Background

One prerequisite for the creation of national defence settings and equipment market is the establishment of an appropriate legislative framework. In the field of procurement, this involves the coordination of procedures for the award of contracts to meet the security requirements and obligations arising from the respective regulations and treaties. Regarding the EU candidate, potential candidate and neighbouring countries, the process of EU enlargement has been a key tool for establishing corresponding system settings, including anti-corruption reforms in respective countries.

The Workshop on Aspects and Challenges in the Public Defence Procurement was aimed at strengthening the defence procurement organization. The activity supported and fostered the capacity-building process, exchange of experiences and best practices in the field and organization of defence procurement.

Purpose

This multi-country beneficial event was an exceptional opportunity to get together all relevant state institutions and agencies in order to discuss and share best practices on the common issue of concern: organizing public defence procurement. The purpose of the Workshop was to discuss and share information on aspects and challenges in the organization of defence procurement, with corruption as one of the issues that needs special attention.

Acknowledgements

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Venue and participation

The event was held in Sarajevo from 06 to 08 May 2013. The workshop gathered a total of 45 participants: civilian and military officials representing the Ministries of Defence, Ministries of the Interior, Ministries of Justice, Public Procurement Bureau, State Appeals Commission, State Anti-Corruption Commission and State Audit Office relevant for the activity subject matter.
The Agenda

Mr Milan Janicijevic, acting RACVIAC IRC Pillar Programme Manager, chaired the Workshop. Mr Janicijevic welcomed respective participants and kindly opened the event, inviting the State Secretary of the Ministry of Defence (MK), Mr Sašo Stefanoski, to take the floor and give his introductory remarks.

On behalf of the host and co-organizer, Mr Sašo Stefanoski said that establishing the defence equipment market was essential to strengthen the industrial and technological base of defence and the development of military capabilities needed to implement national systems, as well as to comply with the European Security and Defence Policy. Mr Stefanoski also said that defence procurement accounted for a large part of public procurement in each country and that the Workshop was unequivocal confirmation of individual and joint efforts and success in building and maintaining security in the region of SEE and beyond.

Following the initial opening addresses, the event continued with the presentation delivered by Mr Burkard Schmitt, defence expert, Unit C3, DG MARKT of the European Commission on “The Defence Procurement Directive 2009/81/EC”. He made the following points:

- The Defence Procurement Directive 2009/81/EC is a tool for members states;
- There is a necessity of combined EU defence spending;
- Interoperability is very important, especially in crisis management operation, where different countries are involved;
- Small production volumes equal high prices and less value for money;
- The need for industrial consolidation and competitiveness;
- More cooperation is needed.
The Workshop proceeded with the presentation by Mr Steen Jensen, senior legal expert from the Kingdom of Denmark, on the “European Public Procurement Policy: Definitions, Scope and Principles”. He outlined some practical examples, highlighting the main principles of public procurement - transparency and proportionality.

Mr Philippe Le Louran from the French Ministry of Defence gave a presentation on “The Transposition of Defence Procurement Directive 2009/81/EC”. He highlighted the following: Public Procurement Contract Code (PPCC) – Part 3; Guidelines; Training sessions; Sub-contracting; Security of supply; 50% of EU contract notices; Lack of regulation for defence contracts in the scope of 346TFEU and the relations with third countries.

After each presentation, the floor was open for questions and discussions and national participants engaged in active communication.

The next speaker was Dr Aris Georgopoulos, Head of Defence and Strategic Procurement Research Unit, the School of Law, University of Nottingham, UK, who delivered a presentation on “Offsets”, presenting an academic viewpoint. The final remarks and points Dr Georgopoulos made included the following:

- Many “givens” of arms trade (internal/external) in the EU are being challenged;
- The whole re-evolution of the EU competences (Commission, CJEU) in this area can have knock-on effects on both the internal and external EU arms trade dimensions;
- Shift of the policy making centre of gravity in the field;
- Need for compliance of candidate countries for their accession to the EU;
- Offsets are not automatically exempted from EU Rules through Article 346;
- Low level of scrutiny established by Article 346 renders “prosecution” by the Commission of most offsets practices more difficult than usual (but potential impact of the DP Directive?);
- The EDA’s Code of Conduct on offsets is an attempt to “contain” offsets in the medium term but does not legalize offsets (potential tension between the two regimes).

The first working day was closed with the presentation on “Offsets and the Defence Procurement Directive 2009/81/EC” delivered by Mr Burkard Schmitt, defence expert, Unit C3, DG MARKT from the European Commission. Mr Schmitt noted that offsets differed in nature, but always had the same purpose and principle: to foster local (defence) industry, to impose the obligation on foreign supplier to provide economic compensation for acquisition abroad, while offsets had been traditionally mandatory in many member states for purchases above a certain threshold. Regarding the Directive, he said that offsets were not directly mentioned and explicit prohibition was not necessary as basic principles, selection criteria, contract conditions and similar ensured compliance.
with primary law. He also underlined several other things, such as that the Directive 2009/81/EC had an impact on offsets without mentioning them, that Article 346 was no blank check, that the EDA Code was legally not relevant, and that a new approach and new policy were needed.

The second working day started with a presentation by Mr Sebastien Pechberty, legal advisor in the European Defence Agency (EDA), on the Financial and Procurement Rules of the European Defence Agency (EDA). The focus of his presentations was on the background of EDA and its mission, financial regulations and procurement methods, standard procurement, ad hoc projects and programmes and joint procurement.

Mr Waldron pointed out that corruption had a huge impact on the operational effectiveness of defence/military forces. Troops often have equipment ill suited to their needs, as purchases are made according to how large the accompanying bribe is, and not according to real requirements. He stressed that in order to reduce corruption commercial involvement in procurement was really important. He continued by saying that there were different ways in which corruption harmed the operational effectiveness of the armed forces. He highlighted that corruption and poor procurement might lead to:

- Inadequate analysis aimed at determining the needs of the armed forces;
- Inadequate evaluation of candidate equipment before awarding the contract;
- Inadequate assessment of equipment through life costs and value for money;
- Inadequate interoperability;
- Inadequate consideration of long-term requirements.

The event proceeded with a presentation on security of supply for defence and security procurement cooperative programmes and contracts awarded in third countries and between governments, which was delivered by Mr Philipe Le Louran from the French Ministry of Defence. The Workshop was closed with Mr Norbert Dippel’s presentation entitled “Best practices” and the following points were made:

1. Procurement rules of the Directive 2009/81/EC are very practically oriented and can be used after a short training period;
2. At HIL GmbH, new procurement law changes as a matter of routine in less than one year;
3. Most of the existing problems are not caused by the Directive 2009/81/EC but by the long period of no competitive procedures in the field of defence and security.
Closing remarks

This multi-country beneficial event was an exceptional opportunity to get together all relevant state institutions and agencies in order to discuss and share best practices on the common issue of concern: organization of public defence procurement.

Considering the recent EU Progress Reports on the EU candidate and potential candidate countries in the SEE region, the Workshop topic and agenda were spot on. In addition, the Workshop topic is placed high on the international agenda, particularly having in mind the Transparency International's Index on Corruption in the Defence Sector.

The Workshop on Aspects and Challenges in the Public Defence Procurement definitely met all the objectives, while the purpose of the activity was successfully achieved.

All the participants and EU experts contributed to this successful two-day event. According to the audience, the experts contributed to upgrading and improving standards in the domain of public defence procurement. At the end of the Workshop, the participants highly recommended for this initiative to be further promoted in the future.

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