

COMPANY TARGETED HOST CITIES FOR EURO 2012

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Abstract:

Provisions of the Act to prepare EURO 2012 to require the establishment of several companies targeted host cities where tournament will take place. On the basis of agreements to delegate tasks, set the Mayors, the organizers, as they implement enterprise project supervisors in the organization of the preparations for the tournament and perform tasks related to the construction of stadiums and associated infrastructure.

Key words: EURO 2012, Special Purpose Vehicle, stadion, infrastructure

INTRODUCTION

The aim of this study is to analyse issues related to special purpose vehicles established by municipal governments of selected Polish towns which have been entrusted with the organisation of EURO 2012. It specifies in particular formal and legal bases of their activity necessary for the planned investments to be completed, mainly outside Warsaw.

Legal bases for the organisation of European Football Championship – EURO 2012 in Poland have been defined in a law specially adopted for this purpose (hereinafter referred to as the “Opft” Act) [1]. Pursuant to this act, the completion of enterprises related to the championship organisation has been entrusted to companies specially established for this purpose – special purpose vehicles, which adopt a form of limited liability legal companies. They have become a tool for the fulfilment of necessary organisational procedures so as to hold EURO 2012 tournament in each of tournament host cities, allowing the fulfilment of the entrusted tasks in selected towns and communes.

ATTRIBUTES OF A SPECIAL PURPOSE VEHICLE

Until present the contract of a special purpose vehicle (SPV) has not been regulated in Polish law. This means that it is an innominate contract, which has been shaped by the business trading practice, serving the fulfilment of a particular purpose. A special purpose vehicle may take a form of a limited liability company. Its essence is determined by the fact that partners oblige themselves to strive to achieve the common goal by making contributions and, if the contract or the statutes of a company provide so, by cooperating in another particular way [2].

Special purpose vehicles may be used for a particular concrete goal. It might be e.g. construction, completion of an investment, purchase of a real estate etc. [3]. In trading business practice special purpose vehicles are usually used by its participants to complete larger investments. Due to

the owned construction, they might also be useful in the completion of new and innovative enterprises which require the application of special methods. Owing to all the above mentioned factors, a special purpose vehicle may be used in practice as a proper legal form also for ensuring the completion of enterprises related to the organisation of European Football Championship EURO 2012, which has been entrusted to Poland [4].

ORGANISATION OF PREPARATIONS FOR EURO 2012

While creating organisational and administration bases for preparations of the final tournament of the European Football Championship UEFA EURO 2012, the legislator – as has been mentioned before – in art. 7 of the act provided for the establishing of a few special purpose vehicles dealing with the organisation of preparatory procedures in towns appointed to be hosts to EURO 2012.

These towns have the status of communes. This means that they act pursuant to the Commune Self-government Law dated 8th March 1990 [5], simultaneously carrying out the tasks of a county on the basis of the County Self-government Act dated 5th June 1998 [6]. Pursuant to these acts (state system acts), within the framework of their own tasks, they also fulfil tasks related to the organisation of EURO 2012. Pursuant to art. 7 of the Commune Self-government Act and art. 4 of the County Self-government Act, the commune’s own tasks are among others related to spatial order, public safety, real estate management, water supply etc.

The right to set up special purpose vehicles by the towns – hosts to EURO 2012, which has been provided for by the “Opft” Act, means that by granting them independent decisions on organisational solutions the legislator established formal and legal framework for them. This applies in particular to four towns – organisers: Gdańsk, Poznań, Warsaw and Wrocław. These towns created special purpose vehicles according to the principles specified in the “Opft” Act, pursuant to art. 7 paragraph 7. Under the cur-

rent legal status the preparations of towns for EURO 2012 are effected by: National Sport Centre Ltd, seated in Warsaw and limited liability special purpose vehicles established by the towns which are hosts to the tournament: Investment Office EURO Gdańsk 2010 Ltd, Wrocław 2012 Ltd and Euro Poznań 2010 Ltd. The above mentioned companies operate on the basis of contracts for tasks concluded with the mayors of the listed towns-hosts.

National Sport Centre Ltd, which carries out tasks related to the preparation and performance of EURO 2012 enterprise in Warsaw is a special purpose vehicle. This results not only from the scope of activities, but also from the strategic position of the city of Warsaw in the organisation of EURO 2012 in Poland. Apart from that, the activities of the Centre include the preparations of investments related to the construction of National Sport Centre, including National Stadium in Warsaw and accompanying facilities, together with the technical and transport infrastructure.

In the remaining towns, other than Warsaw, which will be hosts to the championship the tasks related to the construction of adequate infrastructure have been entrusted to territorial self-government units, which – as mentioned before – are performed by special purpose vehicles, specially established for this purpose. Thus the “Opft” Act provided the towns – hosts with appropriate rights. They are supposed to serve the purpose of streamlining and facilitating the activities in the organisation of the championship. It is also worth stressing that the organisation of EURO 2012 tournament gives great possibilities of development to these towns, also in a broader aspect.

FORMAL AND LEGAL BASES OF SPECIAL PURPOSE VEHICLES’ OPERATION IN TOWNS-HOSTS

The establishing of a special purpose vehicle by a territorial self-government is not an easy task, chiefly because pursuant to the existing law regulations in the process of setting up an SPV it is necessary to take into consideration legal solutions contained in many acts as well as in many orders apart from the relevant provisions of the “Opft” Act [7]. The act which is of primary importance for the establishing of a special purpose vehicle by a town – host is also the Municipal Management Act dated 20th December 1996 [8]. From the point of view of the validity of law, it is a special provision in relation to the commercial companies code. This means in practice that there are certain differences between regulations applying to the commercial law companies and companies with participation of territorial self-government units [9].

The establishing of a special purpose vehicle requires first of all a resolution to be passed by a town council [10]. This results from art. 18 paragraph 2 subparagraph 9 letter f of the Commune Self-government Act. Pursuant to the provisions of the “Opft” Act, a special purpose vehicle may be a limited liability vehicle, and the subject of its activity should be preparation or performance or coordination and supervision of EURO 2012 enterprises, including among others substitute performance of investor’s tasks and investor’s supervision. The detailed scope of tasks related to EURO 2012 which have been entrusted to a special purpose vehicle is specified by the town in a written agreement. Its provisions prevent the company from engaging in another activity [11], which is a very important issue in the case of ensuring the organisation of the tournament.

Pursuant to art. 7 paragraph 3 of the “Opft” Act, the minimum amount of a special purpose vehicle’s share capi-

tal is PLN 2 000 000 [12]. Pursuant to art. 9 paragraphs 2 and 4 of the above mentioned act – in conjunction with art. 215 § 1 of the Commercial Companies Law - the supervisory board of a company consists of three to five members. Members of the company’s supervisory board should meet the requirements of the Municipal Management Act. This means that – pursuant to its provisions – supervisory board members representing a territorial self-government unit must pass an exam according to the procedure specified in the provisions of the Commercialisation and Privatisation Act [13]. The mandatory term of a supervisory board member with a majority interest of a territorial self-government unit, therefore also of a special purpose vehicle – pursuant to art. 10 a paragraph 3 of the Municipal Management Act – is three years.

Pursuant to the “Opft” Act, the management board of a special purpose vehicle may consist of no more than three persons. The “Opft” Act does not specify who should appoint members of the management boards of special purpose vehicles established for the purposes of EURO 2012. For this reason it should be assumed that the rights in this scope belong to the supervisory board pursuant to art. 10a paragraph 6 of the Municipal Management Act, applying to all communal companies.

For all special purpose vehicles established to implement EURO 2012 enterprises the “Opft” Act in art. 10 paragraph 1 introduced limitations of their activity in certain areas. Pursuant to this provision a special purpose vehicle may not:

- be engaged in activity which is not related to EURO 2012 enterprises that have been entrusted to it in a special purpose vehicle contract,
- create other entities,
- acquire shares or other titles of participation in other entities,
- be subjected to recovery or bankruptcy proceedings,

Wishing to eliminate the limitation in activities on behalf of the organisation of EURO 2012, in an order issued by the Council of Ministers the legislator introduced the so-called list of EURO 2012 enterprises [14]. The list provided a basis to introduce some facilitations necessary for the organisation of the final tournament. They are connected with activities performed even beyond special purpose vehicles, within a simplified public orders procedure and a quick administrative procedure. This results from the fact that such enterprises have been granted the public purpose investment status, which allows e.g. issuing a building permit despite the lack of a local area development plan.

ENDING

The organisation of EURO 2012 in Poland has been entrusted to limited liability special purpose vehicles. This way the performance of public tasks has been shifted from the administrative-legal sphere to the civil law sphere, that is to the private law area. For this reason, a contract for tasks is of primary importance and the activities performed by a special purpose vehicle are subjected to liability rules provided for by the commercial companies code.

In order to facilitate activities undertaken by the bodies of special purpose vehicles of towns-hosts and to ensure their professionalism, the exemption of the so-called „chimney regulations” in relation to members of SPV management boards and supervisory boards have been applied” [15]. Such a solution secures the possibility to freely shape the remunerations of the members of managing and

control bodies, and provides local self-governments with a possibility to employ the highest class competent managers.

An important issue for eliminating legal barriers which limit an investment cycle and possibilities of choosing the investment preparation procedure is also the exemption of EURO 2012 enterprise preparations from the public orders act dated 29th January 2004 [16]. It allows public procurement without a need to call a public order (for all kinds of orders, especially design and building works). The application of a simplified public order procedure allows limiting the long-term procedure of investment completion. Possible barriers to the functioning of special purpose vehicles established for EURO 2012 organisation are also limited owing to the possibility to quickly terminate a contract in the event we deal with an unreliable contractor. This way it may be entrusted – in due term – to another contractor.

When evaluating the activity of companies of the townshosts attention should be paid to the fact that apart from positive elements, related in particular to the adopted legal solutions, there are certain drawbacks in the management sphere. They are mainly connected with: failure to keep deadlines, the lack of supervision over the performance of tasks or settlement documentation etc... [17]. Unfortunately, as it turns out, such limitations have a decisive influence on the unfavourable effects of the activities of the townshosts.

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