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Joint public procurement in European Union Law¹

Wspólne zamówienia publiczne w prawie Unii Europejskiej

Abstract. One of the areas related to the drawing and use of the budget funds of particular member states, as well as European Union (EU) funds, is public procurement. EU law allows particular contracting authorities or sector procurers to cooperate within public procurement and procure commodities jointly, i.e. to implement the joint public procurement procedure. This procedure is undoubtedly advantageous, especially in terms of cost savings; however, it also has a few drawbacks, particularly the ambiguity of legal regulations regarding the application of particular institutes in such joint public procurement. This paper aims to examine the theoretical and legal basis of joint public procurement, define the individual forms of joint public procurement under consideration, highlight the existing application-related problems in the implementation of this procedure and

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indicate possible legal solutions to the identified legal problems based on the interpretation of the relevant provisions of legal regulations.

Keywords: public procurement; procurer; joint public procurement.

Streszczenie. Zamówienia publiczne są jednym z obszarów związanych z wykorzystaniem i absorpcją środków z budżetów krajowych oraz funduszy Unii Europejskiej. Prawo unijne pozwala poszczególnym instytucjom zamawiającym lub zamawiającym sektorowym na współpracę w zakresie zamówień publicznych i wspólne zamawianie towarów, czyli prowadzenie wspólnych zamówień. Takie podejście ma niewątpliwe zalety, zwłaszcza w zakresie oszczędności kosztów. Jednocześnie ma to również swoją ciemną stronę, polegającą na niejednoznaczności regulacji prawnej dotyczącej stosowania przez poszczególne instytucje w takich wspólnych zamówieniach publicznych. Celem niniejszego opracowania jest zbadanie teoretycznych i prawnych podstaw wspólnych zamówień publicznych, określenie różnych form wspólnych zamówień publicznych, które mogą być brane pod uwagę, a także wskazanie istniejących problemów aplikacyjnych w realizacji takiego postępowania. Celem jest również zaproponowanie możliwych rozwiązań prawnych zidentyfikowanych problemów prawnych w oparciu o interpretację odpowiednich przepisów prawa.

Słowa kluczowe: zamówienia publiczne; zamawiający; wspólne zamówienia.

1. Introduction

One of the areas related to the drawing of the budget funds of particular member states of the European Union (EU), as well as European Union funds or other public funds, is public procurement. Unlike in the private sector, procurement in the public sector is often determined more heavily by politics and political interests than by the price and quality of the procured commodities². Therefore, when using such funds, transparency, economics and efficiency of the use of public funds must be sufficiently ensured on the one hand and non-discrimination of operators on the

² C. Bovis, *Public Procurement in the European Union*, Nowy Jork 2005, p. 18.

other³. In addition, such attributes should be ensured by the public procurement procedure.

The legal regulation of public procurement in particular member states is harmonised by the law of the EU. At the EU level, public procurement is regulated through directives, namely through Directive No 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC⁴, as well as Directive No 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive No 2004/17/EC⁵. The contents of such directives have been incorporated into the laws of particular member states; therefore, there should not be substantial differences within national regulations.

An institute that enables the use of coordinated public procurement procedures by several contracting authorities or sector procurers is the so-called joint public procurement. The legal basis of such an institute under EU law is Articles 37 and 38 of Directive 2014/24 and Articles 55 and 56 of Directive 2014/25, which regulate joint public procurement in the form of a central purchasing body, as well as in the form of occasional public procurement, with the regulation in both directives being fundamentally similar. The use of such an institute would not be complete if the implementation of such joint procurement by entities operating in different EU member states was not possible. This is regulated in Article 39 of Directive 2014/24 and Article 57 of Directive 2014/25⁶.

³ As regards the principles of public procurement, see K. Burešová, *Zásada rovného zacházení a zákazu diskriminace ve veřejném zadávání*, "Studia Iuridica Cassoviensia" 2018, No 2, pp. 141–147; P. Baily, D. Farmer, B. Crocker, D. Jessop, D. Jones, *Procurement principles and Management*, Victoria 2015, p. 594; L.D. Dąbrowski, *Poland and EU Cooperation – mechanism of joint public procurement COVID-19* [in:] J. Menkes, M. Suska (eds), *Economic and Legal Impact of COVID-19. The case of Poland*, Oxford 2022, pp. 53–65.

⁴ OJ EU L of 2014, No 94, p. 65 with subsequent amendments, hereinafter: Directive 2014/24.

⁵ OJ EU L of 2014, No 94, p. 243 with subsequent amendments, hereinafter: Directive 2014/25.

⁶ As regards cross-border public procurement, see R.C. Perin, G.M. Racca, *European Joint Cross-Border Procurement and Innovations* [in:] G.M. Racca, C.R. Yukins (eds),

Based on the provisions of the directives, one may state that joint public procurement can be used by both contracting authorities and sector procurers, which are not limited by the borders of the given member state. The advantage of joint public procurement is the possibility of saving budget funds, with such savings being either direct (in the form of lower prices) or indirect (in the form of savings in administrative costs). An additional advantage is that there are fewer problems in the joint procurement procedure, as the procedure is led by an experienced team. In addition, it is possible to achieve a higher level of standardisation of commodities used in the public sector. Finally, this procedure also contributes to increasing the transparency and efficiency of public procurement.

However, the aim of this paper is not to examine the advantages and disadvantages of joint public procurement or its impact on the budget management of public contracting authorities or sector procurers. In this regard, we refer to Tünde Tátrai's conclusions published in her article *Joint public procurement*⁷. This paper aims to examine the theoretical and legal basis of joint public procurement, define the individual forms of joint public procurement under consideration, highlight the existing application-related problems in the implementation of this procedure and indicate possible legal solutions to the identified legal problems based on the interpretation of the relevant provisions of legal regulations.

When preparing this paper, the basic research methods applicable in legal sciences were used, namely analysis, synthesis, explanation, interpretation and description. To identify existing application-related problems, we used guided interviews with operators implementing the public procurement procedure for public contracting authorities and sector procurers as well as directly with the sector procurer operating within the international energy group of companies.

Joint Public Procurement and Innovations. Lessons Across Borders, Bruksela 2019, pp. 93–132.

⁷ T. Tátrai, *Joint Public Procurement*, “ERA Forum” 2015, No 1, p. 7–24. See also: Yuyang Tan, Wenchao Zhao, Chunxiang Guo, *The joint procurement model and algorithm for small and medium enterprises*, “Computer & Industrial Engineering” 2021, vol. 155, No 107179.

2. Forms of joint procurement

The applicable legal regulation of public procurement allows for two basic forms of joint procurement by procurers (public contracting authorities and sector procurers, with both types collectively referred to as the “procurer” hereinafter). The first form represents procurement through a central purchasing body, with this form being designed to ensure continuous, repeated joint procurement. The second form is represented by the so-called occasional joint procurement, which is aimed at ensuring occasional joint procurement of contracting authorities, i.e. not at continuous joint procurement. Even these two basic forms can have an internally different form.

2.1. Joint procurement through a central purchasing body

Joint public procurement through a central purchasing body is not a new institute. This form of cooperation within public procurement had been used in particular member states, even before it was regulated in EU law. In fact, this form of cooperation was challenged by the European Commission before the Court of Justice of the European Union, which also found a contradiction with EU law⁸. Given that centralised procurement techniques have been widely used by member states but the Commission initiated proceedings before the Court of Justice of the European Union arguing a contradiction (with the then effective) Public Procurement Directive, it was necessary to define in the new directive the conditions under which such form of cooperation is admissible⁹. Therefore, this form of joint public procurement was foreseen for the first time in Directive No 2004/18/EC¹⁰. Subsequently, the regulation of joint public procurement

⁸ Case C-264/03: Commission of the EC v. French Republic, ECLI: EU:C:2005:620.

⁹ C.R. Hamer, M. Comba, *Centralising Public Procurement. The Approach of EU Member States*, Cheltenham 2021, p. 23.

¹⁰ J. Tkáč, M. Griga, *Zákon o verejnom obstarávaní. Veľký komentár*, Bratislava 2016, p. 180; Directive of the European Parliament and of the Council of 31 March 2004 on

through the central purchasing body was also adopted by Directive 2014/24 into its Article 34 and by Directive 2014/25 into its Article 55.

Such cooperation essentially provides that several procurers can agree to implement the public procurement procedure through a central purchasing authority, and it is intended for continuous and repeated joint procurement. The central purchasing body is a procurer (either the public contracting authority or sector procurer), which also awards contracts per the needs of other procurers¹¹. The legal basis for the existence of such a form of joint procurement is the agreement between the procurers to determine the central purchasing body and the conditions for conducting joint procurement.

The activity of the central purchasing body may occur in two forms¹²:

- 1) First, the central purchasing body acts as a wholesaler by buying and storing commodities and then reselling them to other contracting authorities for whom it procures commodities. With this form, it is possible to procure goods and services; however, work cannot be procured in this way.
- 2) Second, the central purchasing body can also act as an intermediary by awarding contracts, operating dynamic purchasing systems or concluding framework contracts that will be used by other procurers. This intermediary role could, in some cases, be fulfilled by independent implementation of the relevant procedures for awarding public contracts, without detailed instructions from the procurers concerned, and in other cases, by carrying out the relevant procedures for awarding public contracts based on the instructions of the concerned procurers on their behalf and for their account.

In the case of both forms of procurement implemented through a central purchasing body, the public procurement procedures shall be applied

the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, OJ EU L of 2004, No 134, p. 114.

¹¹ A central purchasing body can also be a European public authority that acquires goods or services or awards contracts for the supply of goods or services in the field of defense and security.

¹² See also V. Podešva et al., *Zákon o veřejných zakázkách. Komentář. 2. vydání*, Praga 2011, p. 17.

by the central purchasing body in relation to potential suppliers. In the case of the first form, other procurers acquire commodities from the central purchasing body directly, without using public procurement procedures. In the case of the second form, other procurers acquire commodities on the basis of a contract awarded by a central purchasing body on the basis of a dynamic purchasing system operated by such a body or on the basis of a framework contract concluded by a central purchasing body. In addition, at this stage, they no longer proceed according to public procurement rules.

The central purchasing body shall be responsible for centralised activity in public procurement. Particular contracting authorities are responsible for the part of the public procurement that they carry out themselves, for instance, in the case of awarding a contract within the dynamic purchasing system operated by a central purchasing body or in the case of reopening a competition upon the conclusion of a framework agreement by a central purchasing body.

2.2. Occasional joint procurement

Occasional joint procurement comprises a voluntary group of several procurers involved in the provision of goods, services or construction works that are required by all participants of the given group. Compared to centralised activity in public procurement through a central purchasing body, this is a less institutionalised and systematic joint procurement that allows sector procurers to coordinate their procurement procedures. Occasional joint procurement may only occur between operators that have the same status within public procurement (e.g. the public contracting authority and sector procurer). It is not possible to mix operators with different statuses (e.g. joint procurement of a public contracting authority with a sector procurer). The legal regulation of this form of joint public procurement first appeared in EU law in Article 35 of Directive 2014/24 and Article 56 of Directive 2014/25. Thus, compared to the previous form, which involves implementation through a central purchasing body, this is a newer form in the given case.

Even occasional joint procurement can take several forms¹³:

- 1) The first form is a full joint procurement, within which all procurement activities are conducted, starting with the preparation of documents, specifications, call for tenders, evaluation and the conclusion of contracts. Depending on the involvement of particular members of the group, it may occur in the so-called centralised form or decentralised form. When applying the centralised form, the so-called leading member of the group implements all procurement steps themselves, and the other members are the recipients of performance under the concluded contracts. When applying the decentralised form, the leading member of the group coordinates the procedure with other members who participate in the preparation of documents, the creation of the evaluation committee, etc.
- 2) The second form of occasional public procurement is the so-called partial joint procurement, in which several procurers jointly perform only some public procurement operations, e.g. a preparation of common technical specifications for construction works, supply of goods or provision of services; however, the subsequent procurement procedure is implemented by each of the procurers themselves.
- 3) The third form is the so-called piggy-backing procurement¹⁴, in which public procurement is completely conducted by the leading member of the group, as if the latter were conducting the procedure for themselves. However, the call for tender shall specify that the results of the procurement may be used (not mandatorily) by other operators and that the extent to which they use it is at their own discretion.

Depending on the form of occasional public procurement, a model of responsibility for discharging one's obligations resulting from the award of contracts is also established. If public procurement is conducted jointly on behalf and for the account of all participating procurers, they are jointly and severally responsible for the discharge of their obligations. This shall also be applied if one procurer manages the public procurement

¹³ See also C. Roberto, S. Albert, *European Public Procurement. Commentary on Directive 2014/24/EU*, Cheltenham 2021, p. 432.

while acting for the account of all participating procurers. However, if public procurement is not conducted on behalf of and for the account of the participating procurers, they are jointly and severally responsible only for those parts that they conducted jointly. Each procurer is independently responsible for discharging their obligations regarding those parts that are performed on their behalf and for their own account.

3. Application-related problems related to joint procurement

Should a joint procurement of several procurers be carried out, certain specific conditions arising from the nature of the institute of joint procurement shall be applied. Such specific conditions relate mainly to the determination of the estimated value of the contract, the nature of contractual relations in joint procurement, the possibilities of not concluding a contractual relationship by individual members of the group, subsequent termination of the contractual relationship or aggregation of the contracts.

3.1. Estimation of the value of the contract

The essential obligation of the procurer when calling for tenders is to estimate the value of the contract. The rules for calculating the estimated value of the contract are set forth in Article 5 of Directive 2014/24 and Article 16 of Directive 2014/25. In relation to forms of joint public procurement, there are no exact rules for estimating the value of the contract resulting from the specified articles of the directives.

Each individual public procurement procedure has a specific estimated contract value, which includes the estimated value of all supplies to be delivered under the contractual relationship/s that will be concluded on the basis of the public procurement in question¹⁵. In the case of joint pro-

¹⁵ See also P. Nowicki, K.M. Halonen, *Methods for calculating the estimated value of procurement* [in:] R. Caranta, A. Sanchez-Graells (eds), *European public procurement: commentary on directive 2014/24/EU*, Northampton 2021, pp. 48–63.

curement, either in the form of a central purchasing body or in the form of an occasional joint procurement, it is necessary to assume that one public procurement procedure having one estimated value of the contract is implemented, wherein the contract value includes the value of all supplies to be delivered on the basis of contracts resulting from this public procurement procedure, i.e. all supplies for all involved procurers.

If joint procurement is conducted in the form of a central purchasing body where such a body is a wholesaler, the estimated value will comprise the values of all supplies that the central purchasing body intends to purchase for the needs of all participating procurers. This is also the case wherein the central purchasing body acts as an intermediary; here, the estimated value will comprise the values of all supplies scheduled by the particular participating procurers under the contracts with the supplier on the basis of a concluded framework contract or a dynamic purchasing system.

In the case of occasional joint procurement in the form of full procurement, a similar conclusion shall be applied, i.e. the estimated value will comprise the values of all supplies scheduled by the individual participating procurers under the contracts with the supplier on the basis of a concluded framework contract or a dynamic purchasing system.

In the case of occasional joint procurement in the form of partial procurement resulting in joint preparation of technical specifications for procurement with subsequent independent implementation of the public procurement procedure by particular operators, the estimated value of the contract is determined independently by each procurer with respect to the contract procured by them, since, ultimately, the public procurement procedure is conducted by each group participant alone.

Finally, in the case of occasional joint procurement in the form of piggy-backing, it will be necessary that the estimated value of the contract include the value of supplies that can also be used by other procurers on the basis of the given public procurement due to the fact that it is a certain type of an option that must be included in the estimated value of the contract.

3.2. The nature of contractual relations in joint procurement

Another application-related problem is determining the nature of the contractual relationship resulting from individual forms of a joint public procurement. The outcome of a joint procurement is the conclusion of a specific contractual relationship with the supplier. Such contractual relationships may be different for individual forms and types of joint procurement. The identification of the contractual relationship at which the public procurement is aimed must be clearly mentioned in the contract notice.

If joint procurement is conducted in the form of a central purchasing body acting as a wholesaler, the contractual relationship with the supplier for the supply of goods or the provision of services is held by the central purchasing body, i.e. the latter is a party to such a contract. The involved group members then purchase goods from the central purchasing body under a purchase agreement or service under a service-level agreement. When entering such agreements, it is necessary to take into consideration that the central purchasing body may not sell to the participating procurers a larger amount of goods or services than that purchased by the central purchasing body from suppliers, based on the public procurement procedure.

When conducting joint procurement in the form of a central purchasing body acting as an intermediary, the results are as follows:

- 1) a conclusion of contractual relationships (e.g. a purchase agreement, a service-level agreement or a contract for work done) between the supplier and the particular members of the group involved, or
- 2) a conclusion of a framework contract between the supplier and the central purchasing body and the subsequent conclusion of individual contracts between the involved members of the group and the supplier under the conditions agreed upon in the framework contract, or
- 3) an establishment of a dynamic purchasing system by a central purchasing body and, subsequently, the purchase of goods, services and works by individual members of the group through the given dynamic purchasing system.

In the case of an occasional joint procurement in full form, the resulting contractual relationship may be as follows:

- 1) entering one individual agreement (e.g. a purchase agreement, a service-level agreement or a contract for work done) between the supplier and all members of the grouping of procurers, or
- 2) entering one framework contract between the supplier and all members of the group of procurers with subsequent entry into individual contracts between the supplier and individual members of the group of procurers under the framework contract, or
- 3) entering separate individual contracts between the supplier and particular members of the group of procurers.

When implementing a joint occasional procurement in partial form, the result of public procurement conducted independently by each member of the group will be the conclusion of a separate contractual relationship with the particular members of the group and the supplier (either a framework contract or an individual one).

Finally, if joint procurement has been conducted as occasional joint procurement in the form of piggy-backing, the basic contractual relationship is concluded between the supplier and the procurer implementing the public procurement (a framework contract or an individual contract). The other members of the group are entitled to enter the same contract with the supplier as the procurer implementing the public procurement (or an individual contract if a framework contract was entered by and between the supplier and the procurer implementing the procurement).

3.3. Consequences of a failure to conclude a contractual relationship for group members

In this context, it is relevant to assess the situation wherein, after the completion of the joint public procurement procedure, one of the members of the group of procurers does not wish to enter a contractual relationship resulting from the public procurement. First, it should be noted that this situation should be resolved by an agreement between the procurers whereunder a group of procurers was created for the purposes of a joint

procurement, either in the form of the creation of a central purchasing body or occasional joint procurement. It should regulate the consequences in the case of a refusal by some members of the group to enter a contractual relationship.

If a joint procurement is conducted in the form of a central purchasing body acting as a wholesaler, the refusal of supplies by an individual member of the group is without prejudice to the public procurement procedure. Even if the central purchasing body purchased goods or services from the supplier, whereby the public procurement procedure is completed, the group member does not subsequently purchase such goods or services from the central purchasing body. The question of a penalty is, therefore, a matter of an agreement between group members.

When assessing such a matter in the case of a joint procurement in the form of a central purchasing body acting as an intermediary, it is relevant to take into consideration the type of contractual relationship envisaged by the public procurement procedure. If the result of the public procurement is to establish a framework contract between the supplier and the central purchasing body or to establish a dynamic purchasing system by such a body, the refusal of supplies by particular members shall not affect the public procurement procedure; even in this case, the right of recourse shall be a matter of an agreement between group members. Refusal of supplies based on the public procurement procedure by an individual member of the group would be problematic if the result of the procurement was the conclusion of a contract between the supplier and the given individual member of the group. In this case, it would be necessary to cancel the public procurement in relation to the entire public procurement.

In the case of an occasional joint procurement in full form, the active participation of each member of the group of procurers in the conclusion of a contractual relationship is generally required. Refusal to enter into a contract by one member of the group would have to be accompanied by the cancellation of the public procurement. The same conclusion can also be reached in the case of an occasional joint procurement in partial form, since particular procurers conduct public procurement on their own;

a refusal to conclude a contract should be accompanied by cancellation of the public procurement.

In the case of an occasional joint procurement in the form of piggy-backing, a failure to conclude a contract by a member of the group (except the procurer directly carrying out the public procurement procedure) is without prejudice to the public procurement procedure, as it is only their right, not their obligation.

The reasons for which it is possible to cancel the public procurement and thus not conclude the intended contract are usually defined in the national legislation implementing the directive. For instance, according to Section 57 of the Slovak Act on Public Procurement¹⁶, there are both mandatory reasons, where the procurer is obliged to cancel the public procurement, and optional reasons, where the procurer may opt for cancellation of the public procurement.

Mandatory reasons for the cancellation of public procurement are as follows:

- 1) none of the tenderers or candidates has satisfied the conditions for participation in public procurement and the tenderer or candidate has not raised objections within the time limit prescribed by the Act on Public Procurement,
- 2) procurer did not receive a single tender,
- 3) none of the submitted tenders meets the requirements prescribed by the Act on Public Procurement and the tenderer has not raised objections within the time limit set forth by the Act on Public Procurement,
- 4) the Public Procurement Office ordered it to be cancelled.

Optional reasons for the cancellation of a public procurement are as follows:

- 1) the circumstances whereunder the call for tenders was made have changed,
- 2) in the course of the public procurement procedure, specific causes have emerged due to which the procurer cannot be required to further

¹⁶ Act No 343/2015 on Public Procurement and on Amendments to Certain Acts, with subsequent amendments.

proceed with the public procurement, especially in case of a violation of a law that has or could have a fundamental impact on the outcome of the public procurement,

- 3) no more than two tenders were submitted,
- 4) the proposed prices in the submitted tenders are higher than the estimated value.

Accordingly, the very fact that the result of the public procurement is the achievement of worse price conditions than those in the previous contractual relationship is not in itself a reason to cancel the public procurement. However, it is likely that the value of the contract will also be estimated according to the current prices of the given commodity. Therefore, the fact that the proposed prices in the submitted tenders are higher than the estimated value could be the relevant reason for a cancellation of the public procurement.

3.4. Subsequent termination of the contractual relationship

Should the joint procurement process be successful and result in the conclusion of the intended contractual relationship with the supplier, the conditions specified in point 1 of this analysis shall be applied appropriately for the subsequent termination of the given contractual relationship. Thus, it is fundamentally true that such a contractual relationship can be terminated for reasons and in a manner envisaged by legal regulations (especially the Commercial Code or the Civil Code), as well as for reasons and in a manner agreed upon in the contract. In addition, Article 73 of Directive 2014/24 and Article 90 of Directive 2014/25 set forth the reasons for the termination of contracts concluded within the public procurement procedure. Other reasons may arise from the national legislation on public procurement.

Given that multilateral contracts can be concluded within the joint public procurement procedure, i.e. on the one hand, there is a supplier, and on the other hand, there are several procurers, it is necessary that while drafting the given contract as part of the public procurement docu-

ments, such a contract should explicitly specify how the given multilateral relationship shall be affected in case of a termination by only one procurer. The consequences of such a termination may be as follows: a termination by one procurer sets an end to the contractual relationship in relation to other procurers as well, or, conversely, a termination of the contractual relationship by one procurer is without prejudice to the existence of the contractual relationship in relation to other procurers. Similarly, it can also be agreed that a termination of the contractual relationship requires an unanimous expression of will by all procurers. Thus, the degree of a commitment is a matter of contractual agreement, and it should be clearly mentioned in the draft contract included in public procurement documents.

A similar approach shall also be applied if the result of the public procurement is the conclusion of a framework contract between the supplier on the one hand and either the central purchasing body, the leading member of the group or each procurer on the other. In this constellation, it will be necessary, both in the framework contract and in particular individual contracts, to adjust the impact of the termination of the individual contract by one procurer on the validity of the framework contract, as well as on the individual contracts of the other procurers. Therefore, it is possible to agree on a mutual interconnection as well as a mutual non-interconnection.

If the result of joint public procurement is the conclusion of contractual relations between the supplier and the framework contract or individual contracts separately with each member of the group of procurers, a termination of the given contractual relationship by one contracting party shall be without prejudice to the validity of the contractual relationships between other involved procurers who are in a separate contractual relationship with the supplier.

3.5. New joint procurement pending the term of the contractual relationship

Another aspect requiring an assessment is the possibility of initiating a joint public procurement procedure, despite the fact that one of the pro-

curers involved is in a valid and effective relationship for the supply of the given commodity being the subject of the joint procurement.

The legal regulation of a public procurement (whether at the level of the EU or member states) applies to the initial phase of the contracting procedure, comprising the selection of a supplier of a certain commodity and setting forth the basic terms of the contractual relationship. Only in exceptional cases does the regulatory scope of such legislation also apply to other phases of the procedure, or even to the previous pre-contractual phase.

In this context, it should be noted that the legal regulation of a public procurement does not preclude the procurer from conducting the public procurement procedure, despite the fact that it continues to be in a valid and effective contractual relationship for the supply of the given commodity with a certain supplier. Conversely, due to the duration of the public procurement procedure, its implementation will also usually take place pending the term of the existing contractual relationship to ensure the continuity of supplies of the given commodity. Therefore, it is a matter of consistently setting the commencement of a new contractual relationship to be created upon a joint public procurement so that it continuously builds on the previous contractual relationship.

Similarly, it is not excluded that the original contractual relationship and a new contractual relationship to be created upon a joint public procurement co-exist in parallel, unless the increased capacity requirements of the procurer require so. If it is not justified by such requirements, the procurer should take actions aimed at terminating the original contractual relationship.

3.6. Aggregation of contracts within joint public procurement

Within the public procurement procedure, contracts for the supply of particular categories of goods, works or services are procured, with such categories being defined within the so-called Common Procurement Vocabu-

lary (CPV). This undoubtedly also applies to the joint procurement of several procurers. In some cases, however, it is desirable that the categories of goods, works or services are defined, divided or combined.

The legislation is stricter when it comes to dividing contracts. In this context, Article 46 of Directive 2014/24 and Article 65 of Directive 2014/25 shall be applied. In any case, when dividing the contract, it is necessary to take into consideration the principle that the contract cannot be divided, nor can the method of estimating its value be chosen in order to reduce the estimated value below the financial limits to avoid the use of the public procurement method or, as the case may be, a stricter method of public procurement. Thus, not every division of contracts is excluded but only the one whose purpose is to reduce the estimated value in order to apply a less strict method of public procurement.

However, the legislation fundamentally does not prevent individual contracts from being aggregated. However, such procedures must be based on the fundamental principles of public procurement, namely the principle of equal treatment, the principle of non-discrimination of economic operators, the principle of transparency, the principle of proportionality and the principle of economics and efficiency. Thus, the aggregation of contracts is permissible, provided that such aggregation does not result in violation of the basic principles of public procurement, illegal application of an exception to public procurement or distortion of competition.

4. Conclusions

With respect to the use of budget funds, including EU funds or other public funds, the need for a coordinated procedure for several contracting authorities or sector procurers often arises when procuring goods, works or services. To achieve this, one of the institutes offered by the legal regulation of public procurement within the EU, as well as particular member states, can be used—joint public procurement.

A joint public procurement can be implemented in two forms. The first is a joint procurement through a central purchasing body, which is suitable for repeated, continuous joint procurement of a certain commo-

ty or commodities. The second form is the so-called occasional public procurement, which is justified in the case of the occasional unique interest of procurers to coordinate their procedure in public procurement. Both forms are also internally differentiated, i.e. they can take different forms.

This paper analysed specific internal and individual forms of a joint public procurement, as well as certain specificities that may occur in a joint public procurement compared to “regular” public procurement. As part of this, individual application-related problems in the implementation of a joint public procurement were highlighted. They relate mainly to the estimation of the value of the contract, the nature of contractual relations in joint procurement, the consequences of not concluding a contract by some of the procurers or the subsequent termination of the contractual relationship by some of the procurers, the implementation of a new joint procurement pending the term of the contractual relationship or the aggregation of contracts within joint public procurement. By applying the methods of interpretation and explanation, certain proposals were presented to solve the given application-related problems that cannot be explicitly derived from the legislation, namely from the legislation within the EU. It is not possible to rule out certain specificities arising from the legislation of particular member states, which may also have an impact on the conclusions presented herein.

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