

**Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 7 December 2012 — Centro Hospitalar de Setúbal, EPE, Serviço de Utilização Comum dos Hospitais (SUCH) v Eurest Portugal — Sociedade Europeia de Restaurantes Lda**

(Case C-574/12)

(2013/C 79/09)

*Language of the case: Portuguese*

**Referring court**

Supremo Tribunal Administrativo

**Parties to the main proceedings**

*Applicants:* Centro Hospitalar de Setúbal, EPE, Serviço de Utilização Comum dos Hospitais (SUCH)

*Defendant:* Eurest Portugal — Sociedade Europeia de Restaurantes Lda

**Questions referred**

1. Is it compatible with Community doctrine on in-house procurements that a public hospital, having dispensed with the procedure provided for by law for concluding the relevant contract, should award to a non-profit organisation, which it is in partnership with, and whose aim is to carry out a public service mission in the area of health with a view to enhancing the effectiveness and efficiency of its partners, a contract for the provision of hospital catering services within its area of competence, thereby transferring to that organisation responsibility for its functions in that area, if, under the provisions of its statutes, partners of that organisation may be, not only entities from the public sector, but also those from the social sector, given that on the date of the award, out of a total of 88 partners, there were 23 non-governmental organisations (IPSS) from the social sector, all of which were non-profit making and included charitable associations?
2. Can it be considered that the contractor is subordinate to the decisions of its public partners, in that the latter, on their own or as a whole, exercise a control which is similar to that which they exercise over their own departments, if, under the provisions of its statutes, the contractor must ensure that the majority of the voting rights are held by member partners and are subject to the management, supervision and guidance powers of the member of the Government responsible for health, given that the majority of the Management Board is also made up public partners?
3. In the light of Community doctrine on in-house procurements, can it be considered that the requirement of 'control which is similar' has been fulfilled, if, under the provisions of its statutes, the contractor is subject to the guidance powers of the member of the Government responsible for health who is in charge of appointing the President and Vice-President of the Management Board, approving the resolutions of the General Meeting on taking out loans involving a net debt equal to or greater than 75 % of the equity recorded in the previous financial year, approving resolutions on amendments to the statutes, approving resolutions of the General Meeting on the dissolution of the contractor and determining how the assets are to be distributed in the event of a dissolution?
4. Does the fact that the contractor is a large and complex organisation, which operates throughout Portuguese territory, is in partnership with most departments and institutions of the SNS, including the majority of the country's hospitals, has an estimated turnover in the order of EUR 90 000 000, has a business that includes varied and complex areas of activity, with very impressive activity indicators, and more than 3 300 workers, and participates in two additional enterprise groupings and in two commercial companies, mean that its relations with its public partners may be described as merely internal or in-house?
5. Does the fact that the contractor, under the provisions of its statutes, is able to provide services on a competitive basis to non-partner public entities or private entities, be they national or foreign (i) provided that there is no resulting loss or harm caused to the partners, and that it is beneficial to them and to the contractor, whether economically or in terms of enhancement or technical performance, and (ii) provided that the provision of those services does not represent a volume of invoicing that is greater than 20 % of its overall annual turnover recorded in the previous financial period, mean that the requirement for in-house procurements, in particular the requirement for the 'essential purpose of the activity' under Article 5(2)(b) of the CCP, has been fulfilled?
6. If the response to any of the above questions is not in itself sufficient to conclude whether or not the requirements under Article 5(2) of the CCP have been fulfilled having regard to Community doctrine on in-house procurements, does an overall assessment of these responses imply the existence of that type of procurement?