

STATE TREASURY SPECIAL PURPOSE ENTITIES FOR ORGANISATION OF UEFA EURO 2012

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Abstract:

Under the provisions of the Act to prepare for UEFA Euro 2012, two State Treasury special purpose entities were formed: PL 2012 Ltd. and National Sports Centre Ltd. PL 2012 company fulfils the primary role in the organization of preparations for UEFA Euro tournament because it was formed for the purposes of the coordination and supervision of the preparatory actions.

Key words: EURO 2012, National Sports Centre, Company PL 2012

INTRODUCTION

Projects related to the preparation of the UEFA European Football Championship 2012 in Poland are being executed by separate organizational and legal forms. In accordance with the provisions of the Act of 7 September 2007 on the preparation of the final tournament UEFA Euro 2012 (potft Act hereinafter), [16] these are State Treasury special purpose entities in the legal form of limited liability companies [10, 17].

The aim of this study is to analyse the solutions creating the possibilities for the public entity to use a special purpose entity as a means of preparation of UEFA European Football Championship 2012.

The study assumes that the legal formula of intensive preparations to host UEFA Euro 2012 action is well founded.

The study uses different research methods, including analysis of the literature and dogmatic-legal method.

THE ESSENCE OF A SPECIAL PURPOSE ENTITY ESTABLISHED FOR ORGANISATION OF UEFA EURO 2012

A special purpose entity (SPE hereinafter) is a company unnamed, shaped by the practice of economic activity. Generally speaking, SPE is a company organizational structure, appointed for a specific purpose (e.g. construction, investment, buying property, etc.). It is characterized by the fact that it is: usually appointed for investments either big (spending more than 1 million PLN.), or requiring innovative methods of implementation. SPE usually takes the form of a limited liability company, whose operation is determined by the Commercial Companies Code (hereinafter - CCC) [14].

Indicated features of the SPE have been useful to ensure the implementation of projects related to the organization of UEFA EURO 2012 in Poland. SPE formed by a public entity as a limited liability company, in accordance with Polish law and EU law, is an integral part of the public finan-

ce sector [20]. Therefore, the transfer of assets to the SPE, created by a public entity (e.g. Treasury), financially burdens the public sector. Thus, creating or contributing to the SPV, the public body does not dispose of the risks arising from the project, but participates in the risks to the extent of his share in the company [5].

PL 2012 LTD

Forming the organizational - legal basis for the preparation of UEFA Euro 2012, the legislature made it possible, in accordance with art. 7 of the potft Act, to establish the SPE. Two State Treasury companies were formed: PL 2012 Ltd. and National Sports Centre Ltd., both based in Warsaw [17].

Company PL 2012 was established on 19 October 2007, as a limited liability company (PL 2012 hereinafter), which allows it the independent occurrence in the economic turnover [6]. The basic task of PL 2012 is to execute the necessary operations to prepare for UEFA Euro 2012. According to the legal structure adopted by PL 2012, these tasks can be implemented in partnership, under the Act of 19 December 2008 on public - private partnership [15]. Its main goal is to create legal solutions that will reduce bureaucracy in the implementation of projects and facilitate the execution of investments by public and private partners. This can speed up the implementation of projects necessary for the organization of UEFA Euro 2012 in Poland [11, 19]. The possibility of using the partnership assumptions to these activities creates a broader framework [1]. PL 2012 created for the realization of a particular aim, which is - as already mentioned - the organization of UEFA Euro 2012, as a public institution may also use public-private partnership.

ORGANIZATIONAL REQUIREMENTS FOR SPECIAL PURPOSE ENTITIES FOR UEFA EURO 2012

Potft Act established detailed requirements to be fulfilled by the SPE set up by the State Treasury for the organization of UEFA Euro 2012. First of all, its share capital shall

not be less than 2 mln PLN¹. The share capital of PL 2012 has been covered in full by cash of the State Treasury. Potft Act provides that shares in the company may be transferred or encumbered by the State Treasury, represented by the Minister for Sport, with the consent of the Cabinet of Poland [3]. However, this may occur only after completion of all projects for EURO 2012, which were entrusted to the company. It is worth noting that although the PL 2012 is a state legal person, its ownership rights are not being exercised by the Minister of the Treasury².

Potft Act, Article. 9 provided for the establishment of bodies typical for a company with limited liability for PL 2012: management and supervisory boards³. The board of PL 2012 includes no more than three persons, in accordance with the Potft Act⁴. The supervisory board, is appointed pursuant to Article. Paragraph 9. 2 and 4 of the potft Act, in conjunction with. 215 § 1 of the CCC. It consists of not more than five members, submitted by ministers, referred to in paragraph. 3 art. 9 Potft Act: ministers responsible for public finance, regional development and the Treasury⁵. In addition to representatives of the above-mentioned. ministers, members of the Board shall be persons appointed by the minister responsible for sport and tourism. It should be emphasized that at the current functioning of PL 2012, change of the composition of the board and restrictions on the exercise of oversight by the minister responsible for sport reflected adversely.

It should be stressed that candidates for supervisory board members must meet the general requirements set by the CCC, and so have full capacity to exercise legal actions, no criminal record for certain offenses and may not be subjected to restrictions and prohibitions to hold office in the authorities of the companies, resulting in particular from other acts⁶.

An important issue for the functioning of PL 2012, contained in Art. 14 of the potft Act, is the exemption of the so-called "legislation towers" applying to members of management and supervisory boards, introduced by the Act of 8 March 2003 on Remuneration of Persons Managing Certain Legal Entities [21]. This solution gives the possibility of employment of highly skilled specialists and competent managers in the management of high-value assets. But there are limits on the amount of the severance pay of a recalled board member. In accordance with Article. Paragraph 14. 2 of the potft Act it cannot exceed one month's salary.

OBJECTS OF THE SPECIAL PURPOSE ENTITY PL 2012 LTD

The object of PL 2012, in accordance with Article. 13 of the potft Act, is, as already indicated, the preparation and execution of projects for UEFA Euro 2012, their coordination and control and other projects of the European Championships – UEFA Euro 2012. Part of the business of PL 2012

are, in particular, replacement tasks of the investor and tasks of the investment supervision, in accordance with the provisions of the Act of 7 July 1994; Construction Law [22].

PL 2012 executes projects in terms of: obtaining and preparing documentation, presenting proposals concerning decisions and licenses; participates in appropriate proceedings concerning the acquisition of property or property rights for the Treasury, and other proceedings relating to real estate [2, 7]; concluding contracts and monitoring performance of contracts for supplies, services and works; engaged in other activities directly related to the preparation or implementation of projects for UEFA Euro 2012, resulting from separate provisions or from the contract referred to in art. Paragraph 17. 1 of the potft Act.

The object of the PL 2012 for the implementation, coordination and control of projects for the final tournament of the European Championships in 2012 is in particular, in accordance with Article. Paragraph 13. 4 of the potft Act:

- developing, inter alia, the principles of cooperation and exchange of information between providers of preparations, projects, schedules of activities, principles of information policy
- coordinating the activities of bodies pursuing the preparation and cooperation of these entities with the institutions or entities responsible for implementation in Poland and the Union of European Football Associations (UEFA)
- controlling the state of preparation, execution of projects including: preparation and presentation of reports for the minister responsible for sport, and the Union of European Football Associations (UEFA)
- initiating and implementing measures aiming to improve the efficiency of preparations,
- consulting and training entities pursuing preparation.

Entities participating in the preparation or performance of the UEFA Euro 2012 projects or other efforts to prepare this event, have an obligation – at the request of PL 2012 – to present documents and information related to their activity on the UEFA Euro 2012, accordance with the provisions of legally protected information.

An important aspect of the company is also – like in any organization focused on contacts with the customer – broader marketing and advertising. This is important because the organization of the EURO 2012 tournament is a great opportunity to promote the country as well as regional and local communities [18]. Undoubtedly, respectively conducted promotional campaign can affect the development of tourism in Poland and the interest of investors. This was the case, so far, in all the countries where major sports events were carried out.

¹ This is different from the general principles set out by the CCC, which in art. 154 § 1 sets the lower limit of the share capital of a limited liability company to 50 thousand PLN. The nominal value of each of the 20 000 shares of the company amounts to 100 PLN.

² This is a solution other than used in relation to other entities with Treasury shareholding, where ownership rights usually belong to the minister in charge of the Treasury.

³ Article. 9 of the potft Act indicates different, wider composition than in § 2, art. CCC 201, which relates to the composition of the board in the limited liability company.

⁴ The seat of the company president since February 2008, is occupied by M. Herra. In total, the company employs currently 14 people [12].

⁵ Also in this case, these issues have been dealt with differently than in the CCC.

⁶ For example, this applies to laws on commercialization and privatization and reduced economic activity by persons performing public functions [6].

Table 1

The scope of PL 2012 Ltd. in the field of monitoring and coordinating preparations for the UEFA Euro 2012 tournament

As a part of the task, the supervisory activities of the company include:	The role of coordinator of preparations for the tournament the company realizes by:
<ul style="list-style-type: none"> – analysis of the legislation which may affect the development and implementation of projects related to UEFA Euro 2012 – periodic assessment of the state of preparation, monitoring of projects and identification of the areas potentially implementing threat to tournament preparation 	<ul style="list-style-type: none"> – monitoring and making sure that all relevant entities' guarantees and commitments made in the candidate phase for UEFA Euro 2012 will be satisfied – keeping the current system of reporting progress in the preparatory work to UEFA – organizing training and seminars for entities responsible for organizing the championships – preparing and supporting the implementation of security concepts during the tournament – development and implementation of the concepts of transport and communication during the UEFA Euro 2012

Source: Own elaboration based on [13].

All the activities of PL 2012 are being realized by specialized organizational units and with the help of national coordinators who deal with particular areas of the company. They are subject to individual members of the board. Each coordinator has its own team, with which together he executes assigned tasks [12]. These relate to specific areas of operation which have been indicated above. To ensure greater efficiency of carrying out the projects, a team of experts and qualified managers has been called together. Seven areas of action where national coordinators operate have been identified. These include: stadiums, infrastructure, hotel accommodation, security, intellectual property, telecommunications and information technology, medical coverage and rescue [12, 13]. All of this is to ensure the efficient performance of PL 2012 duties to accomplish the pivotal role in the system of organization of UEFA Euro 2012. Irregularities at the level of central coordination and supervision can – obviously – cause difficulties and problems in the sphere of actual implementation of project activities.

NATIONAL SPORTS CENTRE LTD

The second special purpose entity established under the Act of 2007, on the organization of UEFA Euro 2012 is the National Sports Centre Ltd. (hereinafter-NCS). It was established on 4 October 2007. The share capital amounts to 2 million PLN, and nominal value of each of 20 000 shares amounts to 100 PLN. Capital paid up in full in cash, and all shares have been taken by the State Treasury. Legally, the company is working on the same terms as PL 2012. The scope of its activities is different, however. It covers the preparation or execution of projects for UEFA Euro 2012, in particular in respect of: the design of stadiums and other buildings, construction, reconstruction or repair of stadiums and other buildings, and other projects necessary to carry out the tournament, including [8, 9]:

- a) substitution tasks of the investor and the investor supervision,
- b) acquiring and preparing the necessary paperwork associated with obtaining decisions, permits, agreements and opinions, as well as requesting their release,
- c) acquisition of property or rights to property and having them at disposal for construction purposes,
- d) concluding and supervising the necessary contracts,

e) the management of buildings, arising for the performance of the UEFA Euro 2012.

Under the agreement to entrust the NSC SPE tasks associated with the preparation and implementation of UEFA Euro 2012 – concluded in November 2007 between sports and tourism minister and president of the NSC – the company pursues investments related to the creation of the NCS, including construction of the National Stadium in Warsaw and associated facilities, together with the technical infrastructure and communication necessary for the execution of UEFA Euro 2012 in Warsaw.

CONCLUSION

The organization of EURO 2012 is a great project that in Poland has no precedent. It is coordinated by PL 2012 on behalf of the minister responsible for sport, and NCS is building a national stadium. The resulting SPEs do not have any organizational and technological experience. The form of SPE adopted by the legislature appears to be well-founded for the implementation of projects related to UEFA Euro 2012 tournament. Entities arising under the potft Act may be an opportunity to speed up and simplify the administrative procedures that would normally affect the rate of business investment activities.

In order to facilitate activities of the SPE, the legislature created solutions that should help overcome existing barriers. In particular the companies are not contained by the "legislation towers", legal barriers that slow down the investment cycle are much reduced, and there is introduced the possibility of choosing the mode of preparation of investments in accordance with the will of the investor. Of particular importance for the implementation of projects and activities to prepare projects for UEFA Euro 2012 is the fact that they are excluded from the scope of the Public Procurement Act. By using a simplified procedure for public procurement contracts entered into by the SPE, it is possible to rationalize the procedures for implementing the necessary investments.

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