequate, the percentage should be calculated by means of reliable business projections. In the common sense of the word, a projection means foreseeing the future on the basis of events, documents, or facts already known. However, the term "projection" has not been defined in the PPA. One should therefore assume that the presented linguistic interpretation can be applied to the contents of Art. 67 par. 9 of the PPA. The submitted and owned documents, reports, balance sheets, and financial analyses should unequivocally prove that the requirements regarding the percentage of activity carried out for the controlled contracting authority have been met. The provision formulated in this way and its interpretation may in practice prevent the award of an in-house contract. The adopted solution shows that it would be easier to award a contract to a newly-created municipal company than to an existing one. This is due to the fact that in case of an emerging company the aforementioned percentage of activity would be calculated on the basis of reliable business projections, which are usually easily verified.

4 Conclusion

The in-house solution introduced in the PPA does not exclude and, as it has been shown above, does not conflict with performing tasks by a local government unit in order

to meet collective needs identified in the MSMA. However, the solution regulated in the established provisions has a broader scope of entities set out in Art. 3 par. 1 items 1 to 3a of the PPA. It can be applied not only to the agencies of local government units. Moreover, it is not limited in scope. Hence, in the case of "commission in the form of a contract" it is not necessary to fulfill the conditions for in-house procurement. In all cases it will be a contract to which the provisions of the PPA concerning in-house contracts may be applied, given that a local government unit entrusts its own tasks to a municipal company and concludes with it a payable contract for the performance of a specific task (Cieślak, 2017: 15–21). The award of a contract by a non-tendered procedure contributes to reducing the costs of contract implementation, which may be crucial for smaller municipalities.

The implemented solution provides a basis for the application of a non-tendered procedure while controlling the decision of the contracting authority on awarding contracts directly to a subsidiary. The control over such contracts is also exercised by meeting the obligations required from the contracting authority on the basis of the provisions of the PPA, consisting, among other elements, of the obligation to announce information about the intention to conclude a contract by a single-source procurement procedure (Art. 67 par. 11 of the PPA); having commenced the procedure, to, depending on the value of the contract, place the notice of intention to conclude it in the Public Procurement Bulletin or dispatch the notice to the Publications Office of the European Union (Art. 66 par. 2 of the PPA); to inform the President of the Public Procurement Office about launching the procedure within 3 days of its date while providing factual and legal justification for the application of a single-source procurement procedure (Art. 67 par. 2 of the PPA); ban on the conclusion of the contract awarded on the basis of Art. 67 par. 1 items 12 to 15 before 14 days have elapsed since the date of announcing the information referred to in Art. 67 par. 1 item 11 (Art. 67 par. 12 of the PPA); immediate announcement (no later than within 14 days as of the conclusion of the contract) on the contracting authority's website of the Public Information Bulletin or if there is none, on the contracting authority's main website of the information about awarding the contract under par. 1 items 12 to 15 (Art. 67 par. 13 item 1 of the PPA) or witholding from the award of the contract (Art. 67 par. 13 item 2 of the PPA). The aforementioned requirements have different legal nature, but the contracting authority's obligation to meet them is evident. Hence, an in-house procurement contract will be concluded in a transparent manner. Moreover, the award of such a contract is stricly controlled also by the supervisory authority, which due to its dominant influence on strategic objectives and essential management decisions regarding the affairs of the controlled legal person implementing the contract will be able to counteract potential violations of law.

It seems that the changes that have been introduced, involving the possibility of awarding an in-house contract as grounds for the application of a single-source procurement procedure are subject to specific legal control. Therefore, it should not contribute to the monopolisation of the market and the restriction of free competition on the municipal services market.

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