

## Innovation Procurement - EU Member States factsheet

### Belgium

#### Innovation Procurement legal framework

- Loi relative aux marchés publics, in force since June 17th, 2016 → Article 32 EXCLUDES the purchase of R&D services of its scope (PCP).
- Market Consultations → YES
- Subcontracting → YES
- IPR allocation to contractor by law → YES!
- National/regional Innovation structure → YES
- National policy to stimulate PCP → NO (regional)
- Spending target for IP → NO (regional and local)

#### Joint Procurement legal framework

- Joint procurement regulated at national and international level.
- Institutionalized and occasional joint cross border
- CPB: the Central Procurement Body for the Federal Services

#### Conclusions

- CLEAR EXCLUSION OF PCP of the scope of the Belgian law.
- Inclination for IP → Flemish region, Brussels region + Ghent and Antwerp
- Default IPR regime favours innovation

### Finland

#### Innovation Procurement legal framework

- Act on Public Contracts and Concessions and Act on Public Contracts and Concessions of Entities Operating in the water, energy, transport and postal services sectors → EXCLUDES the purchase of R&D services of its scope (PCP).
- Market Consultations → YES!
- Subcontracting → YES
- IPR allocation to contractor by law → INDIRECTLY: General Terms of Public Procurement in Service Contracts and General Terms of Public Procurement in Supply Contracts
- National/regional Innovation structure → YES!
- National policy to stimulate PCP → YES!
- Spending target for IP → YES!

#### Joint Procurement legal framework

- Joint procurement regulated at national and international level
- Institutionalized and occasional joint cross border
- CPB: Hansel Ltd

#### Conclusions

- CLEAR EXCLUSION OF PCP of the scope of the Finnish law.
- Strong inclination for IP
- Default IPR regime INDIRECTLY favours innovation



## France

### Innovation Procurement legal framework

- Code de la Commande Publique in force since April the 1st 2019 → Article L2512-5 (2°) 2° EXCLUDES the purchase of R&D services of its scope (PCP).
- Market Consultations → YES
- Subcontracting → YES
- IPR allocation to contractor by law → INDIRECTLY: Cahiers des clauses administratives générales et techniques (general terms and conditions for government contracts)
- National/regional Innovation structure → YES
- National policy to stimulate PCP → INDIRECTLY
- Spending target for IP → INDIRECTLY (the State Purchase Plan)

### Joint Procurement legal framework

Joint procurement regulated at national and international level.  
 Institutionalized and occasional joint cross border  
 CPB: Union des groupements d'achats publics

### Conclusions

- CLEAR EXCLUSION OF PCP of the scope of the French law.
- Inclination for IP
- Default IPR regime INDIRECTLY favours innovation

## Germany

### Innovation Procurement legal framework

- Gesetz gegen Wettbewerbsbeschränkungen – GWB: Vergabe von öffentlichen Aufträgen und Konzessionen → Article 116 (1.2) EXCLUDES the purchase of R&D services of its scope (PCP).
- Market Consultations → YES
- Subcontracting → YES
- IPR allocation to contractor by law → NO (in tender documents)
- National/regional Innovation structure → YES!
- National policy to stimulate PCP → NO
- Spending target for IP → NO

### Joint Procurement legal framework

Joint procurement regulated at national and international level.  
 Institutionalized and occasional joint cross border  
 4 CPB: BeschA, BAAINB, BAM, BFD Südwest

### Conclusions

- CLEAR EXCLUSION OF PCP of the scope of the German law.
- Inclination for IP
- Default IPR regime DOES NOT favour innovation



## Greece

### Innovation Procurement legal framework

- Law 4412/2016 on public works, supplies, and service contracts transposes Directives 2014/24 and 2014/25 EU and Law 4413/2016 on award and execution of transposes Directive 2014/23/EU. → Art. 14 of Law 4412/2016 EXCLUDES the purchase of R&D services of its scope (PCP). Law 4310/2014, article 2, paragraph 41 defines PCP
- Market Consultations → YES (not regulated)
- Subcontracting → YES (article 58 of Law 4412/2016, the contracting authorities shall request the tenderer to indicate in his tender the part of the contract which he intends to award to third parties and the subcontractors he proposes).
- IPR allocation to contractor by law → NO (in tender documents)
- National/regional Innovation structure → YES!
- National policy to stimulate PCP → YES
- Spending target for IP → NO

### Joint Procurement legal framework

- The Greek public procurement legislation does expressly allow joint cross border procurement. Indeed, according to article 43 paragraph 5 of Law 4412/2016, the participating contracting authorities shall agree on the applicable procurement rules.
- GC, GDP, National PB, SPPA

### Conclusions

- CLEAR EXCLUSION OF PCP of the scope of the Greek law.
- Lack of IPR policy in public procurement that encourages innovation.

## Italy

### Innovation Procurement legal framework

- Decreto Legislativo 18 aprile 2016 n. 50. → DEFINES PCP + Article 158 EXCLUDES the purchase of R&D services of its scope (PCP).
- Market Consultations → YES!
- Subcontracting → YES!
- IPR allocation to contractor by law → INDIRECTLY (referral to 2007 PCP Communication)
- National/regional Innovation structure → YES!
- National policy to stimulate PCP → NO
- Spending target for IP → NO

### Joint Procurement legal framework

- Joint procurement regulated at national and international level.
- Institutionalized and occasional joint cross border
- CPB: CONSIP + regional and local level 32 CPBs

### Conclusions

- CLEAR EXCLUSION OF PCP of the scope of the Italian law + Definition of PCP
- Inclination for IP
- Default IPR regime INDIRECTLY favours innovation



## Lithuania

### Innovation Procurement legal framework

- Law on Public Procurement + Decree No 709 → DEFINES PCP + Article 2(14) and 15 EXCLUDE the purchase of R&D services of its scope (PCP).
- Market Consultations → YES (mandatory in certain cases)
- Subcontracting → YES!
- IPR allocation to contractor by law → NO (in tender documents)
- National/regional Innovation structure → YES!
- National policy to stimulate PCP → NO
- Spending target for IP → YES!

### Joint Procurement legal framework

Joint procurement regulated at national and international level.  
 Institutionalized and occasional joint cross border  
 CPB: Central Purchasing Organisation

### Conclusions

- CLEAR EXCLUSION OF PCP of the scope of the Lithuanian law + Definition of PCP
- Strong inclination for IP
- Default IPR regime DOES NOT favour innovation

## Netherlands

### Innovation Procurement legal framework

- Aanbestedingswet 2012 → Article 2.24 EXCLUDES the purchase of R&D services of its scope (PCP).
- Market Consultations → YES!
- Subcontracting → YES
- IPR allocation to contractor by law → NO (in tender documents)
- National/regional Innovation structure → YES!
- National policy to stimulate PCP → YES!
- Spending target for IP → YES!

### Joint Procurement legal framework

Joint procurement regulated at national and international level.  
 Institutionalized and occasional joint cross border  
 NO CPB

### Conclusions

- CLEAR EXCLUSION OF PCP of the scope of the Dutch law
- Strong inclination for IP
- Default IPR regime DOES NOT favour innovation



## Poland

### Innovation Procurement legal framework

- Public Procurement Law → Articles 7 (6) and 11 (3) EXCLUDE the purchase of R&D services of its scope (PCP).
- Market Consultations → YES!
- Subcontracting → YES
- IPR allocation to contractor by law → NO (in tender documents)
- National/regional Innovation structure → YES!
- National policy to stimulate PCP → INDIRECTLY (Purchasing Policy)
- Spending target for IP → NO

### Joint Procurement legal framework

Joint procurement regulated at national and international level.

Institutionalized and occasional joint cross border

CPB: Government Administration Service Centre + at regional and local level

### Conclusions

- CLEAR EXCLUSION OF PCP of the scope of the Polish law
- Strong inclination for IP
- Default IPR regime DOES NOT favour innovation

## Slovakia

### Innovation Procurement legal framework

- Public procurement Act 343/2015 → Articles 2(5.1) and 1(2.d) EXCLUDE the purchase of R&D services of its scope (PCP).
- Market Consultations → YES!
- Subcontracting → YES
- IPR allocation to contractor by law → NO (in tender documents)
- National/regional Innovation structure → YES
- National policy to stimulate PCP → NO
- Spending target for IP → NO

### Joint Procurement legal framework

Joint procurement regulated at national and international level.

Institutionalized and occasional joint cross border

3 CPB: Ministry of Health, Ministry of Interior, Ministry of Investments, Regional development and Informatisation

### Conclusions

- CLEAR EXCLUSION OF PCP of the scope of the Slovak law
- Inclination for IP
- Default IPR regime DOES NOT favour innovation



## Spain

### Innovation Procurement legal framework

- Ley 9/2017 de Contratos del Sector Público → Article 8 EXCLUDES the purchase of R&D services of its scope (PCP).
- Market Consultations → YES (exceptionally economic operators active in the market)
- Subcontracting → YES
- IPR allocation to contractor by law → NO (in tender documents)
- National/regional Innovation structure → YES
- National policy to stimulate PCP → NO
- Spending target for IP → NO

### Joint Procurement legal framework

NO clear joint procurement legal framework at national and international level.  
 CPB: INGESA

### Conclusions

- CLEAR EXCLUSION OF PCP of the scope of the Spanish law
- Inclination for IP
- Default IPR regime DOES NOT favour innovation

## Conclusions

Country	Exclusion of PCP	Definition of OMC	Clear allocation of IPRs	Policies and initiatives regarding innovation procurement	Clear joint procurement legal framework
Belgium	1	1	1	1	1
Finland	1	1	1	1	1
France	1	1	1	1	1
Germany	1	1	0	1	1
Italy	1	1	1	1	0
Lithuania	1	1	1	1	1
Netherlands	1	1	0	1	1
Poland	1	1	0	1	1
Slovakia	1	1	0	1	1
Spain	1	1	0	1	-1

- -1 indicates that the particular feature is not present in the legal framework.
- 0 indicates that the feature is present in the legal framework but not favourable to innovation procurement.
- 1 indicates that the feature is present in the legal framework and favourable to innovation procurement.
- Green indicates that the feature is present in the legal framework and extremely favourable to innovation procurement.

