

CHALLENGES OF PUBLIC PROCUREMENT IN THE ROMANIAN MILITARY SYSTEM IN THE CURRENT SECURITY CONTEXT

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Abstract: *Public procurement represents a complex and challenging professional field. Working as a specialist in public procurement within the Romanian defense sector involves managing and overseeing the procurement processes specific to defense related goods and services not only for the military personnel that perform during peace time but also for the forces participating in international missions. This role entails a deep understanding of regulatory compliance, security requirements, and specialized procedures. Moreover, it might involve ensuring transparency, competitive bidding, and adherence to stringent regulations. In this context, this paper analyzes the main challenges faced in the procurement process during the international missions.*

Keywords: *procurement, defense sector, resources, law, international mission.*

Introduction

One of the areas of interest for logistics specialists in the Romanian Army is that of procurement. The provision of goods and materials necessary for the daily activities of the military structures, whether in time of peace, on the national territory, in crisis situations or during missions in theatres of operations outside the borders of the Romanian state is a challenge. Starting from the demands of the contemporary reality, in which, more and more often, the military structures of the Romanian Army are asked to participate in international missions under the aegis of the UN, EU or NATO, and noting the lack of scientific analysis on the subject of public procurement in theatres of operations, through this material we intend to bring to attention this extremely relevant topic for the Romanian Army.

In this regard, we have set the following objectives: to identify and systematize the main legislative references that define the general framework of public procurement carried out in theatres of operations outside the national territory, to highlight the particularities of the procurement process of military structures working in theatres of operations as well as the challenges faced by specialists in this field. This material is approached from a legislative perspective, but the focus is on the technical-procedural aspects supported by the practical experience of the authors and imposed by current legislation, the need to adapt to the international economic and security situation.

1. Challenges of the geostrategic situation

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The current international context supports, through the current challenges, the reinforcement of the image of an uncertain and challenging security environment. Here are a few aspects that support the above statement:

- The aggression of the Russian Federation against Ukraine started in 2014 and turned into a war of attrition with a high level of complexity;
 - The confrontation in which the State of Israel has been asked to take part, as a main actor;
 - The security situation in the Central African Republic where the Council of the European Union has decided to continue the EUTM RCA military mission (Council of EU, 2022);
 - Involvement of 27 contributing states in the NATO KFOR mission in Kosovo, with the aim of maintaining a balanced security environment and freedom of movement for all minorities living in the region (NATO, 2023);
 - The frozen conflicts in the Caucasus region that could escalate at any time;
- All of these can bring or contribute to regional and even global security imbalances.

The 19 years during which the Romanian armed forces have participated in the military conflict in Afghanistan (Cioculescu, 2023) have demonstrated that, although we do not have an expeditionary army, we can, with the support of allies, carry out military actions in an area located at a considerable distance from the national territory. Direct involvement in North Atlantic Alliance missions has made it easier for us to understand how to work in a multinational space, giving us access to an understanding of a specific legal framework with rules adapted to a particular context. Whether we are referring to the strategic movement of Romanian forces in the theatre of operations, the punctual planning of missions or the management of available resources, in relation to the agreements between the participating nations, all these have been the premises for the development of the Romanian armed forces, in relation to the requirements of the international operational environment. At the moment, along with the whole spectrum of measures implemented as a result of the conflict in the vicinity, both in relation to the approaches that the North Atlantic Alliance has on the table as well as to taking into account the specifics of the national security provisions, Romania has assumed the presence, through Romanian forces of varying sizes, in theatres of operations outside the national territory.

Also, Romania's membership of the European Union obliges our country to create its own policies in relation to those of the European Commission (Ivan, 2023), the regional security climate requires this institution to take specific measures. According to Article 288 of the Treaty on the Functioning of the European Union, the secondary legislation of the European Union materialized by Regulations is directly applicable in all Member States, without the need for transposition into national legislation, our country, like the other Member States, having to know and implement the European Regulations on public procurement.

From deciding on the type of military structure, its size, staffing, equipping and provisioning according to the mission assigned to it, to the needs for procurement and re-provisioning throughout the duration of the mission, all these aspects significantly influence the procurement processes planned and carried out in support of the military structure participating in the international mission.

2. Legislative aspects of public procurement in the defence system

Providing the material goods and services needed to carry out all activities in the public domain involves considerable resources: from the design and construction of public domain infrastructure, the provision of equipment and technology, the appropriate equipment, the employment of specialised staff and their salaries, to everything needed to carry out day-to-day activities. First of all, we are talking about substantial financial funds that are required to be spent. Secondly, we draw attention to the need for specialised human resources and continued investment in ensuring the functioning of an information system. Research and development as well as logistical activities are in addition to those mentioned above. Whichever public sector we wish to refer to, the deployment of resources must be continuous. Education, health, public transport or defence, like the others, require a constant provision of resources to achieve the objectives of each sector, which requires significant financial efforts from each individual state.

As we have already pointed out, one of the public sectors on whose functionality national security is directly dependent is the defence sector, with the army being the central pillar of the national defence system. In this regard, achieving the objectives set for the size of the military system, staffing, training and continuous instruction of human resources, the provision of equipment and technical equipment and, last but not least, ensuring the potential to respond in situations of crisis or armed conflict are activities that must maintain their priority in providing resources. Given that the use of the state budget is a matter of interest to citizens, but not only to them, ensuring transparency in the award of contracts, judicious use of resources and honest behaviour in the use of available resources are requirements for the professional conduct of public sector specialists. Even though national security is of vital interest, both from an individual and institutional perspective, public procurement carried out for the Romanian Army does not exceed specific European and national legislation.

The field of public procurement is predominantly technical and described by increasingly dense legislation. Thus, public procurement in the defence sector is primarily governed by European legislation (primary and secondary). This is transposed at national level into primary and secondary legislation and also into regulations with internal application. Briefly, in the table below, we have mentioned the main legislative milestones which are both necessary and defining for public procurement in the defence sector, both for those carried out on national territory and for those whose beneficiaries are deployed in theatres of operations, in international missions.

Table no. 1. Main legislative milestones regarding public procurement in the defence sector carried out for Romanian forces on the national territory but also for military structures participating in international missions

European Union legislation (primary and secondary)	National primary legislation	National secondary legislation	Regulations of entities with a monitoring and control role in public procurement. Regulations applicable in the Ministry of National Defence
Directive 2014/23/EU on concession contracts	Law no. 100 / 23 May 2016	GD 867/ 9 December 2016	
Directive 2014/24/EU	Law no. 98 / 23 May	GD 395/ 7	

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on public procurement	2016	June 2016	
Directive 2014/25/EU on sectoral procurement	Law 99 / 23 May 2016	GD 394/ 7 June 2016	
Council Directive 1989/665/EEC (remedies and appeal procedures)	Law 101 / 23 May 2016		
European Commission Regulation No. 1986 of 2015 (secondary European legislation)			
	G.E.O. No. 98/2017 on the ex ante control function		
			National Public Procurement Agency instructions (document templates, procedural details, etc.)
			Order M 97 of 2011 of the Minister of National Defence for establishing the conditions for the procurement of technical supplies and equipment, in the country, in emergency conditions, as well as goods, construction works and services, outside the territory of the Romanian State, necessary for the performance of missions and operations performed by the armed forces
			Annual / biannual concepts on public procurement in the Romanian Army
	Law 121 of 2011 on the participation of the armed forces in missions and operations outside the national territory		Order M31/2008 on procurement competences for products, services and works within the Ministry of Defence.

(Source: authors' synthesis)

At the level of the Romanian Army, public procurement, by virtue of the legislation in place and the contemporary economic and security context, is carried out in a centralized system. Designated contracting authorities set up complex portfolios of procedures based on established needs and competences. From the perspective of these authorizing officers designated to supply goods and services to military structures, the challenges of planning and conducting public procurement cannot be neglected. Generically, without going into further detail, in relation to public procurement for the Army and carried out on national territory, we refer to:

- Difficulties in understanding and implementing the increasingly complex and varied legal framework for public procurement;
- harmonizing the requirements of the Army with the legal aspects defining the procedural framework for public procurement;
- The time constraints imposed by the needs of the Army on the one hand and the legislative requirements on the other;

- Lack of human resources specialized in procurement;
- Difficulties in cooperating with other structures involved in the procurement process.

If these are the millstones that specialists encounter in peacetime situations on national territory, in the next chapter we analyse the challenges encountered in the international context.

3. Public procurement for the benefit of military structures participating in international missions

When we talk about international missions we are talking about military personnel, specialized detachments, sub-units and military units assigned to participate in missions outside the national territory. Also, considering the sequence of events involved, from the expression of political will to contribute with forces and means to certain security initiatives and military operations in the context of non-Article 5 NATO, EU, UN, OSCE, etc., to the actual deployment of operations, in areas or theatres of operations around the world. The political option is translated into a decision at the level of the Supreme Council of National Defence, which determines the volume of the national troop contribution, a decision that is assimilated and appropriated by the strategic and operational levels of the Romanian Army. Thus, the Defence Staff issues action orders on force generation and operationalisation. Subsequently, an entire process is triggered for the nomination and selection of personnel, the formation of detachments or the completion of sub-units and units, their equipping and the procurement of material goods necessary for the deployment of international missions.

All these steps are carried out in a unified and coherent concept, initiated at the small tactical level and completed and approved at the large tactical level, namely at the level of the responsible force category (land forces, air forces, maritime forces, special operations forces, logistic support forces, cyber defence, etc.). Thus prepared and trained for the mission, detachments, sub-units or units go through an evaluation process strictly regulated by national military or NATO provisions, under the planning and command of the Joint Forces Command, the only operational level command of the Romanian Army, a command that will take over all structures participating in international operations as long as they carry out missions.

With regard to the logistic support of the participating structures, the logistic support concepts of the structures participating in missions can foresee two ways of approaching it. The first option is full in-country logistics provision, either by transporting the entire logistics package on deployment or by organising transport missions for resupply and the provision of goods (especially fuel) and services (food, accommodation, laundry, recreation and sports, etc.) by coalition partners for a fee. In the second variant, it is foreseen to supplement some products and services, during the deployment of the mission, by purchases in the theatre of operations, when the economic and security situation of the host country allows it.

Naturally, purchases made outside the national territory comply with public procurement legislation, as long as the supply/provision/performance of services is paid for with public money. However, the Romanian law¹ governing the planning, organisation and conduct of public

¹ Law No. 98 of 19 May 2016 on public procurement, as amended and updated

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procurement processes states that the law does not apply to "the award of public procurement contracts for contracting authority structures operating on the territory of other states when the value of the contract is less than the value thresholds laid down in Article 7 para. (1)", namely, at that time, 678,748 lei, which is the equivalent in euro of 140,000 euro. This amount is significant and allows, in most cases, the successful execution of all necessary re-procurement abroad for structures participating in international missions. Moreover, the same legislative provision states that contracting authorities draw up their own rules for making purchases below this value threshold, which must comply with the application of legislative principles. The principles defined by the national legislation are: non-discrimination, equal treatment, mutual recognition, transparency, proportionality and accountability (Law 198, 2016).

At the level of third national legislation, we find an Order of the Ministry of National Defence², which mainly states the value threshold below which the acquisition competence is held by the structure itself or the National Support Element. The latter is a specific 3rd line general and logistical support structure, which is not included in international organisations³ requests for missions but is required as a voluntary national contribution to support national forces abroad. The regulated threshold is €15,000 per purchase of goods or services. Once the procurement estimate exceeds this amount, the procurement can no longer be carried out by the structure itself, as the procurement competence lies with the National Support Element.

In this context, the main procurement challenge can be formulated in the form of a question: what should be the elements that the contracting authority, namely the National Support Element, should take into account when tasked with carrying out procurement for the benefit of its own structure and the national structures located in its area of responsibility?

We mention the fact that so far our country has not recorded any breach of the threshold of 140,000 euros / purchase, outside the national territory, In our opinion, for the coherent and legal planning and organization of public procurement processes, the acquiring structure must go through, first of all, all the steps prior to the identification of the exceptional cases provided for by the legislation, as follows:

- Consultation with the specialist staff of the Joint Force Command to provide forecasts of the forces participating in the mission in the theatre of operations in the coming year;
- Interviewing categories of forces generating mission participating structures as well as detachments/structures already present in the theatre of operations on projected requirements and providing expert support for the preparation of requirement briefs;
- The implementation of the annual procurement programme and the direct procurement annex as a management tool for procurement conducted outside the national territory and as a basic tool in the subsequent application for funds to the force categories generating structures participating in missions;
- Carrying out these steps through the rules for estimating the value of a public procurement, namely grouping products with identical or similar uses within the same

² Order of the Minister of National Defence No. M-97 of 2011

³ NATO, UN, OSCE, EU, etc.

procurement requirement. Furthermore, as a national support element operating for the benefit of the national contingent present in a theatre or area of operations, the contracting authority shall estimate the procurement to be performed in the plan year by estimating its value as the total of the identical or similar requirements of all detachments/structures supported in the plan year, whether or not the component staff of these structures are rotated during the year, whether or not National Support Element staff are rotated during the year;

- If the contracting authority finds itself in the position of having to carry out competitive procurement procedures, as a result of value thresholds being exceeded for certain requirements, as a result of the procurement planning process, it shall fully comply with the requirements of national procurement legislation for the requirements of the supported structures present in the theatre of operations.

As regards the budget used by the National Support Element in the implementation of procurement, it is built from funds already provided for in the own budgets of the force categories generating structures participating in the missions and which must be made available to the Joint Logistics Command, the category generating the National Support Element. The basic purpose for which Romanian legislation provides for such centralisation for procurement carried out abroad is the economy of forces and means, as long as, in a theatre of operations, there will have to be a single entity specialised in public procurement to deal with the problem of re-supplying national forces from local economic operators.

The above-mentioned ministerial order also stipulates that, for purchases worth more than EUR 75,000, the National Support Element is obliged to notify the Directorate-General for Armaments. This is only natural, as the Directorate-General for Armaments is the regulatory authority of the Ministry of National Defence in the field of public procurement, and it can order specific measures, for the theatre of operations, to increase the efficiency, economy and timeliness of purchases made outside the national territory.

Conclusions and proposals

As an aspirant of the North Atlantic Partnership, and later as part of the alliance, Romania has consistently, over the years, responded affirmatively to requests from international organisations to contribute with forces to democratic peacekeeping efforts and to regional initiatives to restore peace and security. At this time, the Romanian Army benefits from a general, systemic approach essentially opposed to the organisational and operational paradigm under which it functioned in the pre- and post-December years. Exercises aimed at forming people's identity, ways of thinking, ways of operating and national standards as close as possible to those of the West, as well as the international operations in which our country has taken part in recent decades, have made it possible to develop the military ensemble and the Romanian military as a whole in a much more resilient, more efficient, more sustainable and more integrated manner, in terms of its subsystems and with the North Atlantic Alliance in general.

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Romania's most extensive and long-standing experience in international missions is undoubtedly represented by the operations in Afghanistan over twenty years. Here, thousands of Romanian soldiers have been able to observe and internalize many aspects that give performance and quality to the military system, individual training, professional way of operating and psychomoral qualities to which the professional in this field is called. However, from a logistical point of view, the Romanian military generally had the opportunity to admire American professionalism and benefit from it to the full. In fact, the Lift&Sustain programme, run by the US military for certain nations, has accustomed the Romanian military to being supported, logistically and financially, for the most part, during the deployment of missions, by the partner in the theatre of operations, in spite of NATO doctrine which clearly stipulates national responsibility in this area. As a consequence, almost 3 years after withdrawing from Afghanistan, the Romanian military continues to rely on the support of its partner in the theater, in contradiction to the specifications of logistical action orders and mission support concepts. Current experience shows that in most cases, the need for in-theatre procurement outside national territory is not understood and the acceptance of national responsibility for full logistical support of the contingent participating in multinational operations is hardly accepted. Although simple in itself, for a procurement officer, the issue of procurement outside national territory seems a challenging obstacle. In our view, this obstacle is essentially a mental one, and can be easily dismantled by including NATO logistics topics and practical exercises for planning, requesting funds, organising and conducting procurement processes in mission training programs.

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