



DENTONS

A brief guide to offset agreements in Poland

A way to boost the Polish defense sector even further

Grow | Protect | Operate | Finance

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Introduction – offset agreements within the Polish defense sector

In August 2024, the Polish Ministry of Finance announced a draft state budget for 2025 in which defense spending is to reach 4.7 per cent of GDP amounting to PLN 186.6/EUR 43 billion (compared to 4.2 per cent of GDP and PLN 159/EUR 36.6 billion this year). This is the highest level of defense spending in Poland's history – both nominally and in relation to GDP. The level of Poland's defense spending announced for next year will make Poland a leading spender among NATO countries.

Simultaneously, the priority of the Polish Ministry of National Defense (MoD) is to develop a new national security strategy. Following this, a program for the development of the Armed Forces for the years 2025-2039 will be formulated, that will incorporate lessons learned from the Russian aggression on Ukraine. The Ministry of National Defense aims at limiting "ad hoc purchases," and insisting that procurement procedures involve the formulation of requirements based on the identification of threats and operational needs first. Additionally, the acquisition of equipment must be accompanied by the expansion of infrastructure and the adaptation of the army's training and educational facilities to fully utilize the new capabilities.

The Polish government underscored its commitment to cooperation with companies from the USA and Europe, while also expressing appreciation for the promptness and quality of deliveries from South Korea, which became Poland's strategic partner. However, in Polish government opinion, arrangements with foreign suppliers must provide for Polonization and offset, so the government is able to ultimately allocate half of its military expenditure to Poland's domestic industrial base. It means that offset agreements will become an essential part of the Polish defense landscape and will have to be taken into account by all interested bidders and contractors.

Poland, like many other countries in the world, uses an offset mechanism in connection with purchases of armaments and military equipment. As of 2014, offset is no longer of a compensatory nature, i.e. it is not an instrument that compensates the state economy the need to purchase armaments and military equipment abroad. Currently offset is exclusively aimed at protecting the essential interests of state security. This protection is about ensuring that foreign suppliers establish or maintain an industrial potential in Poland in the area of production, service and maintenance of the purchased armaments and military equipment, providing the Polish State Treasury a guarantee of independence in this respect. The goal is therefore to obtain the best cutting-edge defense technologies connected with the military equipment purchased by the Polish Armed Forces to be utilized by domestic business partners without a need to rely on the foreign equipment manufacturers.

For that purpose, the Polish government declares to use offset (and the so-called product "Polonization") more frequently. In the Polish government's eyes, offset is perceived as a useful tool to reinforce Polish defense sector capabilities.

This brief publication provides an overview of the rules governing the applicability of offset in Poland, its key principles, its specifics in proceedings, its offer and implementational structure of contractual schemes. It also briefly deals with the concept of "Polonization".

We hope it will help potential investors understand the unfolding opportunities and challenges.

EU boundaries on offset

Offset is grounded in Article 346 of the Treaty on the Functioning of the European Union (TFEU), according to which Member States may take measures they consider necessary for the protection of their essential state security interests. However, this must not infringe competition on the internal market. Such measures may exclude the public procurement regime, offsets or others forms.

Apart from Article 346, the TFEU provides for no further official guidelines as to the scope and requirements behind measures to be taken, including offset. Consequently, Member States alone are responsible for compliance of the measures adopted with the TFEU.

Pursuant to Article 346 of the TFEU, offset should be considered an exception to the rule, not a rule itself. The applicability of the exception stipulated by the TFEU (as of all other exceptions to fundamental principles of European law) **must be interpreted narrowly**, so as not to extend their effects beyond what is necessary to protect the legitimate interests of the Member States.

It also has to be **proportionate to the objectives pursued**, i.e., it should constitute a measure that impinges as little as possible on the free movement of goods and the freedom to provide services,

which are fundamental principles of the European Union. It means that the Member State using offset is obliged to demonstrate that the protection of the defined essential security interests **cannot be achieved by less restrictive means** (which could be and had been challenged by the relevant European authorities).

Furthermore, a strict interpretation of Article 346 of the TFEU also means that the **justification** must always relate to specific measures. Accordingly, legitimate derogation from the treaty rules at the stage of the procurement procedure does not automatically open the way to requesting offsets. A specific supply agreement may be subject to an exemption from the public procurement regime, but this exemption does not imply approval to automatically specify offset requirements for the purchase of the exempted equipment. On the contrary, offset requirements must be treated as **additional measures** that have a negative impact on the principle of free competition and therefore, they requires a separate justification. Consequently, the evaluation of the national security interests in terms of offset should be considered as separate to similar assessments made during the delivery procedure and allowing to exclude particular tenders from the public procurement regime. For instance, the exclusion of a particular procurement from the public procurement regime and **effecting**



it through Foreign Military Sales or Direct Commercial Sale does not automatically mean that offset is justified. The possibility to use it requires an additional evaluation (and justification). Only if such further evaluation confirms that a specific national security interest of Poland requires co-operation between the parties to establish specific production and maintenance capabilities in Poland and consequently, the independence of Poland from a foreign supplier, may offset be claimed.

Offset Act

In Poland, the legal basis for offset is laid down in the act of 26 June 2014 on *Certain Agreements Concluded in Connection with Performance of Procurement of Essential Importance for State Security* (Offset Act). It is the second legal act of statutory rank regulating the offset which replaced the former offset act of 1999.

Pursuant to the Offset Act and in line with EU law restrictions, an offset obligation may be imposed on a foreign supplier solely *“in connection with procurements essential for the State security interests”*, and additionally, if the defined essential national security interests *“require offset”*. Consequently, whenever the Polish Government concludes a supply agreement concerning

armaments or military equipment, the acquisition of which is aimed at securing the essential security interests of Poland, and therefore, the procurement is dealt with outside the public procurement regime, offset may be claimed if it is also necessary to protect the defined essential security interests (i.e., in addition to exclusion from the public procurement regime). Consequently, **offset is not permissible in standard public procurement regimes** that account for a significant portion of military purchases and should be the rule in procurements concerning armament and military equipment.

Both those decisions, i.e., whether a particular procurement is aimed at securing the essential security interests of Poland and therefore, it could be excluded from the public procurement regime, and whether those national security interests (additionally) require offset obligations to be imposed on foreign suppliers, **are entirely up to the Polish Government which solely decides whether to request offset or not.** Contrary to the previous offset act of 1999, there is no general obligation under the Offset Act to employ offset in connection with the delivery of armament or military equipment to the Polish Armed Forces. Consequently, **foreign suppliers may only respond to any requirement** imposed by the Polish Government.



If the Polish Government decides not to request offset, a foreign supplier cannot be blamed for failing to meet the offset obligation as it was not automatically imposed on him by law in the first place. **The same applies to the scope of the offset requirement** as is up to the Polish Government to shape offset requirements. Therefore, a foreign supplier cannot be blamed for not fulfilling an offset obligation within the scope which could be expected from him considering the deliveries made as the **adequacy of the offset requested should be assured by the Polish Government only**, with the foreign supplier(s) directly responding to a requirement set.

As an offset obligation is strictly connected with the supply agreement being concluded by the Polish government, the structure of the supply agreement has a direct impact on related offset obligation(s). In a model case (DCS), where the military equipment is being acquired by the Polish government directly from its manufacturers, parties to supply agreements also conclude offset agreements. In more complex cases, in particular where a prime supply agreement is being concluded with another government (e.g. the FMS case with USG) which cannot be directly involved in the offset, the proper designation of the parties to an offset agreement and factors triggering that designation gets more complicated.

Offset in FMS

Generally, in terms of the offset obligation to be imposed on a foreign supplier, the Offset Act does not distinguish between FMS – where the military equipment is being acquired through the USG – and acquisition of the military equipment directly from its manufacturers (DCS).

Despite certain concerns as to the literal wording of the Offset Act, the LOA should be considered the equivalent of a supply agreement which generates an offset obligation to be imposed by the Polish government. As the USG cannot be involved in offset, such an offset obligation should be imposed directly on U.S. defense contractors delivering their respective components to the USG under UCAs. Irrespective of such U.S. defense contractors' general obligations to perform offset, the contractors qualified as foreign supplier(s) within the meaning of the Offset Act should conclude offset agreements on the terms and conditions specified therein.

Justification and assessment of the necessity to request offset

As mentioned above, an ability to request offset in a particular case and to conclude a corresponding offset agreement, needs to be justified by the Polish government on a case-by-case basis proving that offset is necessary for the protection of the Polish national security interests.

The justification is to be prepared by the MoD upon assessment of the necessity of offset to protect essential state security interests. The process of preparing such justification is primarily as follows:

- the organizational unit indicated by the MoD (usually the Department for Offset Agreements, within the Armament Agency) prepares its justification of the necessity to request offset which should include: (i) *"indication of capabilities (a potential) to be established by means of offsets, in terms of production, service, maintenance and repair capabilities, as well as other capabilities necessary for protection of essential interests of state security"* and (ii) *"demonstrate that an agreement is linked to the acquisition of arms and that the offset commitments will not adversely affect the conditions of competition in the internal market regarding products which are not intended for specifically military purposes"* (iii) *"demonstrate that the use of offset commitments is necessary and appropriate to protect the essential interests of state security and that it is not possible to protect these interests by other means without the use of an offset"*, and (iv) *"recommendation as to whether or not to use offset"*;
- on the basis of the above justification, in particular the recommendation referred to in point (iv) above, the MoD conducts the assessment of the necessity to request offset and prepares its own justification thereof;
- if positive, the MoD's justification is submitted to the Offset Committee and the Council of Ministers (for their acknowledgment/approval).

Based on the MoD's justification and upon obtaining the positive opinion of the Offset Committee confirming the necessity to protect the Polish national security interests through requesting offset, the MoD prepares and delivers Offset Assumptions/Guidelines to identified foreign supplier(s).

Nature of offset

The Offset Act allows for direct offset only, i.e., an offset associated with the subject of delivery (the equipment to be supplied) or in some cases, more broadly connected with/related to the area of supply and the capabilities it is intended to provide.

Offset is defined as *"a co-operation between the State Treasury, offsettee and the foreign supplier, necessary to open or retain in Poland production, service, repair, maintenance and other capabilities necessary from the perspective of protection of the essential security interest of Poland consisting in particular in the transfer of technology, know-how transfer agreements along with the transfer of copyrights or rights to use the works on the basis of the granted license in order to secure required independence of the State Treasury from the foreign supplier"*. Similarly, an offset commitment is *"an obligation of the foreign supplier towards the State Treasury and the offsettee, in particular concerning the transfer of technology or know-how, along with the transfer of copyrights or other rights to use the works on the basis of the granted license, ensuring the required independence of the State Treasury from the foreign supplier and aimed at opening or retaining in Poland production, service, repair, maintenance and other capabilities necessary from the perspective of protection of the essential security interest of Poland"*. Consequently, under the Offset Act, the subject of the offset commitments covers **mainly the transfer of technology** to secure the required independence of Poland from the foreign supplier in terms of production and MRO capabilities. To this extent, it is worth noting that under the previous offset law, offset commitments could have also covered other types of activities, e.g., share purchases, in-kind contributions, direct sales, or deliveries, or performing services. Under the Offset Act, Polish government expects **solely intangible offset commitments** consisting of the transfer of/licensing technology and/or know-how (that however may and usually also includes a transfer of tangible deliverables being a part of projects intangible in nature).

Main principles of offset

The offset in Poland is based on the following principles:

1. **Value of an offset agreement** – the value of an offset agreement is being specified on a case-by-case basis, with respect to a given offset agreement. Contrary to the previous offset law (which was designed to achieve economic benefit), the Offset Act (designed to achieve technology transfer) does not provide for offset multipliers, and therefore, a nominal value of offset commitment should be taken into consideration. In practice, the value is being proposed by the foreign supplier within the scope of its sovereignty and based on a chosen evaluation methodology.
2. **Liquidated damages** – in case of non-performance or improper performance of the offset commitments a foreign supplier is obliged to pay contractual penalties (which under the Polish law constitute a form of liquidated damages). Under the Offset Act, the value of the contractual penalty in the event of default on the offset commitment, should equal the value of the default. In the event of improper performance of an offset commitment, the value of the contractual penalty should equal the value of the improperly performed part of the offset commitment (partial performance). Consequently, in the case of default or improper performance of offset commitments, the foreign supplier is obliged to pay a contractual penalty equal to 100% of the value of the outstanding part of the offset commitment. The contractual penalties are due irrespective of whether the Polish government incurred any loss from the non-performance or improper performance of the offset agreement.

Additionally, the foreign supplier may be obliged to pay the additional (supplementing) compensation if as a result of non-performance or improper performance of the offset commitments Polish government suffers damage exceeding the stipulated contractual penalties. However, in such a case, the Polish government is obliged to prove the loss, the non-performance or improper performance of the offset agreement and the causal nexus between those elements (contrary to contractual penalties).

The foreign supplier may, in lieu of liquidated damages, submit a proposal to perform a replacement offset project.

The offset agreement usually provides for the upper limit of foreign supplier's liability (cap of liability) under a given offset agreement.

- 3. Performance bond** – the Polish government is entitled to demand, no later than on the date of concluding an offset agreement, a performance bond in the amount not lower than the value of the offset agreement (100%) in the form of either: (i) voluntary submission to enforcement proceedings, (ii) bank guarantee, or (iii) blank promissory note (each to be called/collected "on the first demand" upon a pre-drawing notice/cure period). Consequently, the performance bond is required before the execution of an offset agreement and always in the total amount of 100% value of the offset agreement which may significantly increase the costs of offset and should be taken into consideration before making a binding proposal. In practice, foreign suppliers are entitled to submit two separate performance bonds: (i) a cost-free blank promissory note with a promissory note declaration (for the entire 100%), and (ii) bank guarantee(s) at certain milestones and for a limited amount. In such case, the Polish government is entitled to benefit only from one performance bond, i.e., either a blank promissory note along with a promissory note declaration or a bank guarantee in order to seek a given claim. Both performance bonds are governed by Polish law.

The Polish government is entitled to benefit from the performance bonds only if the foreign supplier refuses to pay liquidated damages voluntarily upon the Polish government's request.

- 4. Timeline** – under the Offset Act, the supply contract (including the LOA) may be signed only following the approval of the Offset Agreement. Consequently, the supply contract may not be concluded before obtaining formal approval of the offset agreement by the Council of Ministers which may significantly extend the execution of the supply agreement (for the period required to obtain the approval of the Council of Ministers).

- 5. Term** – the offset agreement is concluded for a maximum 10-year period and expires at the date when the Polish government acknowledges the performance of all offset commitments by the foreign supplier or upon payment of contractual penalties (liquidated damages) resulting from non-performance or improper performance of the offset commitments. The application for crediting the performance of the offset commitment should be submitted within 90 days from the final performance date of a given offset commitment.
- 6. Termination** – under the Offset Act, neither party may terminate or withdraw from an offset agreement.
- 7. Governing law and jurisdiction** – under the Offset Act, offset agreements should be governed by Polish law. Although the jurisdiction is not defined by law, Polish government always requests Polish common courts to have an exclusive jurisdiction over the offset agreements.

Offset Assumptions/ Guidelines

The specific requirements for offset are further denoted in the Offset Assumptions prepared by the MoD and provided to foreign supplier(s) in advance to submitting their proposal. Among others, the Offset Assumptions/Guidelines specify technologies/parameters required from the bidders: critical that are mandatory on the foreign suppliers' part and non-critical ones but connected with additional points during evaluation.

The Offset Assumptions/Guidelines also include requirements concerning the expected scope of independence from a foreign supplier to be achieved upon offset implementation. In this respect, the Offset Assumptions/Guidelines may refer to:

- "constant technical readiness"
- "independence"
- "full capability"
- "reconstruction of efficiency by repairing or replacing"
- "Depot level"
- "independent servicing and repair"
- "full independence and self-sufficiency"
- "adequate level of efficiency"
- "high index of readiness"



Certain offset specifics

Offset proceedings

The offset proceedings can be divided into three phases: offers submission, negotiations, and approval/execution.

1. The **submission phase** includes the following steps:
 - handing the Offset Assumptions/Guidelines (along with draft offset agreement) over to foreign supplier(s) along with RFP/Invitation
 - preparation of offset offers by foreign supplier(s)
 - submission of offset offers to the MoD
 - internal evaluation of the submitted offset offers by the MoD (DOA)
 - delivery of the evaluation of the offset offers by the MoD (DOA) to the Offset Committee for its opinion
 - Offset Committee's opinion
2. The **negotiations phase** includes the following steps:
 - approval of the evaluation of the offset offers by the MoD Secretary of State
 - delivery of the approval and the MoD's (DOA) evaluation to the Armament Agency (AA) (procuring party)
 - choosing by the MoD (DOA) the winning supply offer considering the evaluation of offset offers
 - negotiation of the offset agreement with the selected contractor
 - internal MoD's evaluation of the agreed offset agreement and applying for the Offset Committee's opinion
3. The **approval/execution phase** includes the following steps:
 - positive opinion of the Offset Committee on prepared (agreed) offset agreement
 - execution of the agreed and approved offset agreement by the MoD
 - approval of concluded offset agreement by the Council of Ministers
 - execution of the supply agreement

It is also worth noting that pursuant to the Offset Act, in case of negotiations with one (pre-selected) contractor, the offset procedure is specified by the MoD upon the Offset Committee's opinion and may defer from the above-specified proceedings designed for open tender arrangements.

Offset offer

Composition of an offset offer

Each offset offer should include the following elements:

1. General information on a Foreign Supplier
 - name, address and register number
 - legal form of a Foreign Supplier
 - shareholding structure (affiliates and subsidiaries)
 - law under which the Foreign Supplier operates
2. Information on the representation rules
 - corporate bodies authorized to represent
 - rules of representation
3. Information on past performances
 - general description of Offset Commitments
 - value
 - performance dates
 - initiated offset-related disputes
4. Proposed value of the offset offer
 - as proposed by a foreign supplier
5. Information on a foreign supplier's financial standing
 - financial results for the last 3 financial years

with an excerpt from the commercial register or PoA(s) to be attached

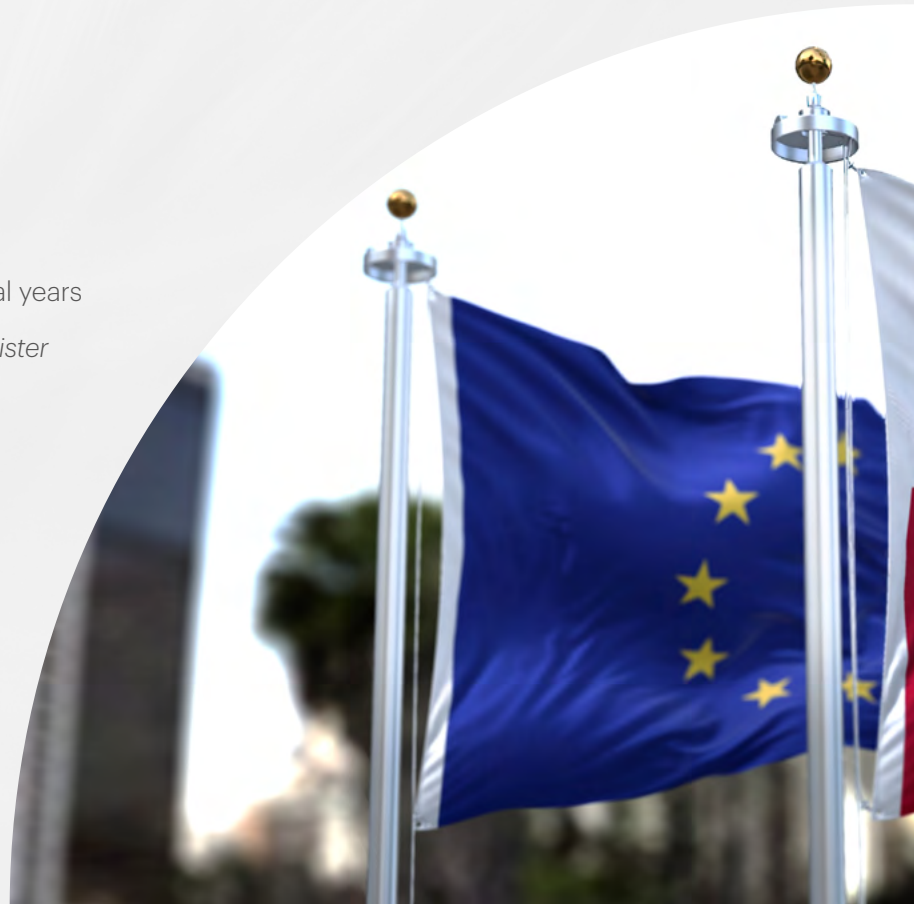
Specifications of Offset Commitments (OTTAs)

The offset offer should be accompanied with the Specifications of the Offset Commitment, separate for each offset project proposed along with attached:

- documents concerning intellectual property rights vested to a foreign supplier
- consents of respective agencies for the transfer of technology or information that such consents are not required
- letters of Intent / other documents confirming the arrangements with designated offset beneficiaries (offsettees)

Formal requirement of the offset offer

The offset offer should be submitted in writing, in the original and two copies, in computer (machine) form and in the Polish language (with official documents attached to an offer being apostilled and sworn translated by a Polish sworn (certified) translator). It should be signed by authorized representatives of a foreign supplier (including based on a PoA) and may include trade secret markings. All pages of an offset offer should be numbered, initialed and bound together, as well as submitted in non-transparent and closed package (envelope).



Contractual structure – offset implementation

An offset agreement concluded between the MoD and foreign supplier(s) should be considered **a frame agreement** that specifies key terms and principles of future offset implementation to be agreed in detail directly between the foreign supplier(s) as offset provider (on its own or through its partners) and identified Polish offset beneficiaries (offsetees). Among others it provides for requirements concerning future offset implementation/execution agreements, performance crediting process as well as consequences of non-performance or improper performance of offset commitments in relation between a foreign supplier and the MoD as offset governing body.

The template of an offset agreement is provided by the MoD, negotiations are conducted in Polish, and the offset agreement is concluded in Polish (with an English working version being prepared for a foreign supplier only).

Further details (specifics) are to be agreed directly between a foreign supplier as a party to an offset agreement and offset beneficiaries as third parties towards whom the implementation of offsets agreed with MoD as the other party to the framework offset agreement is to be provided.

The offset implementation/execution agreements should specify (in certain cases repeating a frame offset agreement) the technology to be transferred to offset beneficiaries (documentation, tooling, trainings, assistance), technology transfer process (including a schedule and receipt/acceptance protocol) as well as the existence and scope of the foreign supplier's warranty obligation. The offset implementation/execution agreements should also provide for details of a license to be granted by foreign supplier (offsetor) to offset beneficiaries allowing to use the technology transferred, including among others, ownership of intellectual property transferred (including derivatives and jointly created works), authorized uses, territory(ies) on which the license may be used, exclusive or non-exclusive nature thereof as well further specifies, e.g. concerning future modernizations/modifications process and respective rights and obligations of both parties connected with that.

As the technology transfer process itself and related license limitations are linked but slightly separate issues, the parties usually sign separate offset execution (technology transfer) and license agreements either for all or individual offset commitments.

There are no standard templates of either offset execution (technology transfer) and/or license agreements. The negotiations are usually conducted in English and the final agreements concluded are bilingual (Polish-English).



Industrial participation (polonization)

On the top of the above offset mechanism, the concept of industrial participation (the so called Polonization in Poland) should be discussed, in particular in light of the above limitations on offset. Polonization, which as the name suggests, is aimed at making the product more Polish, constitutes another way of allowing the Polish defense industry to be involved in the delivery of imported weapon systems and to make Polish defense industry benefit from the modernization of the Polish Armed Forces by developing domestic production and sustainment capabilities in a long term.

Polonization should be understood as the participation of the Polish companies in the production and delivery of the goods being provided to Polish government by a particular foreign supplier. Basically, there are two key models of such participation. The main one consists of adapting the acquired systems to Polish requirements with the use of Polish components/subsystems. Consequently, Polonization entails a constant and continuous involvement of the Polish entities in the production of goods being delivered to the Polish Armed Forces. As long as the foreign supplier locates a part of its production in Poland, i.e., it purchases the components or raw materials from the Polish partners (in many cases manufactured by Polish defense industry on the basis of the transfer of technology provided by a foreign supplier), subcontracts assembly (or other) services to Polish subcontractors or uses Polish manpower for the production process, the Polonization requirement can be met. The second model (although this could be rather considered defense R&D works) involves designing by the Polish defense industry an original platform to be integrated with various key components, acquired either off-the-shelf or through licenses from abroad where the key Polish defense industry effort is focused on integrating crucial components within a novel platform, developed specifically with the aim of meeting the distinct requirements of the Polish Armed Forces.

Polonization as such existed in the Polish legal system in the past as an integral part of the offset obligations. The fulfilment of the Polonization commitments was credited against the value of the offset agreement on the same terms as other offset commitments. Recently, the Polish government has been returning to the concept of pure Polonization within the two scenarios described above, in particular in light of offset limitations. As Polonization constitutes a separate (standalone) foreign supplier's obligation imposed as important criteria in evaluating bids (in practice whenever there are no grounds for offset), the Polish government is entitled to provide the Polonization requirement, at least theoretically, irrespective of whether it is necessary for the protection of national security interests or not. Consequently, the Polish government is not obliged (again, at least theoretically) to specify and justify, on a case-by-case basis the security interest that makes a particular polonization requirement necessary and to demonstrate that it cannot achieve the same objective by less restrictive means.



Conclusions/ Executive summary

1. An offset obligation may be imposed on a foreign supplier *"in connection with procurements essential for the State security interests"* only and *"if they (meaning the essential interests of state security) require offset"*. The conclusion of an offset agreement needs to be separately justified by the procuring party on a case-by-case basis proving that the offset is necessary for the protection of the Polish national security interests.
2. Both decisions, i.e., whether a particular procurement is essential for the national security interests of Poland and whether those national security interests (additionally) require an offset obligation to be imposed on foreign supplier(s) are entirely up to the Polish government which solely decides whether to request offset or not. The foreign supplier(s) may only respond to a requirement imposed by the Polish government. Consequently, if the Polish government decides not to request offset, a foreign supplier cannot be accused of failing to meet the offset obligation as it was not imposed on him in the first place. The same applies to the scope of offset requested.
3. The Offset Act does not distinguish between FMS and DCS and consequently offset is permissible in both those scenarios. Despite certain concerns as to the literal wording of the Offset Act, the LOA should be considered an equivalent of a supply agreement which generates an offset obligation to be imposed by the Polish government with offset obligation imposed directly on U.S. defense contractors delivering their respective components to the USG under UCAs.
4. The justification for requesting offset is to be prepared by the MoD upon assessment of the necessity to request offset to protect essential state security interests. The justification prepared by the MoD is submitted to the Council of Ministers. Based on the MoD's justification and upon obtaining the positive opinion of the Offset Committee, the MoD prepares and delivers Offset Assumptions/Guidelines to foreign supplier(s).
5. The Offset Act allows for direct offset only which entails establishing or maintaining certain production, service, repair, and maintenance capabilities in Poland ensuring the required independence of Poland from the foreign supplier by the transfer of technology or know-how to Polish defense industry.
6. The value of the offset agreement is being specified on a case-by-case basis, with respect to a given offset agreement.
7. In the case of non-performance or improper performance of the offset commitment, the foreign supplier is obliged to pay a contractual penalty (liquidated damages) equal to 100% of the value of the non-performed or improperly performed part of the offset commitment. The additional (supplemental) compensation is possible if as a result of non-performance or improper performance of the offset commitments, the Polish government suffers damage exceeding the stipulated contractual penalties (liquidated damages).
8. The Polish government is entitled to demand, no later than on the date of conclusion of the offset agreement, a performance bond in the amount not lower than the value of the offset agreement (100%).
9. The supply contract (including the LOA) may be signed only following the approval of the Offset Agreement.
10. The offset agreement is concluded for a maximum 10-year period and expires at the date when the Polish government acknowledges the performance of all offset commitments by the foreign supplier or upon payment of contractual penalties (liquidated damages).
11. Neither party may terminate or withdraw from a concluded offset agreement.
12. An offset agreement should be governed by Polish law with Polish common courts as an exclusive dispute resolution forum.

13. Apart from (or rather instead of) offset, in particular in light of legal limitations on offset, the Polish government may also impose on a foreign supplier a Polonization requirement. Polonization should be understood as the participation of the Polish companies in the production and delivery of the goods being provided to Polish government by a particular foreign supplier and entails adapting the weapon systems to Polish requirements by the use of Polish components/subsystems. Polonization constitutes a separate (standalone) foreign supplier's obligation and is being imposed as (important) criteria in evaluating bids.

Other issues

There are also some other issues, critical from the point of view a foreign supplier taking part in the offset proceeding, such as: offset offers evaluation criteria, a "potential" / capabilities challenge, liability in practice, value struggles (including available and/or preferred valuation methodologies), or IP rights dilemmas in license agreements.

In order to maintain the confidentiality of these details (that outline of our proprietary knowledge and strategic insights), its detailed content has been intentionally omitted. Further specifics can be disclosed under the appropriate non-disclosure agreements (NDA) to be signed should our discussions progress towards a more concrete collaboration.

We appreciate your understanding and respect for our need to safeguard the unique aspects of our business model.

We will be more than happy to answer any question you may have after reading this brief guide.

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