

**EUROPEAN COMMISSION**

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Single Market for Public Administrations  
**Public Procurement Strategy**  
Head of UnitBrussels, **10. 04. 2017**  
GROW G1/MR/TS/kr  
grow.ddg2.g.1(2017)2156045Mr Jouni Alanen  
HPP Attonreys Ltd  
Bulevardi 1A  
FI-00100 Helsinki  
jouni.alanen@hpp.fi

Dear Mr Alanen,

Thank you for your interest in public procurement and your message of 31 March 2017 to our Deputy Director General Mrs Irmfried Schwimann. She has asked me to reply to your questions on her behalf.

Let me first point out that the final interpretation of legislation and the legality of a specific case at hand, as you certainly know, this belongs to the remit of the relevant judicial Courts, and ultimately the European Court of Justice. However, we are willing to share our views with you on the matters exposed. Let me state that these views are entirely based on the information you provided in your letter, with no verification whatsoever of their correctness.

In cases like the one you described, it is important to underline that Article 12 of Directive 2014/24/EU ("Directive"), stipulates a number of conditions which have to be met in order for the award of a public contract to fall out of the scope of the Directive (so-called "in-house" exemption). Specifically, Article 12, paragraph 3 of the Directive concerns the exercise of joint control by the contracting authorities over the company which is entrusted with the given task(s).

The essence of your question seems to pertain to the question whether the sale of by-products from waste management would fall within or out of the scope of the notion of "tasks entrusted to it by the controlling contracting authorities". We assume, without further indications of the contrary, that all other conditions are met in the case you described, as you claim. It seems that this activity can indeed be seen as inherent to the task of responsible waste management, entrusted to the company by the contracting authorities. The Directive requires only that the tasks in question are entrusted to it by the controlling contracting authorities or by other legal persons controlled by the same contracting authorities, and is neutral as regards to the question who is the recipient of the results of the task. Following the above, and without regard to the possibility that revenues from such tasks may be coming from other sources than the public authorities, such as private market players, the revenues from that activity would be considered as

turnover related to the execution of the tasks entrusted to it by the contracting authorities, and fall into the scope of the calculation of the requisite percentage.

Finally, in connection with the issue of percentage, we would also like to point out that Member States are indeed free to adopt measures stricter than the ones foreseen by the Directive, such as the ones you mentioned Finland has adopted for in-house provisions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Rogalska', with a large, stylized initial 'M'.

Marzena ROGALSKA

Contact: Mariya Pelovska – telephone: +32 2 2983034 – [maria.pelovska@ec.europa.eu](mailto:maria.pelovska@ec.europa.eu)