

JOURNAL OF SECURITY AND SUSTAINABILITY ISSUES

ISSN 2029-7017 print/ISSN 2029-7025 online

2016 December Volume 6 Number 2

[http://dx.doi.org/10.9770/jssi.2016.6.2\(9\)](http://dx.doi.org/10.9770/jssi.2016.6.2(9))

DEFENCE AND SECURITY PUBLIC PROCUREMENT: ANALYSIS OF MANAGERIAL AND LEGAL ISSUES

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Received 20 February 2016; accepted 18 September 2016

Abstract. Public procurement as a system of procedures for purchasing goods and services is quite complex. Especially having in mind international legal regulation and high requirements for the assurance of such principles as transparency, fair competition, non-discrimination, mutual recognition, proportionality. Thus from the other side of the issue, in special fields as defence and national security, it is not always possible to strictly observe the mentioned rules. Institutions in a state, which is facing threats, must be able to flexibly; this would allow balancing the urgency and competitiveness of purchasing procedures. Still such situations require clear managing system and legal regulation supporting it. In this article, the authors present the preliminary analysis of management of public procurement for defence and security via disaster management cycle theory and mostly focus on the phase of response towards certain destructive actions. The managerial aspect of the issue is supplemented by the analysis of the legal regulation, which should support managerial processes. Having in mind that in different phases of the disaster management cycle, different methods of management (requiring special legal regulation, as legitimation of such actions) should be applied, examples of two countries are presented. Lithuania as a member state of European Union is chosen to illustrate the reflections of managerial processes in legal acts, which are passed in the phases of mitigation and preparedness. Ukrainian example is presented to illustrate the difficulties, which state may face, when managerial processes as well as legitimation thereof in legal regulations are developed in the phase of response. To answer these questions, literature review, comparison, analyses of documents, synthesis and other methods were used. It is concluded that the public procurement processes definitely should be prepared in advance and every state should be ready for the urgent purchases before the direct threats for security appears. Ukrainian example shows, how it is difficult, costly and requiring other efforts to develop these processes and implement it in the same time. It should be mentioned that raised questions are in the constant process of learning and this article should be considered as a primary steps towards deep analysis of the continuity of state actions in the situations of real threats and tensions, which Europe is facing today.

Keywords: public procurement, defence, national security, continuity of activity, threats, urgency, disaster management.

Reference to this paper should be made as follows: Survila, A.; Tvaronavičienė, A.; Shapoval, R.; Peleckienė, V. 2016. Defence and security public procurement: analyses of managerial and legal issues, *Journal of Security and Sustainability Issues* 6(2) 299–314.

DOI: [http://dx.doi.org/10.9770/jssi.2016.6.2\(9\)](http://dx.doi.org/10.9770/jssi.2016.6.2(9))

JEL Classifications: D73, H83

Introduction

Due to the fact that proper operation of public procurement corresponds to the public interest, it is clear that any faults of this process or nonconformity to the positive law would cause complex consequences for various groups of society. Apart from the contracting authority and the tenderer, the society as a whole is severely

affected as well as the national economy is damaged. First of all, due to the fact that a procurement failure can disturb the functioning of the public administration sector. Second, but no less important, is the fact that public procurement is creating a favourable environment for corruption-related offences (Tvaronavičienė 2015; Paliduskaitė, Ereminaitė 2010; Fazekas et al. 2013; Hessami 2014; Tvaronavičienė et al. 2016). Large purchasing power of the public sector as well as junction of public and private interest in this field create a favourable environment for abuse of office and violate the mandatory legal rules governing the execution of procurement. Often this risk is realized through criminal acts. The society is disillusioned that public procurement has the potential for corruption and so they are not satisfied with the procurement procedure as it is now.

Public procurement can be described as a tool for public sector institutions to purchase supplies, services or works necessary for their functioning. Public procurement can be referred to as a complex multi-component system, the main objective of which is transparent and efficient use of public funds. According to K.V.Thai (2001), the famous public procurement specialist from the USA, “In the public finance literature, government is involved in four major economic activities: (a) providing the legal framework for all economic activities, (b) redistributing income through taxation and spending; (b) providing public goods and services freely available to the public such as national defence, public safety, education, and infrastructure (bridges and roads); and (c) purchasing goods, services and capital assets.” Thus public procurement is a public administration entities’ activity of extraordinary importance (related to at least two latter above mentioned functions of the authority), the transparency, quality and efficiency thereof are important to the development of the state (Tvaronavičienė 2015). In order to prevent the misuse of public finances disposed by public administration entities, the appropriate legal regulation and well-constructed managerial system are essential in all fields of economics. Still, taking into consideration nowadays threats for state security as well as international obligations undertaken by a state, public procurement in this field becomes the more and more important issue. In today’s world, such legal regulation is established at the international, European and national levels, and legal norms governing the procurement procedures, performance of public procurement contracts, and control thereof make public procurement institution. A part of such legal regulation is referred towards public procurement for security and defence. Still the questions arise: does this detailed legal regulation at international and national level support the managerial processes, which are suitable in the situations of real threats and tensions.

Purchases for defence and security is a separate field from the state public procurement system. This field is special because of the need to balance the general principles of public procurement (competition, transparency, honesty etc.), with an essentially important reliability of tenderers, who get an access to sensitive information and in case of awarding with a contract would have a possibility to influence the continuity and effectiveness of the measures protecting national security and defending the state. It should be noted that analysis of public procurement in states facing threats for national security and/or need for defence becomes more and more urgent in the context of constant tension in Europe. In changing political and socio-economic circumstances, the need for interdisciplinary researches in the field of procurement is obvious. It is not enough to envisage certain managerial processes as well as it is not sufficient to pass certain legal regulation. It is necessary to find a balance and establish procedures harmonizing the best managerial practices and suitable legislation to support it. The article raises the problem, which is formulated as a question: how to assure that in the situation of threats of direct attacks public procurement is still organized in line with legal requirements, but not against the necessary pace and reliability? The authors aim to analyse both managerial and legal questions, raising the problem of necessity to find a balance between general public procurement principles and peculiar properties of purchases for defence and national security.

Theoretical background of the issues will be analysed attempting to adapt disaster management cycle theory towards management of public procurement for defence and national security. Later will be briefly analysed cases of Lithuania and Ukraine. Lithuania as a member state of European Union is chosen to illustrate the reflections of managerial processes into legal acts, which were passed in the phases of mitigation and preparedness. Ukrainian example is presented to illustrate the difficulties, which state may face, when managerial processes as well as legitimation thereof in legal regulations are developed in the phase of response.

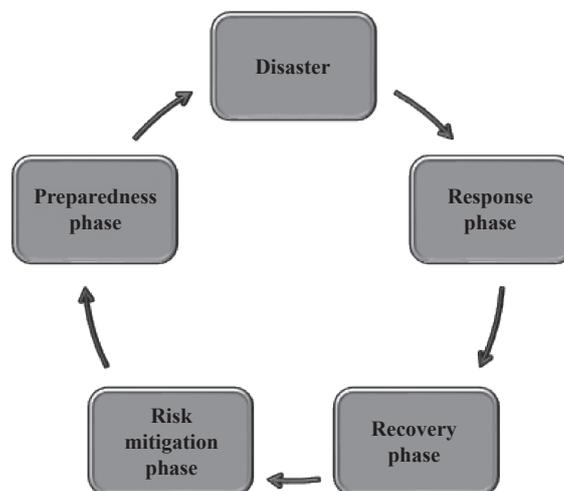
The objective of this article will be achieved using the methods of literature review, comparison, document analysis, synthesis etc. It should be stated that previously the managerial issues of disaster management were

analysed by Haddow et al. 2008; Beach 2010; Bullock 2013; Ellis 2014; Saban 2014; Coppola 2015. Still these researches do not analyse public procurement issues in disaster management cycle's phases environment. It can be noted that presented research innovative, because disaster's management cycle's phases environment correlation with public procurement and especially procurement for defence and security issues is analysed and the attempts to evaluate influence for public procurement actions during different disaster management cycle's phases are made. From the legal perspective the issue of defence and security public procurement was widely discussed during the period of arrangement the project of Directive (2009/81/EC) and after the passing of it. The works of Edwards (2011), Schmidt (2005) etc. should be mentioned. Still it should be stated that the necessity of interdisciplinary approach towards this issue is still obvious.

1. Environment of the Disaster Management Cycle's Phases Affecting Public Procurement in the Fields of Security and Defence

When a small incident occurs during which people are injured or die, buildings or infrastructure are destroyed, social relations are broken off, a community usually has a capacity to restore the losses and sustain effects that are even more considerable. However, the harmful effects of a disaster (as a war) spread out in a bigger geographical territory, have impact on a higher number of people, buildings, industrial companies and even more interrelated social components. Disaster as a situation is an extraordinary event in a society or its big subsystems (e.g., regions and communities) which shows a connection between physical conditions and social damages caused to people and the notions of disturbance of social activities (Kreps 2001). In a modern understanding, a pre-disaster phase is composed of mitigation, preparedness, early warning. The phase of a disaster includes information processing, decision making, activities coordination, communication under the conditions of threat, indefiniteness and urgency. During a post-disaster phase, long-term support is organised and provided, restoration programmes are implemented, lessons learned are recorded (Hart; Sunkelius 2013). The whole modern disaster management cycle is made up of four phases (Fig. 1): mitigation, preparedness, response and recovery (Saban 2014). Every disaster can require unique decisions but, on the other hand, there common structures of models of disaster management. It should be noted that in countries with decentralized governance and where local disaster management managers have primary responsibility to react to disasters, the process of disaster management goes „step by step“. Local authorities of the affected communities try to manage the consequences until they are no longer able to cope on their own. When this level is reached the information about the current situation is transmitted to a higher officer, who then decides whether to go to the next level of Governmental support. If the official decides that the aid is necessary, he/she recognizes that there has been disaster and the necessary resources are given. If he/she thinks that the resources at his/her disposal are not enough to control the consequences of disaster, he/she refers to the leaders of national level for additional support (Survila et al. 2015).

Figure 1. Disaster Management Cycle



Source: Saban, 2014.

Mitigation inseparable from potential harm reduction or elimination of the occurrence of the threat when it has not manifested yet. Mitigation phase aims to control the risks so that the frequency of the threat is minimized, and if it arises, it would have the least possible negative impact on society, environment, and property (Survila et al. 2015). During the mitigation process all effort is put on the aim to reduce the risks posed by the threats and vulnerability. On this phase risk assessment and analysis are carried out. The field of risk analysis focuses on the issues of risk assessment and risk management. The former involves the identification, quantification, and characterization of threats to the country's safety and security environment. Whereas risk management centers around the processes of communication, mitigation, and decision making (Slovic, Weber 2002). A risk in disaster management has been defined as the cumulative impact of hazard and vulnerability (Blaikie et. al., 1994) expressed through the following equation:

$$R = H \times V,$$

where R stands for the loss or realized risk (disaster), H for hazard (the probability of occurrence of a specific hazard in a given area over a given time period, and V for vulnerability (the degree of loss resulting from the occurrence of the phenomenon). Risk reduction measures are implemented before the occurrence of threat and become passive when a disaster occurs. On an individual level, every person is responsible for the management of risk she/he faces. When citizens of a country face threats collectively and such threats occurrence cause injuries or deaths and can affect a country's safety and security, they are considered more important than any other [threat] for the reason of their possible outcomes. Every threat is unique and when it occurs, the choice must be made out of unique threat mitigation measures which are appropriate for that specific threat by selecting only those measures which have already been developed and tested, not any just designed or to-be-designed measures. Every opportunity is related to costs, limits of possibilities and expectations of reducing the risk in practice. What mitigation measures are chosen completely depend on those mentioned factors as well as on such factors as the available financial resources, likely social and physical consequences of actions and geographical environment in which the measure will be applied.

Definition of vulnerability as "the degree to which a community was at risk from occurrence of extreme physical or natural phenomena, where risk refers to the probability of occurrence and the degree to which socio-economic and socio-political factors affect the community's capacity to absorb and recover from extreme phenomena" suggests that the likelihood of being affected by disasters depends on:

- frequency and severity of the impact and if the impact is not cushioned and mitigated, the higher the vulnerability; and
- the communities' resilience that linked to the capacity to resist and recover from the adverse impact of a disaster. Resilience is just one part of the vulnerability but it is very important to ensure it in seeking to reduce the vulnerability (Vatsa 2004).

Society or community resilience may be characterised by a number of factors, for instance, social class, gender, race, caste, ethnicity, age, etc. (Bolin, Stanford 1999; Cannon et al. 2003; Vatsa 2004) and during vulnerability proliferation it is necessary to assess these structural factors to understand who is vulnerable to the sufferings and losses from disaster, and which segment of population is more likely to be affected by a disaster event. However, it needs to be pointed out that these specific categories of population by themselves do not mark vulnerability. It is their level of participation in social and economic processes that impinges on vulnerability and community resilience doesn't occur solely within individual citizens. It is important to increase social resilience of communities along with economic resilience because economic systems will provide the resources to adapt and act in ways that remedy the impact of the disaster (Paton et al. 2001; Pfefferbaum et al. 2005). While each citizen, private sector firm, and public sector entity is challenged individually to be resilient, communities cannot expect uncoordinated efforts to improve their functioning and adaptation to the consequences of disasters. Community resilience encompasses a broader domain that includes the resilience of relevant stakeholders, which operate within their economic and social systems. As such, it is defined as a process which integrates the adaptive capabilities of relevant stakeholders to manage consequences in ways that create a positive trajectory of functioning and adaptation after a disturbance (Vatsa 2004).

As aforementioned, disasters are particularly regressive on businesses, which are not prepared for incidents. So it is imperative to focus on the complexity which ties together all levels of government, critical infrastructures, supply chains, and the local communities where disasters actually occur (Table 1).

Table 1. Levels where disasters actually occur

Level	Description
Government	Government programmes intended for hazard mitigation planning and critical infrastructure protection require collaborative engagement with private sector operators in order to be effective in accomplishing their intended goals.
Critical infrastructures (CI)	Assets, systems, and networks are vital to the country so that their destruction had a debilitating effect on security, national economic security, public health or safety, or any combination thereof. Key resources are publicly or privately controlled resources essential to the minimal operations of the economy and government. CI cuts across physical, cyber, and human elements and is identified in the following sectors: transportation systems, telecommunications, water, agriculture and food, health care, financial systems, and information technology etc.
Supply chains	Supply chains exist in both private and public sectors and often involve collaboration across sectors. Supply chains are an important component of community resilience framework because they begin to highlight the interdependent nature of responding to and recovering from disasters. Supply chain resilience can be created by quickly assessing areas of anticipated vulnerability, identifying actual supply disruptions, and developing strategies which address the actual situation.
Local level	At local level, governments need to influence supply chain and economic resilience by working with national governments to inform local businesses about processes and options for establishing continuity after an event.

Source: Prepared by the authors in accordance with Geoffrey et al. 2009

The resilience of supply chains in times of disaster is also influenced by the presence of public-private relationships. Stronger public-private relationships will positively influence the capability of participating supply chain operators to manage disaster consequences. That definitely can affect their ability to provide value to relevant stakeholders located within and outside the impact area. That it is so, because state level agencies should interact with industry associations that are important to the state's economy and firms, which have the capacity to respond to regional level disasters. Local level governments should interact with local and/or regional companies to build resilience within supply chains that have vested interests in the local community (Geoffrey et al. 2009).

Preparedness is defined as actions which are taken before disaster occurs so as to ensure an adequate response to its impact and to facilitate and restore its consequences and which are performed with the aim to reduce the demand for the last minute actions (Coppola 2011). During the process of preparedness, the following actions are taken: 1) to counter the effects of the approaching disaster, 2) to prepare the required legislative acts and post-legislative decrees as well as to approve them; 3) to draw up disaster management plans; 4) to develop warning systems; 5) to foresee the required resources for taking the actions of response and recovery; 6) to initiate and sign mutual assistance agreements with stakeholders; 7) to organise personnel training and exercises, education of community and the public (McEntire, Myers 2004; Survila, Stasiukynas 2015). Preparedness is the key component of the entire disaster management process:

1. Preparedness helps to determine the need of resources (i.e., personnel, time, finances, equipment, goods and objects) which are necessary for a community during the response and recovery phases (Auf der Heide 1989, p. 39). Thus during the preparation, the following must be identified: resources and the extent of resources owned by a country so as to effectively respond to threat occurrences; resources and the extent of resources a country can receive from external sources and whether it is known how to reach them; what unforeseen needs might occur and how to find personnel, materials and equipment to satisfy these needs when needed? A complex preparedness process may take a number of years to achieve the satisfactory level. Negative effects of threats are mitigated by the measures of preparedness by applying mitigation and prevention measures, which ensure timely, adequate and effective organisation of response and recovery actions. Through improved access to resources, supply chain resilience will positively influence the capability of communities to manage the consequences of disasters to enable the restoration of economic - social networks. Through improved access to resources, the resilience of critical infrastructures will positively influence the capability of communities to manage the consequences of disasters to enable the restoration of economic social networks.

2. Preparedness enables the identification of functions (i.e. resource management, evacuation, measurement of damage, removal of the cause) which will have to be implemented during a disaster (Auf der Heide 1989,

p. 41). For this and other reasons, preparedness is of paramount importance. Many different organisations and individuals, including, government representatives, business representatives and ordinary citizens participate in preparations for actions in a disaster situation. Everyone has their unique role and holds the designated position as well as perform their functions when a disaster occurs. Actions of the preparedness phase are based on the description of the planning process and discussions, exercises, training, required equipment, early warning and preparation of the public. As such resilience provides insight into one's ability to operationalize disaster management plans and/or business continuity and to take action within a given context.

Response is a process which is designed to reduce the impact so as to avoid any further destructive outcomes and starts immediately after it becomes clear that a disaster is inevitable and continues until its end is declared. Response is one of the most complicated management phases of the four of them since it is taken under the conditions of extreme stress, limited time and available information. Any doubts, distrust and delay during response may lead to a catastrophe (Coppola 2015). Response to the event of threat occurrence is composed of measures which are aimed at preserving life and property and avoiding social dry-rot. Response activities can be categorised into targeted mitigation actions and citizen protection actions (Tierney et. al 2001). Besides, response actions which have to be taken urgently are also related to the development of a system required to coordinate and take over these actions. Response also includes some urgent actions in updating critical infrastructure (communication roads' management, restoration of communications and electricity supply, ensuring food and potable water supply, etc.) which enable the restoration of a locality, the reduction of further growth in the numbers of the injured ones and the dead ones and the return to a normal functioning of the society. Therefore, response to any disasters, especially calamities, is unique, complex and complicated. The government component which includes administration, disaster management, public health and institutions providing any other services constitute one group. Individual persons and business is another group. Preparedness of the first group is usually defined and conducted after drawing up and adopting a Disaster Management Plan and is reinforced by trainings and exercises (Drabek 2003; Tierney 2003; Tierney, Trainor 2004; Coppola, 2015). Managers must as soon as possible start collecting data required for planning of response actions immediately after a disaster strikes. Such data as what is happening, where it takes place, what measures need to be taken immediately, how to satisfy the emerging needs and what resources are available, must be learned about in a very short period of time. Situation assessment or damage assessment identifies the geographical territory of the event, consequences, how the disaster has affected people, buildings and their content. The assessment of needs helps to find information about services, resources and other assistance required during a disaster. Most often three types of effects are identified: those before which no response measures were initiated, i.e. operators of retaliatory actions manage only the outcomes having already taken place and their secondary occurrences; the persisting ones against which there is no response related to the protection of the society and self-protection from further injuries, actions which would eliminate or reduce those outcomes; and the persisting ones which may be reduced or completely eliminated by applying the existing measures (Coppola 2015; Survila, Stasiukynas 2015).

Recovery is a process during which buildings, economy and community are recovered (Alexander, 2004).) In the recovery phase is important to reintegrate the people and the affected area into the "normal" status according to the consequences of disaster. Recovery phase begins when response phase is still ongoing. Restoring of the affected area may last from several months to several years. Governmental authorities actions and support during recovery occurs by coordinating and assuring cooperation of the actions of the public administration institutions responsible for disaster management, damage assessment, emergency needs assessment, distribution of support, recovery program and project-level work plan preparation and implementation, funding and additional support (Survila et al. 2015). During the recovery process everything is restored, reconstructed and renovated so as to return to the functional state, i.e. recovery is the process during which communities reduce the risk of occurrence of similar situations and the scale of their impact in the future. Short-term recovery measures are aimed at stabilising the life of victims (affected people) and prepare them for a long life restoration process. At the beginning of the recovery phase most often life rescue and assistance activities are carried out as well as restoration of daily routine and planning of recovery work. Long-term recovery does not start until the consequences of emergency stop prevailing. When recovering, in often cases communities need to restore and accumulate new information on emergency (why it occurred or why there were concerns before its occur-

rence) (Facing Hazards and Disasters: Understanding Human Dimensions 2006). Government's actions and support during recovery (coordination, cooperation, initial damage measurement, general evaluation of urgent needs, support allocation, drawing up of programme and project level, distribution of support, drafting and implementation of programme and project level business plans, finances and additional support); development of the construction sector and accommodating people affected; restoration of economy and business; personal, family, and social restoration; cultural recovery and education; ensuring financial capabilities so as to ensure the implementation of the recovery process (Jha 2010; Coppola 2015; Survila, Stasiukynas 2015).

In summary it should be noted that before the occurrence of the incident, which could be considered as disaster, disaster management cycle is implementing in two phases. Both phases - mitigation and preparedness are characterized that are carrying out before occurrence of threats and all necessary actions required to fend off disaster can be made in "normal" conditions. Mitigation phase aims to control the risks so that the frequency of the threat and vulnerability of the society are minimized, and if it arises, it would have the least possible negative impact on society, environment, and property. During preparedness actions which are taken are necessary to ensure an adequate response to disaster's impact and to facilitate and restore its consequences and which are performed with the aim to reduce the demand for the last minute actions. During the recovery process everything is restored, reconstructed and renovated so as to return to the functional state, i.e. recovery is the process during which communities reduce the risk of occurrence of similar situations and the scale of their impact in the future. Very different from others is response phase's environment. Response is one of the most complicated management phases of the four of them since it is taken under the conditions of extreme stress, limited time and available information. Any doubts, distrust and delay during response may lead to a catastrophe. Such atmosphere can lead to not necessarily adequate decisions on further actions such as the purchase of equipment etc.

2. Legal regulation of defence public procurement in European Union and Lithuania as it member state

Defence and security procurement started to be regulated in EU level as late as from 2009. Till the implementation of the regulation, which is analysed below, in member states, defence and security procurement mostly was not regulated by the general public procurement rules, which are applied to classical and communal sectors (in other words 'civil procurement'). Certain level of competition was preserved in most countries, but direct rules with clear requirements were established in some countries only, for example France (SIGMA 2013). Traditionally public procurement is one of the most important areas of the EU policy, because it was one of the instruments for creating the common market. Absence of the EU level legislation in the field of defence and security faced several problems. In European context the expenditure for the defence and security every year reaches more than 1 percent of GDP. For example, according to EUROSTAT (2015) in 2014, 'defence' expenditure amounted to 1.3 % of GDP for the EU-28 and 1.2 % of GDP for the euro area. In 2014, the highest levels of total expenditure on defence in the EU were found in Greece (2.7 % of GDP), followed by the United Kingdom (2.2 % of GDP), Estonia (1.8 % of GDP) and France (1.7 % of GDP). In contrast, Luxembourg (0.3 % of GDP) and Ireland (0.4 % of GDP) as well as Austria and Hungary (both 0.6 % of GDP) had comparatively low expenditure on defence. Such number, despite of diversity among the states, shows the big purchasing power. Still, is it correct to evaluate such procurements in regards of economy solely?

According (SIGMA 2013) member states were facing low efficiency and high prices of products necessary for fulfilment of their defence and security needs. Moreover, there was no clear system for remedies, what is important in order to secure the transparency, equality and competition in the market. Also, absence of clear rules induced a problem of corruption and preservations of national market, which is not in compliance with the primary EU Law. According to Jay Edwards (2011) the aim of EU regulation for defence and national security purchases aimed to facilitate the development of an EU defence equipment market that had to increase industrial competition, reduce duplication and lower prices. The author noted the key difficulty: the European Commission was facing the culture of national defence-industrial protectionism. Protection of national market from the first sign may look attractive: having in mind the importance of weapons system for member state's security it may appear both logical and justified to give the priority to national producers (Schmidt 2005). Still, it is not allowed to skip political, industrial and financial aspects of the issue. On all these dimensions common com-

petitive market grants more benefits. Moreover, according to B. Schmidt (2005) moreover, national preference often serves to protect non-competitive companies rather than strategic interests. EU policy makers have stated that defence procurement is still largely covered by national legislation, most of which provides for exemptions to the rules governing public procurement, with differing degrees of transparency (Green paper 2004). It was also noted that defence markets have particular characteristics, which are not only economic and technological (Green paper 2004). Hence sensitivity of the data connected with such kind of procurements plays important role. This leads us towards particular characteristics of defence procurement: confidentiality of data and the need to involve merely reliable tenderers into such procurement. Green paper (2004) states that the nature of defence may also require states to have equipment that guarantees the technological superiority of their military forces. This superiority depends, in particular, on the confidentiality of programmes and their technical specifications. The obligation to protect this confidential information means companies must have special national security clearances. These reasons created a need for supra national regulation and enhancement of public procurement law regulation towards defence purchases as a new area for common policy within EU.

On the 13th of July 2009 the Directive 2009/81/EC of the European Parliament and the Council On the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC was enacted. This document had to be implemented by Member States by August 21, 2011. According to UK Ministry of defence (2011), the New Directive established new procurement rules specifically adapted to meet the concerns of Member States regarding the sensitive nature of procurements in the defence and security sectors. It was adopted following a successful proposal by the EU Commission to address concerns by Member States that the existing Classic and Utilities Directives do not always permit the purchase of military or sensitive security capability as effectively as they could, or deal explicitly with key issues such as security of information.

Hence EU policy makers decided to create separate legal regulation for defence and security procurement. The ideas to include this area under the regulation of 2004/17/EC and 2004/18/EC Directive aimed to gradual establishment of a European defence equipment market. In preamble of this document it is stated that purchases of goods and services in the defence and security sectors are often of a sensitive nature. New regulation reflected the ground principles of EU public procurement system as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. Still these ground rules, in the area of defence and security procurements are accompanied by the need to secure information on security and defence issues. Implementing this goal Directive established more flexible rules to compare with traditional procurement and provides wider discretion for the contracting authorities in this field. For example, strict requirements on reliability of economic operators. It is recognized as vital. According the directive this reliability depends, in particular, on their ability to respond to requirements imposed by the contracting authority/entity with respect to security of supply and security of information.

In addition, it is stated that, nothing in this Directive should prevent a contracting authority/entity from excluding an economic operator at any point in the process for the award of a contract if the contracting authority/entity has information that to award all or any part of the contract to that economic operator could cause a risk to the essential security interests of that Member State. Another peculiarity of defence procurement regulations is related with protection of classified information. According to the article 7 of the Directive, contracting authorities/entities may impose on economic operators requirements aimed at protecting the classified information they communicate throughout the tendering and contracting procedure. Bigger flexibility is ascertained for the contracting authorities also in the field of choosing negotiated procedures. Few of the grounds for negotiating are related with urgency and crises situations (if such events were unforeseeable by the contracting authorities/entities in question). This directive was planned to be implemented till the August 2011. Most of the countries managed to implement.

Till the European Union initiative to regulate public procurement for defence and security, in Lithuania public procurement rules were not applied towards such purchases because of the necessity to apply strict

special security requirements. Such acquisitions were carried on according the rulings of Government. The Ministry of Economy of the Republic of Lithuania (2011) stated that currently procurements in the field of defence and security in Lithuania are not under control, there is no register of such procurements, usually such procedures are closed and there are no measures encouraging small and middle size companies to take part in such contests.

Lithuania using benefits of mitigation and preparedness phases' environment have fully implemented directive 2009/81/EC in 2011 by introducing into the legal system Law on Public procurement for defence and security (2011). This law till the end of 2016 was several times amended (most of the changes of procedural character). Mentioned law should be applied in line with the Law on State and Service Secret Information (1999), which regulates in detail the issues connected with secret information and classification of it. Special EU attitude towards defence and security procurement clearly had a big impact on national system. Legal regulation fated the need to re-examine internal processes of procurement planning and performance of the acquisition procedures.

For the greater understanding of differences between regular and defence procurement requirements, it should be stated that defence and security procedure may be quicker. As well it is envisaged to use non-competitive negotiations procedures more flexible. Still, we must note that principles of the both kinds of procurement are almost the same. Law on Public procurement for defence and security (2011) declares public procurement procedures in the field of defence and security as well must follow the principles of equality, nondiscrimination and transparency. Still it is obvious that principles of proportionality and competition, which are declared in Law on Public Procurement (1996) and applied towards all classical and utilities procedures are missed.

According of the official report of Public Procurement office of Lithuanian Republic (2015) during three years period the number of Public procurement for defence and security increased. Still it is obvious from the table 1 that such kind of procurement is rare to compare with general number of performed procurements.

Table 2. Defence and security procurement in Lithuania

Year	Number of procurement for defence and security
2013	63
2014	80
2015	90
Year	Value of procurements for defence and security (mil. euro)
2013	57,6
2014	65,3
2015	94,6

Source: Public Procurement Office of Republic of Lithuania 2015.

More than 55 percent of the value in 2015 was spent for acquisition of products, 44,4 percent – for services and only 2,2 for works. Mostly it was purchased secure papers (22,2 percent), weapons (22,2 percent) and parts of aircrafts and services of it maintenance (12,2 percent). More than 50 percent of Defence and Security procurements were related to secret information of different classes. Analysing the data related to defence and security procurements in 2015 the lack of interested in participation tenderers is obvious. More than in 50 percent of such procurement participated only one tenderer despite of the fact the procedures were open. It probably shows the limited number of tenderers able to supply goods and services related to sensitive information and state secrets; as well it addresses us towards the further researches of practices in the field. The issue is complicated by the fact, that there is wide range of purchases which must be procured under the general rules of Public Procurement. As well on the other hand most sensitive production may be purchased without using public procurement procedures.

Lithuania in this article is showed as an example of establishing the necessary legal regulation in advance. Ob-

viously, developed managerial system, supported by adequate legal regulation creates possibilities to evaluate this country as prepared for the procuring goods and services in situation of direct threats.

3. Public Procurement for the Defence and Security under the Conditions of Response Phase of Disaster Management: Case of Ukraine

In May 2014, under the influence of active changes in the economic and political situation in the country, the Parliament (Verkhovna Rada) of Ukraine made amendments to the newly adopted law “On Public Procurement” (2014) in terms of simplification of the procurement for the security services. Paragraph 3 of Article 39 directly pointed out that due to the extraordinary situation certain listed institutions (the Ministry of Defence and its intelligence agencies, the Ministry of Interior Affairs, Security Service, the National Guard, the State Border Service, the Foreign Intelligence Service, the State Service of Special Communication and Information Protection State Service of Emergency Situations) may apply the negotiation procedure. In addition, all these listed contracting authorities received legal preference regarding conclusion of the agreement within the shorter period of time (5 days from the day of publication of a notice of acceptance instead of the generally established 10 days). Thus, the procurement process was reduced from 30 to 7 days. The starting point of the simultaneous use of such procedures by public services and power ministries started in June 2014. In the context of special period, these articles became the guarantee of not only timely fulfilment of the order, but also measures to save lives. Alongside with that, the legislation did not mention military units directly engaged in procurement, regardless of the central offices of their ministries and services. The right to replace the open tender with the negotiation procedure did not directly applied to them. There were 120 such military units of the Ministry of Defence, National Guard, State Special Transport Service, Security Service and State Border Service. In this case, the National Guard and the State Border Service delegated the duty to make all procurement to the military units.

In August 2014, the Ministry of Economic Development and Trade issued the official explanation, which detailed the negotiation procedure by “security-service agents”, but that still did not give a clear clarification regarding the status of military units. It fated that in practice there was no common understanding and different units were using different rules for procurement. Thus, for example, a military unit 1490 of the State Border Service, referring to the special period, made procurement of different fuel for the total amount of more than UAH 50 million, using the negotiation procedure (Prozzoro, 2016). At the same time the military unit A0215 of the Ministry of Defence has decided that the repair of 400 anti-aircraft missile systems, 160 “BUK” and other air vehicles will be made by the tender announcement (Prozzoro, 2016).

The first clear formulations of the position of the Ministry of Economic Development were announced on October 14, 2014 by publication of the statement of the Director of the Public Procurement and State Order Department A. Ruban regarding the prohibition for the military units to use the non-competitive procurement procedures (Kanyevskyy and Sklyarov, 2015). This means that the management of military units that made their choice for the benefit of the negotiation procedure violated the law, which entails both the administrative and in some cases criminal liability.

Only the changes from September 15, 2015 made amendments to the aforementioned Article 39 to extend the right to use non-competitive procurement procedures for “other military units and parts”. In December 2015 the National Police was added to the list of law enforcement agencies with the right to procurement under the negotiation procedure. Thus, the officials of the departmental military units have not been legally protected for more than a year because of the lack of the clear regulation for public procurement in the state of urgency. The reason for it is first of all the lack of preparation for extraordinary situations as well as a lack of experience of establishing legislation in conditions of significant political changes.

However, despite the fact that the procurement procedure has been simplified, there have remained the hidden pitfalls, relating to the entire tender process. One of the biggest ones is the private sector’s lack of trust in the state in terms of ensuring timely repayment of financial liabilities. The indebtedness to the procurement

winner preceded the formation of business distrust tendencies to the solvency of the state. Actually, such distrustfulness of the suppliers is grounded even by the statistics. The data of the State Statistical Service of Ukraine (2016) for the period 2012-2016 certify that there have been numerous facts of failure to pay under the agreements. From 40 to 50 percent of the contractual obligations in 2012-2016 remained not backed by the actual payments.

Another factor, important for arising of such distrust is numerous scandals appeared in the mass media and related to corruption schemes, involving representatives of the executive authority and peoples' deputies. It has a significant negative impact on procurement. According to the analysis of the materials in the specialized mass media (various articles published in antikor.com.ua/; <http://www.pravda.com.ua/>; <http://novagazeta.kr.ua/> etc.), journalistic investigations, and reports, violations in holding the procurement procedure for the defence with the participation of companies close to the government officials are frequent. According to the survey of the trade area of the public and commercial procurement Zakupki.Prom.ua (2016) 48% of the surveyed business representatives do not even want to know about the public procurement, not to mention to take part in them.

In December 2015, the President issued the Law of Ukraine "On Public Procurement". One of the most prominent novelties was establishment of an authorized electronic trading platform Prozorro.gov.ua. In May 2016, the Law of Ukraine "On Peculiarities of Procurement of Goods, Works and Services for ensuring the Defence Needs" (hereinafter referred to as the Law) was passed (came into force in June 2016). The Law maintained the possibility to use negotiated procedures and once again affirmed the need for electronic procurement for the defence, as defence and security contracting authorities were granted a right to conclude the procurement contracts faster to compare with regular public procurement requirements. Has the new law actually accelerated the procurement procedure and made it quite resistant to fraud?

According to the Law "On Public Procurement" (2015), the customer deciding to use the negotiation procedure has to place the relevant advertisement on the website of the Authorized Agency within the period of time, not exceeding three business days. When it comes to urgent needs, it's enough to assume that the customer will hurry up and have time to manage within one day. So there are two days in the reserve. The next step is to determine the winner, which takes five days. It is not necessary to hide that it is not a rare case where determination of the winner takes place within one day. Sometimes it is an opportunity to create the most favourable conditions for "own" suppliers. So, at the winner's choice the customer may spend from one to five days and then report the decision in favour of a particular contractor at the mentioned web-portal. The procurement agreement, as already mentioned, may be concluded not earlier than in five days. It turns out that to the maximum extent the procurement procedure can last 13 days, and 7 days at minimum.

The new Law "On Peculiarities of Procurement of Goods, Works and Services for ensuring the Defence Needs" (2016) regulates a slightly different procedure. First, the participants to the negotiation procurement procedures should be selected by electronic auction. The first step for selection is publishing of the announcement through the authorized electronic platforms on the web portal of the Authorized Agency. Alongside with the publication of the announcement of the selection the customer shall also publish a draft procurement agreement. Then follows the period of submitting price offers by the participants, which cannot be shorter than six business days, starting from the date of publication of the advertisement. Incidentally, the proposals can be also submitted by filling-in the on-line form. Special mention should be on the fact that at the moment of submitting the price offers the selected participant shall provide the customer with a unit of goods for checking compliance with the sample-standard. This concept is used in the tender legislation for the first case and means sample of the goods, approved by the customer and designed to compare the items of the goods with the selection member. Such an approach reduces the possibility of supplying defective equipment, uniforms, etc. to the front.

In accordance with the Law of Ukraine "On public procurement" (2015) the regulation of negotiated procedure for contracting authorities in the field of defence and security was changed. Although in our view, under the threat of war or in situations involving threats to national security, it would be advisable to leave this provision of the law valid. To date, the Law of Ukraine "On public procurement" (2015) only involves the introduction of

a separate special law for procurement features guaranteed to satisfy the needs of almost all defence force and military government agencies. In regard to the planning of the public procurement for defence, the Law “On State Defence Order” of Ukraine (2016) makes it clear that the Cabinet of Ministers of Ukraine approves the main rates of the defence orders within one month after the entry into force of the Law of Ukraine “On state budget” for the relevant year. Article 7, paragraph 5 of this law indicates that the formation of prices for the defence products and services, if the selection is carried out not following the competitive procedures, must be determined by the Cabinet of Ministers of Ukraine. This order approves the mechanisms of formation of prices for defence purpose products and implementation of research and scientific development work on defence projects, determines the cost of acquisition and the creation of intangible assets during the implementation of the state defence order.

In conclusion, it should be stated that under the conditions of threats for national security it is impossible to develop on time the necessary legal regulations empowering contracting authorities to implement public procurement for the defence under the requirements of general principles of transparency and competitiveness on the same time following the need to select the trustworthy suppliers and service providers. It links us to the understanding of the need of constant alertness of state defence and national security institutions as contracting authorities in all countries even when the threats are not direct yet.

Conclusions

1. During the mitigation phase, all effort is put on the aim to reduce the risks posed by the threats. Threats, vulnerability and risk assessment and analysis are carried out and social resilience of communities along with economic resilience are increased and will provide the resources to adapt and act in ways that remedy the impact of the disaster. Mitigation phase’s environment allows each citizen, private sector firm, and public sector to take actions to be resilient, so communities can improve their functioning and adaption to the consequences of disasters. The resilience of supply chains in times of disaster is also influenced by the presence of public-private relationships that will positively influence the capability of participating supply chain operators to manage disaster consequences.
2. During preparedness phase actions are taken before disaster occurs so as to ensure an adequate response to its impact and to facilitate and restore its consequences and which are performed with the aim to reduce the demand for the last minute actions. Preparedness phase’s environment helps to determine the need for resources, which are necessary for a community during the response and recovery phases and enables the identification of functions, which will have to be implemented during a disaster.
3. Response is one of the most complicated disaster management phases since it is taken under the conditions of extreme stress, limited time and available information. Any doubts, distrust and delay during response may lead to a catastrophe. Response activities can be categorised into targeted mitigation actions and citizen protection actions. In a very short period of time managers must as soon as possible start collecting data required for planning of response actions. Also situation assessment helps to find information about services, resources and other assistance required during a disaster.
4. During the recovery process everything is restored, reconstructed and renovated so as to return to the functional state, i.e. recovery is the process during which communities reduce the risk of occurrence of similar situations and the scale of their impact in the future.
5. Advantages of mitigation, preparedness and recovery phases’ environment allow to carry out public procurement in a “quiet” environment to assess the threats and risks, to plan procurement for security and defence sector and to carry them out in accordance with the statutory requirements. The response phase’s environment hinders decision making process because of stress, urgency and lack of information.
6. Lithuanian example shows, that implementing the EU regulation of defence and security procurement in

the phase of preparedness, helps to balance the managerial processes with legal regulation and allows creating preconditions for legitimate procurement in the possible situations of direct threats for national security.

7. It should be stated that under the conditions of threats for national security it is impossible to develop on time the necessary legal regulations empowering contracting authorities to implement public procurement for the defence under the requirements of general principles of transparency and competitiveness, in the same time following the need to select the trustworthy suppliers and service providers. It links us to the understanding of the need for constant alertness of state defence and national security institutions as contracting authorities in all countries even when the threats are not direct yet.

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