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Abstract

The institution of "self-cleaning" in Polish public procurement law

The institution of self-cleaning is a tool enabling contractors who have been excluded from public procurement proceedings to take corrective and preventive actions to demonstrate their reliability. If the contractor proves his reliability sufficiently, he will not be excluded from the proceedings.

The main aim of the dissertation is to solve the research problem - obtaining an answer to the question: whether the institution of self-cleaning in force in Polish public procurement law violates the principle of equal treatment of contractors and fair competition, as the basic principles of preparing and conducting public procurement proceedings. Particular attention was paid to the admissibility of initiating the self-cleaning procedure, the initiative to submit self-cleaning evidence and their assessment in the context of compliance with applicable law, while indicating the risks of violating the principle of equal treatment of contractors and fair competition.

The author was guided by the view that solutions regarding self-cleaning institutions should not violate applicable procurement rules, in particular the principle of equal treatment of contractors and fair competition. Meanwhile, the applicable legal regulation is not sufficient to guarantee that the procedure will always be consistent with the principles of public procurement.

Taking the above into account, the following research thesis was adopted: The institution of self-cleaning applicable in Polish legal regulations, which allows contractors subject to exclusion from public procurement proceedings to apply for a public contract, may violate the principle of equal treatment of contractors and the principle of fair competition, which may consequently lead to to award a public contract to an unreliable contractor who does not guarantee its proper performance. In order to formalize the above thesis, the following hypotheses were adopted: 1) If the institution of self-cleaning is an element of the public procurement procedure, which must be prepared and carried out in a way that ensures fair competition and equal treatment of contractors, its assumptions must implement the principle of equal treatment of contractors and the principle of fair competition, 2) If the self-cleaning

institution is an element of the public procurement procedure and its assumptions must implement the principle of equal treatment of contractors and fair competition, then these principles must be used at every stage of the self-cleaning procedure, and tools and mechanisms used as part of self-cleaning cannot violate these principles, 3) The introduction of compliance systems may constitute an incentive for the contractor to make changes in the form of preventive actions and future protection against the occurrence of undesirable effects, however, without the introduction of an appropriate system guaranteeing compliance with and enforcement of these changes, it will not be sufficient to effectively carry out self-cleaning.

The dissertation was divided into five chapters, which included: using the following research methods: dogmatic-legal, historical and legal-comparative.

The issues presented in the first chapter constitute an introduction in the issue of public procurement. By defining what public procurement is, analyzing the goals and functions they perform, the rules to which they are subject, as well as discussing the nature of legal norms shaping the public procurement system, the necessary background has been outlined. The second chapter presents the origins of the establishment of the self-cleaning institution - from the 1980s until the introduction of appropriate regulations in Directive 2014/24/EU. Moreover, the reasons and purpose of introducing the institution of self-cleaning into public procurement law, as well as the circumstances of its application, were discussed. The grounds for excluding a contractor from applying for public procurement specified in Directive 2014/24/EU were also discussed. The considerations contained in the fourth chapter constitute a key analysis of the issues of the topic of the work. They concern the institution of self-cleaning and the procedure for its implementation regulated in the public procurement law applicable in the Polish legal system, against the background of the principle of equal treatment of contractors and fair competition. Real problems were identified that make it difficult to carry out self-cleaning in accordance with the above principles against the background of applicable case law and views of the doctrine. The fifth chapter presents models of regulation of self-cleaning institutions in force in selected European Union countries, which are based on the same assumptions as Polish legislation, and yet show differences in the implementation of Directive 2014/24/EU. Attempts were also made to present the solutions used in the United States - as they are older than the European ones, based on similar assumptions as to the effectiveness of public expenditure, but using mechanisms appropriate for implementing this process other than those specified in Directive 2014/24/EU.

At the end of the dissertation, a summary of the analyzes carried out was made, an assessment of the self-cleaning regulations in terms of compliance with the principles

of equal treatment of contractors and fair competition was presented, as well as de lege ferenda comments regarding the introduction of legislative changes ensuring self-cleaning in accordance with the principle of equal treatment of contractors and fair competition.