

ORDER
OF THE MINISTER OF ECONOMY OF THE REPUBLIC OF LITHUANIA

**CONCERNING THE APPROVAL OF THE RULES OF COMPENSATION WHEN
PURCHASING ARMS, AMMUNITION, EXPLOSIVES OR OTHER MILITARY
PURPOSE GOODS AND THE STATUTE AND COMPOSITION OF THE
COMMISSION ON COMPENSATION MATTERS WHEN PURCHASING ARMS,
AMMUNITION, EXPLOSIVES OR OTHER MILITARY PURPOSE GOODS**

22 September 2003 No. 4-355
Vilnius

Following paragraph 3 of Resolution No. 918 of the Government of the Republic of Lithuania of 15 July 2003 on the approval of the procedure of compensation when purchasing arms, ammunition, explosives or other military purpose goods (*Official Gazette*, 2003, No. 71-3232),

I hereby a p p r o v e the hereto attached:

1. The Rules of Compensation When Purchasing Arms, Ammunition, Explosives or Other Military Purpose Goods;
2. The Statute of the Commission on Compensation Matters When Purchasing Arms, Ammunition, Explosives or Other Military Purpose Goods;
3. The composition of the Commission on Compensation Matters When Purchasing Arms, Ammunition, Explosives or Other Military Purpose Goods.

MINISTER OF ECONOMY

PETRAS ČESNA

APPROVED
by Order No. 4-355
of the Minister of Economy of
the Republic of Lithuania of 22
September 2003

**THE RULES OF COMPENSATION WHEN PURCHASING ARMS, AMMUNITION,
EXPLOSIVES OR OTHER MILITARY PURPOSE GOODS**

I. GENERAL PROVISIONS

1. The Rules of Compensation When Purchasing Arms, Ammunition, Explosives or Other Military Purpose Goods (hereinafter referred to as the Rules) regulate the procedure of entering into compensation agreements, submitting and coordinating compensation proposals, supervising the fulfilment of compensation commitments, a Foreign Supplier accounting for the fulfilment of compensation commitments, compensation assessment and application of sanctions in case of the failure to fulfil compensation commitments.

2. The main definitions used for the purpose of these Rules shall correspond to the definitions used in the Procedure of Compensation When Purchasing Arms, Ammunition, Explosives or Other Military Purpose Goods approved by Resolution No. 918 of the Government of the Republic of Lithuania of 15 July 2003 (*Official Gazette*, 2003, No. 71-3232).

II. ENTERING INTO A COMPENSATION AGREEMENT

3. The Foreign Supplier who applies to the Ministry of Economy for entering a Compensation Agreement must be:

3.1. familiarised with the conditions of the compensation requested (requested value of compensation, possible compensation activity and its assessment, terms of compensation, etc.);

3.2. given certain terms for submitting a compensation proposal and other requirements to the submission of compensation proposals.

4. The Ministry of Economy must define the conditions of the requested compensation referred to in paragraph 3.1. of these Rules when the procuring organisation informs it about the procurement in process whose conditions include the requirement to the Foreign Supplier to assume compensation commitments. For defining the conditions of the requested compensation the Ministry of Economy may rely on competent organisations or experts. The conditions of the requested compensation shall be defined:

4.1. following the provisions of the Procedure of Compensation When Purchasing Arms, Ammunition, Explosives or Other Military Purpose Goods and these Rules;

4.2. taking account of the current economic situation in Lithuania and essential procurement conditions.

5. The conditions of the requested compensation must be discussed by the Commission on Compensation Matters When Purchasing Arms, Ammunition, Explosives or Other Military Purpose Goods.

6. The Foreign Supplier taking into consideration the specified conditions of the requested compensation must submit to the Ministry of Economy compensation proposals – a preliminary compensation plan providing for the compensation activities, their scope and the terms of compensation.

7. In case the requested compensation value exceeds 100 million Litas, the Foreign Supplier must indicate specific compensation operations proposed (indicate specific economic entities in Lithuania with which they plan to cooperate) where the proposed compensation value must make at least 30% of all commitments for the requested compensation. In such a case the Foreign Supplier must present documents (preliminary agreements or other documents) certifying the existence of such transactions.

8. The compensation proposed by the Foreign Supplier must meet the conditions for the requested compensation defined by the Ministry of Economy.

9. The Ministry of Economy shall analyse the proposals submitted by the Foreign Supplier: establish whether they conform to the requirements specified in the conditions of the requested compensation, whether the proposed principles of calculating the value of the compensation operations are appropriate and whether multipliers are applicable. For analysing the proposals of the Foreign Supplier the Ministry of Economy may rely on competent organisations or experts.

10. In case the Ministry of Economy rejects the Foreign Supplier's proposal or disagrees with the principles of assessing compensation operations or multipliers proposed by the Foreign Supplier, the Foreign Supplier shall have the right to present additional arguments concerning the relevance of the proposed compensation or its assessment.

11. The provisions of the Compensation Agreement must conform to the provisions of the Procedure of Compensation When Purchasing Arms, Ammunition, Explosives or Other Military Purpose Goods and these Rules. The Compensation Agreement, apart from other provisions, must contain:

11.1. the prominent commitment of the Foreign Supplier to provide compensation and the defined total compensation value;

11.2. defined possible activities and compensation terms;

11.3. defined principles of compensation assessment (conforming to the provisions of Section VI of these Rules);

11.4. consolidated right of the Ministry of Economy to carry out the control of fulfilment of the commitments assumed according to the Compensation Agreement:

11.4.1. to receive the requested documents concerning the fulfilment of compensation operations, and other information about compensation operations being fulfilled or already complete;

11.4.2. to carry out inspections of the fulfilment of compensation commitments at project implementation sites (the Foreign Supplier must ensure the exercise of this right of the Ministry of Economy);

11.5. the defined procedure of the Foreign Supplier's report on the fulfilment of compensation commitments;

11.6. the defined liability of the Foreign Supplier for the failure to fulfil compensation commitments or improper fulfilment of such commitments.

12. The drafted Compensation Agreement must be presented for consideration to the Commission on Compensation Matters When Purchasing Arms, Ammunition, Explosives or Other Military Purpose Goods. The Commission having considered the draft Compensation Agreement and expressed its opinion, the Ministry of Economy shall take the final decision regarding the entering into the Compensation Agreement.

13. The Compensation Agreement must be entered into no later than within 30 days following the day of notification by the Procuring Institution to the Ministry of Economy about the selected Foreign Supplier unless the Procuring Institution and the Ministry of Economy agree on a longer term.

14. The Ministry of Economy and the Foreign Supplier having entered into the Compensation Agreement or the Foreign Supplier having decided not to assume the compensation commitments conforming to the requirements of the Ministry of Economy or having failed to submit appropriate compensation proposals within the set term, the Ministry of Economy must inform the Procuring Institution in writing within 3 working days.

III. PRELIMINARY COORDINATION OF PROPOSED COMPENSATION OPERATIONS

15. In case the Foreign Supplier and the Ministry of Economy have not agreed on specific compensation operations when entering into the Compensation Agreement, before performing such compensation operations the Foreign Supplier must preliminarily coordinate their propriety (as well as the calculation of their value) with the Ministry of Economy. In case the compensation operation is not preliminarily coordinated and the Foreign Supplier includes this operation in the report on the fulfilment of compensation commitments (referred to in paragraph 24 of these Rules), the Ministry of Economy shall have the right to exclude this operation as inappropriate for compensation or to unilaterally establish its value.

16. In the process of preparing to perform a specific compensation operation, the Foreign Supplier must submit a preliminary proposal to the Ministry of Economy containing detailed information about the proposed compensation operation:

16.1. a foreign economic entity that will perform the proposed compensation operation (if they are not the same as the Foreign Supplier);

16.2. an economic entity in Lithuania that benefits from the compensation operation;

16.3. a detailed description of the compensation operation, prospective scope and terms of fulfilment;

16.4. prospective value of the compensation operation together with detailed explanation of its calculation principles;

16.5. proposed compensation multiplier and reasoning of its value.

17. The Ministry of Economy shall analyse the proposals submitted by the Foreign Supplier and determine whether they conform to the requirements set forth in the Compensation Agreement (i.e. whether the proposed operation is appropriate as compensation, whether the proposed principles of calculating the value of the compensation operation and proposed compensation multipliers are acceptable). For analysing the proposals of the Foreign Supplier the Ministry of Economy may rely on competent organisations or experts. Where necessary, the Ministry of Economy may request the Foreign Supplier to provide additional information or explanations.

18. Prior to taking the final decision, the proposal of the Foreign Supplier must be presented to the Commission on Compensation Matters When Purchasing Arms, Ammunition, Explosives or Other Military Purpose Goods that will assess the proposal and provide its opinion.

19. The Commission on Compensation Matters When Purchasing Arms, Ammunition, Explosives or Other Military Purpose Goods having assessed the proposal of the Foreign Supplier and provided its opinion, the Ministry of Economy shall take the final decision concerning the approval of the compensation operation proposed by the Foreign Supplier (including its assessment principles and applicable multipliers). The decision by the Ministry of Economy must be taken no later than within 60 days following the submission of the Foreign Supplier's proposal.

20. In case the Ministry of Economy fundamentally disagrees with the proposal submitted by the Foreign Supplier, the proposal shall be rejected. The Foreign Supplier must be given written notification specifying the reasons for the rejection. The Foreign Supplier shall have the right to provide additional arguments to prove the propriety of the rejected proposal.

21. In case the proposal is deemed fundamentally acceptable, the Foreign Supplier shall be notified about the fact that the completed compensation operation referred to in the proposal shall be considered proper compensation.

22. The Ministry of Economy may request to specify the proposed assessment principles for the compensation operation and compensation multipliers to be applied when assessing the completed compensation operation. In case the Foreign Supplier disagrees with the requirements of the Ministry of Economy, they shall have the right to provide additional arguments concerning the assessment of the compensation operation.

IV. REPORT BY THE FOREIGN SUPPLIER ON THE FULFILMENT OF COMPENSATION COMMITMENTS

23. At the end of every artificial year the Foreign Supplier must account to the Ministry of Economy for the fulfilment of the compensation commitments within this year.

24. Before 1 March the Foreign Supplier must submit a report on the fulfilment of compensation commitments. The report must contain information about compensation operations completed within the reporting year:

24.1. foreign economic entities that performed compensation operations (if they are not the same as the Foreign Supplier);

24.2. economic entities in Lithuania having benefited from compensation operations;

24.3. description and scope of compensation operations;

24.4. values of compensation operations;

24.5. compensation multipliers applicable to specific compensation operations completed.

25. In case a specific compensation operation is not coordinated with the Ministry of Economy in advance or the completed compensation operation fails to conform to the fundamental parameters of the compensation operation coordinated with the Ministry of Economy, all information concerning every such completed compensation operation must additionally be provided subject to be provided when submitting the compensation proposal to the Ministry of Economy (pursuant to paragraph 16 of these Rules).

26. Together with the report the Foreign Supplier must present documents (or their certified copies) certifying the completion of compensation operations.

27. The Ministry of Economy shall analyse the report submitted by the Foreign Supplier and establish whether the compensation operations completed conform to the operations defined in the Compensation Agreement or proposals of Foreign Suppliers approved by the Ministry of Economy or whether they conform to the requirements specified in the Compensation Agreement and whether the principles of calculating the value of compensation operations and compensation multipliers are properly applied. For analysing the reports submitted by the Foreign Supplier the Ministry of Economy may rely on competent organisations or experts.

Where necessary, the Ministry of Economy may request the Foreign Supplier to provide additional information, documents and explanations.

28. Before the final decision concerning the acceptance of the compensation commitments fulfilled by the Foreign Supplier is taken, the report must be presented to the Commission on Compensation Matters When Purchasing Arms, Ammunition, Explosives or Other Military Purpose Goods that will assess the completed operations and provide its opinion.

29. The Commission on Compensation Matters When Purchasing Arms, Ammunition, Explosives or Other Military Purpose Goods having considered the report of the Foreign Supplier and provided its opinion, the Ministry of Economy shall take the final decision concerning the acceptance of the compensation operations completed by the Foreign Supplier. The decision by the Ministry of Economy must be taken no later than within 4 months following the submission of the Foreign Supplier's report.

30. The following stakeholders must be notified about the decision taken within 3 working days:

30.1. the Foreign Supplier. In case the operation completed by the Foreign Supplier is not accepted as the fulfilled compensation commitment (or a smaller part of the commitment than specified in the Foreign Supplier's report is accepted), the Foreign Supplier must be given written notification specifying the reasons;

30.2. the Procuring Institution.

31. The Foreign Supplier having fulfilled all compensation commitments provided for in the Compensation Agreement, the Foreign Supplier and the Ministry of Economy shall sign the Certificate of Fulfilment of Compensation Commitments. The Procuring Institution must be notified about the signing of the Certificate within 3 working days.

COMPENSATION PRIOR TO ENTERING THE COMPENSATION AGREEMENT

32. The Foreign Supplier's activity conforming to the conditions of the requested compensation but completed before entering into the Compensation Agreement may be considered (included in the Compensation Agreement) proper compensation. In such a case the following conditions must be met:

32.1. such a compensation operation cannot be completed before more than 2 years prior to entering into the Compensation Agreement;

32.2. such compensation cannot exceed 30% of all compensation commitments required (defined in the Compensation Agreement).

VI. ESTABLISHING THE VALUE OF COMPENSATION OPERATIONS

33. The following rules shall be followed when establishing the value of a compensation operation:

33.1. in case of ordering (exporting) goods of Lithuanian origin the value of the compensation operation corresponds to the value of these goods. In case over 20% of the value of these goods belongs to the resources of foreign origin (raw materials, components, labour force, etc.), the compensation value must be reduced in proportion with the share of the resources of foreign origin used for creating the goods;

33.2. in case of free transfer of property (technology, practical experience (*know-how*) as well as goods, materials, etc.) to the ownership of the Lithuanian economic entity or providing free training or other services for the Lithuanian economic entity, the value of the compensation operation shall correspond to the value of the property transferred or the service provided;

33.3. other compensation operations (investment, organisation of general manufacturing, participation in research and development projects, etc.) in every separate case shall be assessed separately taking account of the contribution of the compensation operation to the development of the economic activity carried out by the Lithuanian economic entities (it is estimated how

much added value is produced or may be produced in Lithuania due to this compensation operation, how much the realisation of the goods of Lithuanian origin increases or may increase, etc.).

34. Defining the conditions of the requested compensation in every separate case, the Ministry of Economy may specify the values of multipliers and provide for additional cases of multiplier application. The following two conditions must be followed in all cases when assessing a compensation operation:

34.1. one compensation operation may not have over 3 multipliers applied;

34.2. a common multiplier (the product of applied multipliers) applied to one compensation operation may not be bigger than 5.

35. Multipliers applied to the compensation operation completed in advance (as provided for in paragraph 32 of these Rules) shall be reduced by half.

VII. APPLICATION OF SANCTIONS FOR THE FAILURE TO FULFIL COMPENSATION COMMITMENTS

36. In case the Foreign Supplier fails to fulfil compensation commitments provided for in the Compensation Agreement or unduly fulfils them (for example, they are late according to the schedule of fulfilling compensation commitments defined in the Compensation Agreement), the Ministry of Economy:

36.1. may refuse to enter into new Compensation Agreements with this Foreign Supplier;

36.2. shall inform the Procuring Institution about the failure to fulfil compensation commitments (or their unduly fulfilment).

37. The Compensation Agreement may additionally provide for other sanctions which the Ministry of Economy shall have the right to apply to the Foreign Supplier for the failure to fulfil compensation commitments or their improper fulfilment.

COORDINATED

by Letter No. 12-01-15-3846 of 19 September 2003
of the Ministry of Defence of the Republic of Lithuania

APPROVED
by Order No. 4-355
of the Minister of Economy of the
Republic of Lithuania
of 22 September 2003

THE STATUTE OF THE COMMISSION ON COMPENSATION MATTERS WHEN PURCHASING ARMS, AMMUNITION, EXPLOSIVES OR OTHER MILITARY PURPOSE GOODS

I. STATUS AND COMPOSITION OF THE COMMISSION

1. The Commission on Compensation Matters When Purchasing Arms, Ammunition, Explosives or Other Military Purpose Goods (hereinafter referred to as the Commission) is a collegial advisory institution that analyses and assesses the application of compensation requirements when purchasing arms, ammunition, explosives or other military purpose goods from Foreign Suppliers and presenting proposals to the Ministry of Economy with regard to taking decisions related to such issues.

2. The Commission must include representatives of the Ministry of Economy and at least one representative of the Ministry of Defence. The Commission shall also consist of representatives of other stakeholder institutions or organisations the activity goals of which are directly connected to the promotion of the economic development of Lithuania and defending interests of business entities or to organising the procurement of arms or other military purpose goods and materials. The chair of the Commission shall be given to the representative of the Ministry of Economy.

3. The composition of the Commission shall be subject to the approval of the Minister of Economy.

4. In its activity the Commission shall follow the laws of the Republic of Lithuania, other legal acts and this Statute.

II. FUNCTIONS AND RIGHTS OF THE COMMISSION

5. The following shall be the functions of the Commission:

5.1. to present to the Ministry of Economy proposals concerning compensation requirements to be set and principles of compensation assessment;

5.2. to analyse compensation proposals presented by Foreign Suppliers and present conclusions to the Ministry of Economy concerning the propriety of the proposed compensation and its assessment;

5.3. to analyse the proposed drafts of Compensation Agreements and present conclusions to the Ministry of Economy concerning the entering into such agreements;

5.4. to analyse information about the fulfilment of Compensation Agreements and present proposals to the Ministry of Economy concerning the approval of the fulfilment of compensation commitments assumed by the Foreign Supplier as well as the application of sanctions to the Foreign Supplier in cases of the failure to fulfil such commitments or their improper fulfilment.

6. When carrying out the functions assigned to it, the Commission shall have the right:

6.1. to receive information from the Ministry of Economy and the Procuring Institution necessary for the Commission to take a decision;

6.2. to invite to meetings representatives of stakeholder institutions or organisations;

6.3. to create workgroups as well as invite specialists and independent experts for settling complicated issues related to the Commission's functions.

III. WORK ORGANISATION OF THE COMMISSION AND TAKING DECISIONS

7. The Commission shall be headed by the Chairperson of the Commission and in case of their absence – the Deputy Chairperson of the Commission.

8. The Chairperson of the Commission shall:

8.1. organise the work of the Commission and be responsible for the performance of the functions assigned to it;

8.2. where needed, assigns tasks to other Members of the Commission;

8.3. sign minutes of meetings of the Commission and other necessary documents related to the activity of the Commission.

9. The main form of work of the Commission shall be meetings. The Commission meetings shall be convened by the Chairperson of the Commission who shall also approve their place, date and agenda and chair them. The time of the Commission meeting and the list of issues to be considered shall be coordinated with the Members of the Commission no later than 5 working days prior to the Commission meeting.

10. No later than 2 working days prior to the Commission meeting its Members shall be presented the approved agenda of the meeting and the materials of the meeting.

11. The Commission meeting shall be deemed legitimate if at least 2/3 of the Commission Members take part in it. Decisions of the Commission shall be taken by the majority of votes of

the Commission Members present at the meeting on a show of hands. In case of equal votes, the deciding vote shall belong to the Chairperson of the Commission.

12. Representatives of stakeholder institutions or organisations as well as other specialists and independent experts may be invited to participate in the Commission meeting with the right of an advisory vote.

13. Decisions of the Commission shall be drawn in the form of minutes of the Commission meetings. The minutes shall be signed by the Chairperson of the Commission and the Secretary of the meeting. Copies of the minutes shall be given to the Commission Members and the Ministry of Economy.

14. In case the Commission Member (Members) expresses a separate opinion concerning the decision of the Commission, it shall be entered in the minutes of the meeting.

15. The Commission shall technically be maintained by the Ministry of Economy.
