

**D.2.3.1. Capacity Building  
Seminar Report  
Budapest, 17. June 2014**



## D.2.3.1. Capacity Building Seminar Report

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## 1. Capacity Building Seminar

In the framework of the IMAILE project capacity building seminars are to be organised connected to each major milestone of the PCP process. Thus, according to the initial plans, a seminar has been organised to focus on the topic of the preparation of the tender, one connected to Phase 1) Solution Design, one to Phase 2) Prototype-development and one to Phase 3) First test products.

According to the Description of Work of the IMAILE Project, these will take place in M6, M14, M17, and M25 of the implementation.

### 1.1 Brief description

The first capacity building seminar (CBS) took place during the second project meeting in Budapest M6, in connection with the (SC) steering committee meeting, project consortium meeting and the PLE workshop.

Basic information	
Venue:	National Innovation Office's White Room 12. Andrassy street, Budapest, H – 1061
Date:	17.06.2014.

Figure 1: Venue and date of first CBS

### 1.2 Objectives

The IMAILE project consortium has planned to organize capacity building seminars on innovation procurement to learn from PCP experts with significant experience in innovation procurement projects willing to share their experiences concerning methodologies and good practices. The project intends to use these experiences in order to avoid general mistakes and potential pitfalls, which might hinder its implementation. The partnership considers it to be a major advantage to be able to learn from experts and get to know different solutions to the challenges of PCP.

The aim of first CBS was

1. to review the needs assessment methodologies
2. to learn about the legal framework of innovation procurement and IPRs related to software solutions
3. to define a common PLE definition

To discuss these topics in depth, the project partners invited as guest speakers representatives of EU funded PCP projects, namely from Smart@fire and SILVER projects. Local guest speakers have been invited to cover the topic of legal issues of public procurement and IPRs.

### 1.3 Agenda

10:00 – 11:00	Lessons learnt in Smart@Fire: How to run a proper needs analysis? The purpose of the need analysis – <b>Mr. Christophe Veys, IWT</b>
11:00 – 12:00	Good to know: Experiences in Smart@Fire: PCP Framework Contract Preparation and Publication of a PCP call – <b>Mr. Christophe Veys, IWT</b>
12:00-13:00	<b>Lunch</b>
13:00 – 14:00	Lessons learnt in SILVER project: How to run a PCP? Experiences in the different stages – <b>Mr. Jonathan Hazell, SILVER Project Manager, Technology Strategy Board</b>
14:00 – 15:00	New EU Procurement Directives – <b>Ms. dr. Ágnes Varga, Public Procurement Authority, International and Educational Department, tbc.</b>
15:00 – 16:00	Patenting and IPR issues related to Software Development – <b>Mr. dr. Tamás Kovács A., Attorney-at-law</b>

Figure 2: Agenda of the first CBS.

### 1.4 Brief summary of the presentations

#### 1.4.1 Lessons learnt in Smart@Fire

##### How to run a proper needs analysis? The purpose of the need analysis

Project Smart@fire aims at the procurement of personal protective system for fire fighters and first responders. The project was preparing the tender documentation at the time of CBS (Pre-phase 1).

Mr Veys presented

- the **methods and techniques used during the needs assessment** of the pre-commercial procurement of project Smart@fire,
- the lessons learnt during the implementation,
- his recommendations for the IMAILE Consortium.

##### Mr. Christophe Veys:

- Senior Legal Expert in Innovation procurement
- Programme Director of IWT (Knowledge Centre Procurement of Innovation at the Flemish governmental Innovation Agency).
- Coordinator of the Smart@fire project.

Methods and techniques

- The Smart@fire Consortium launched a survey among the potential end users of the intended solution receiving an answer from approx. 4000 respondents. The responses were collected from the network of project partners.
- The survey was intended to specify the expectations of the firefighters and first respondents concerning personal protective equipment (PPE).
- Answers to the open question of the survey were used to structure use cases.
- Fibonacci planning poker method has been used for the evaluation of the use cases. Respectively 70 fire fighter officers have been involved in the evaluation of the responses.
- Planning poker is one of the best methodologies to estimate e.g. added value, level of complexity, required implementation effort and risk. It is based on domain expert evaluation and aims at attaining consensus. The experts are to use score cards to evaluate



the specific features of the subject. The cards are marked with the following scores: 0, 1/2, 1, 2,3,5,8,13,20,40,100 and one with a question mark.

Interpretation of Fibonacci poker planning into risk assessment	
0	There is no reason to worry
2-3	Frequent, manageable problem
5-8	Significant problem that requires attention.
13	It is an extraordinary problem that requires experts and specialist.
100	It is impossible to solve the problem.
?	The jury has no information about this issue.

Figure 3: Example for the Fibonacci planning poker method

#### Lessons learnt

- PCP must contain three individual phases, namely: solution design, prototype development and testing of first batches. Less than three phases are not accepted by the EC. Initially the Smart@fire project intended to realize the PCP with only two phases.
- RTD is to contain research and development activities, except engineering. The suppliers cannot charge the procurers for only existing solutions, or licenses. More than 50% of the charges must be RTD. The remaining part is most likely to be license fee.

Mr. Veys has stressed that the adaptation of already elaborated and accepted methods might help to avoid mistakes, which have been hindering PCP projects.

#### Recommendations

- IMAILE's PCP budget should be more concentrated on prototyping and testing of first batches rather than the solution design.
- IMAILE should regulate the cost/price of the final solution. The suppliers won't be interested in a PCP project if they cannot develop a marketable product. Therefore the price of the final product, its new features should be kept attractive.
- In exchange of the giving up the IPRs, the procurers can have a discount price on the final product in the PPI.

### 1.4.2 Good to know: Experiences in Smart@Fire

#### PCP Framework Contract Preparation and Publication of a PCP call

Mr. Veys presented his experiences in the preparation of PCP Framework Contract and the legal aspects of tender publishing.

#### Framework Contract

Smart@Fire had to comply with a rather wide set of rules and regulations that all had to be reflected by the framework document of the project. Although most of the regulations for environment standards, functional specifications and standards, radio and communication compatibility requirements, medical standards or material related directives were known for vendors expected to



show interest for the PCP call, Smart@Fire had to face the fact that for ICT solutions no harmonized standards and directives existed.

As a result, the central question within the project context was if the potential innovation can be realized within the boundaries of known harmonized standards and directives at all. Smart@Fire coped with the challenge by studying the legal frameworks of the partner countries in order to identify legal obstacles in advance and covered these question in the documents elaborated within the project.

### Conclusions

- The aim of the framework agreement is to legally bind all suppliers during all the phases of the innovation procurement, therefore it is crucial that it incorporates all conditions before the launch of the Pre-Commercial Procurement.
- Procurers must clearly define the functional requirements of the expected solution that is to be the part of the tender document.
- It is important to know the legal aspects of PCP. The suppliers will request for all kind of information, they will be especially interested in the legal constrains.
- Evaluation procedure of PCP must be considered as a time consuming process.
- End of phase evaluations also have to be taken into account
- The procurers should plan the whole evaluation process in advance.
- An assessment board should be set up, involving internal and external experts.
- The tender must be published in the native language of the lead procurer and in English.

As part of the session, the participants were divided into 4 groups, the group receiving the task of developing a challenge brief, an ITT (Invitation To Tender), the financial aspects and a framework agreement respectively.

Christophe Veys's presentations are available as Appendix 1.

### **1.4.3 Lessons learnt in SILVER project:**

#### **How to run a PCP? Experiences in the different stages**

Mr. Jonathan Hazell presented the lessons learnt during the implementation of project SILVER, Supporting Independent Living for the Elderly through Robotics.

Project SILVER started in January 2012 and is planned to run for 56 months. This is the first project that has ever launched a second phase of PCP.

Mr. Hazell presented the SILVER project's needs assessment, market consultation, the process of elaborating the tender documentation and publication, evaluation and assessment procedures

Needs assessment and Market consultation

#### **Mr. Jonathan Hazell**

- Strategic Account Manager
- Project coordinator at Technology Strategy Board (UK) – North Star House



- SILVER received the recommendation from the EC to show further evidence that there is no available solution on the market able to satisfy the needs of end users.
- In the framework of the project, each participating country carried out their own individual needs assessment. The results were combined at a workshop and a common ground was established.
- The aim of the market consultation was to engage the suppliers and acquire information on their already available products. Project SILVER used a survey with 4-5 specific questions to gather the required information, receiving 33 responses from 12 countries.
- Although SILVER has used patent search for its market analysis, it had to conclude, that it is almost impossible to do patent searches without defining technologies. Unfortunately, within PCP procurers are looking for a solution to a problem and not for a given technology, and thus SILVER could not define the specifications (technology description) required for a sound patent-search.





## Tender documentation

- SILVER has developed a set of documents for its PCP call: an Invitation to Tender, a Challenge Brief, a Guide, a Tender Form, a Framework Agreement and an official template for Questions and Answers
- Project SILVER treated it as crucial to develop a transparent PCP documentation during the whole trajectory. It has set the financial conditions for each phase in advance in line with the requirements of the EC.
- SILVER also organised “tender information sessions” after the launch of the tender.
- The information session was followed by a stand still period with no communication between the contracting authority and the suppliers.

## Evaluation and assessment

- SILVER Consortium created the position of a monitoring officer, who has been responsible for the monitoring of activities, milestones and awarding of contracts. The officer had a separated budget to travel to the suppliers and manage its duties.
- SILVER Consortium used an FTP server as communication tool during the evaluation process as a secure way of communication and file sharing between the consortium and the evaluators.
- Evaluation has been carried out in form of a face to face meeting in London with Procurers and External Experts
- Previously, SILVER has developed a detailed and documented process and a balanced assessment criteria
- Although SILVER has allocated the same amount of money for all suppliers, the contracted amount was equal only with the offered bid, as a result of which it has realised significant savings, which it has been able to utilize in and for later phases. Luckily, this option has been left open in the Framework Agreement.
- For the 2<sup>nd</sup> Phase, SILVER used less assessors, assuming that for the 2<sup>nd</sup> round a smaller human resource base will suffice to carry out the assessments. Unfortunately the staff dedicated to the task proved to be insufficient in number, a situation that has been made even worse by one of the chosen assessors reporting an inability to take part in the process with a short notice.
- For the 2<sup>nd</sup> Phase SILVER has removed price from minimum criteria to improve balance between impact and quality criteria

## Recommendations

- A template should be developed to support needs assessment and market consultation
- The needs assessment should be planned taking in account the time demand of the chosen approach.
- Market consultation activity although time consuming, is worth the time, to pre-inform the suppliers about the project and the upcoming call for tender.
- The Consortium should utilize its available internal expertise and set up a core team with the key expertise in order to implement a successful PCP.
- Having a reserve list of experts can save time and secure a smooth evaluation process.

- The assessors need a common understanding, therefore they need guidance, a short briefing on how to use the standard evaluation form

Mr. Jonathan Hazell's presentation is available as Appendix 2.

#### 1.4.4 Seminar on EU Procurement Directives

The third speaker, Ms. Dr. Varga presented the new EU Procurement Directives and the legislative framework of procurements, especially innovation procurements.

Ms. Varga summarized the regulations of the old Directives focusing on the technical specifications, variants, evaluation criteria, negotiation procedures, competitive dialogue and the R&D exclusion, that is concerning PCP, but also pointed out that Europe 2020 is to reform the public procurement throughout the Single Market Act and an e-Procurement reform package.

The Single Market Act is to provide the framework and the tools for implementing the reforms. "Revised and modernised public procurement legislative framework, with a view of underpinning a balanced policy which fosters demand and environmentally sustainable socially responsible and innovative goods, services and works." The reform package aims at the simplification of procurement procedures, the strategic use of results, the better access for SMEs, and sound procedures.

The new Directives are the:

- Directive 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL – on public procurement and repealing Directive 2004/18/EC
- Directive 2014/25/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL – on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC
- Directive 2014/23/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL - on the award of concession contracts

Although these directives have entered into force on 17.04.2014, the transposition deadline is set to 17.04.2016. Thus, the new Directives may not concern the present innovation procurement.

She highlighted the possible innovation procurement solutions defined by the new legislative framework. Pre-Commercial Procurement will still be available, although Innovation Partnership is offering a simplified solution. However, other possibilities will also be available like the "light regime", that is recommended for the procurement of social or health related services, while "cross-border joint procurement" is to be used by Contracting Authorities in order to facilitate their cooperation.

Ms Varga's presentation is available as Appendix 3.

#### Ms. Dr. Agnes Varga

- deputy head of Hungarian Public Procurement Authority, International and Educational Department

### 1.4.5 Seminar on Intellectual Property Rights

Mr Dr. Kovács presented the patenting and IPR issues related to software development.

Software is legally protected by (1) a range of Intellectual Property Rights (IPR), and in many cases by (2) contractual agreements. A computer program is automatically protected by copyright as a work. It may also be the subject of a granted patent, which in turn may or may not be valid.

#### Mr. Dr. Tamas Kovacs

- attorney in law
- specialized in IT/IP law matters
- experience in assisting major as well as SME IT firms in their day to day operations

The primary form of protection for software is copyright. Software, including operating systems and other software, is defined as a type of work. Software is defined by statutory law as the computer program and related documentation. The computer program is entitled to such protection irrespective of its form: source code, object code, or any other form.

Copyright is an exclusive right, which means that unless (1) permission has been granted by the rights holder, or (2) copyright in the work has expired, or (3) an exception applies, it is an infringement to use them without appropriate licences.

The rights related to copyright protection may be divided in two main categories and described with the following main elements of protection:

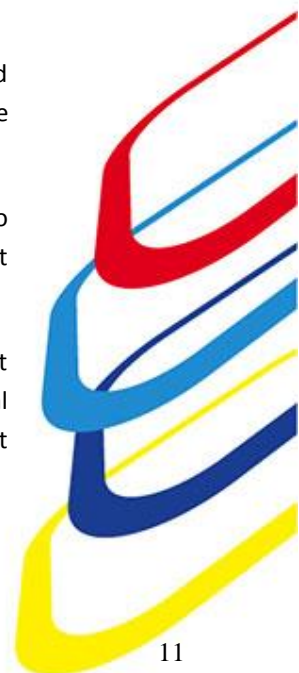
1. Personal rights of the author. These rights belong to the author irrespective of any transfer of the economic rights of the software.
2. Economic rights pertaining to the software. Economic right of the software may be transferred to a third party. Such transfers, or authorizing uses by third persons is done primarily by means of licensing agreements. Provisions in such license agreements are likely to specify authorized uses and conditions for such use, including the exercising of personal rights of the authors. Such agreements often regulate the payment of royalties, the right to which may be waived with explicit statement only.

Licensing agreements may take up various forms: it may be individual agreements, or incorporated in software development agreements, support agreements, licensing agreements, franchise agreements or various other forms of contract.

If the software is also protected by patent, and if that patent is valid, it would be an infringement to distribute any software, which performs a function covered by the patent claim, even if it is not copied (i.e. the software has been independently produced).

Patent is a limited means of IPR protection of software products, since according to relevant jurisprudence, software as such may not be patented within Europe. However, extensive legal practice exists for patenting complex works which include some sort of hardware/other element beyond the software element.

Mr. Kovács's presentation is available as Appendix 4.



## 1.5 Results

The Consortia members within the framework of the 1<sup>st</sup> CBS have learned about

- the **methods and techniques used during the needs assessment**
- **how market consultation shall be organised**
- **how tender documentation shall be elaborated**
- the important elements to prepare the evaluation
- the legislative framework of PCP
- IPR issues related to software development

A conclusion is that the participants acknowledged that although every PCP project is different and – besides, the legal framework - there is no clear-cut way for the implementation. Therefore the methodologies and experiences of other organizations will be of immense value for the IMAILE project and needs to be incorporated in the agenda of the coming CBSs.

**Key message 1: The innovation procurement and the procurers must be well prepared. If the preparation requires more time, then rather postpone the call for proposal instead of publishing insufficient innovation procurement tender document.**

**Key message 2: Every PCP project Consortia have to capitalize the internal expertise. If there is a lack of expertise, external experts must hired to carry out the special task, otherwise the project is to suffer serious delays.**

**Key message 3: Investing into innovation procurement is not only challenging, but also requires a lot of preparation and time. However some tasks might look like extremely time consuming and requires extra resources, this is the price of being a pioneer in the field of innovation procurement.**





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## 2. Appendixes

### Appendix 1)

Please find below the following link to get access to the external appendix:

[Mr. Christophe Veys's presentation](#)

### Appendix 2)

Please find below the following link to get access to the external appendix:

[Mr. Jonathan Hazell's presentation](#)

### Appendix 3)

Please find below the following link to get access to the external appendix:

[Ms. dr. Agnes Varga Presentation](#)

### Appendix 4)

Please find below the following link to get access to the external appendix:

[Mr. dr. Tamas Kovacs's presentation](#)

