

Artificial splitting of a public contract under EU legislation and CJEU case law

ABSTRACT

The EU public procurement law aims to ensure open competition in the public procurement market for the purpose of achieving the EU internal market. The scope of procurement legislation based on the estimated value of a contract is set by the financial thresholds specified in the relevant Directive 2014/24/EU. In direct breach to the purpose of EU procurement legislation is artificial splitting of a public contract conducted by a contracting authority resulting in lowering the estimated value of procured works, services and supplies, and thus excluding them from the scope of the Directive.

Article 5(3) of Directive 2014/24 prohibits artificial splitting of a public contract. Similar provisions were part of first procurement directives from the 1970s. However, the relevant paragraph does not explicitly regulate what are the exact criteria that contracting authorities should take into consideration while determining the subject matter of a single public contract in order not to violate the prohibition of artificial splitting of a contract.

The aim of this thesis is to analyse the secondary EU legislation relevant to prohibition of artificial splitting of a public contract, including soft law and relevant doctrine, as well as the related CJEU case law, in order to evaluate the clarity of those rules and to find an answer to the question of what criteria a European contracting authority must follow when determining the subject-matter of a single public contract.

KEYWORDS

Public Procurement; Artificial Splitting; Division into Lots; Contract value