

# Belgium



## Governance and legal framework

In Belgium, public procurement is regulated by the national Public Procurement Act<sup>1</sup>, which came into force first 17 June 2016 (with some later additions). It regulates the public procurement procedures for all types of public procurers and transposes into national legislation all the EU public procurement Directives 2014/24/EU, 2014/25/EU, 2014/23/EU and 2009/81/EC.

Belgium is a federal state with decentralised authority, including over procurement, shared among the central government and the three regions: Wallonia, Flanders, and the Brussels-Capital Region. Public procurement is regulated at the federal level by a procurement law, and each region has a certain level of flexibility for interpreting and implementing the legislation.

The number of public procurements launched in 2015 accounted around 14% of the national GDP.<sup>2</sup> Belgian federal system disperses procurement authority across approximately 5,000 contracting authorities spread among the three regions, the provinces, the municipalities, and other public entities.

The key institutions in the federal public procurement system are the **Federal Public Service Chancellery of the Prime Minister**, the **Central Procurement Body for the Federal Services**, and the **Purchasing Advice and Policy Unit (ABA-CPA)**. The Federal Public Service Chancellery of the Prime Minister is responsible for the preparation, coordination, and monitoring of public procurement legislation, as well as the development of e-procurement. In particular, the Chancellery acts as a secretariat of the Commission for Public Procurement which is a specialised advisory body composed of representatives from the federal authority, federated entities, public corporations, supervision bodies, and representatives of businesses and trade unions. The Central Procurement Body for the Federal Services (CMS-FOR) negotiates contracts on behalf of the federal state. It is composed of 11 sector specific units specialising in insurance, fuel, hygiene, IT, furniture, office supplies, telecommunication, drinks and snacks, cars, and light commercial vehicles. The ABA-CPA gives support to the federal staff and accompanies them through the contracting process by providing advice to purchasing departments.<sup>3</sup> Finally, the **Federal Public Service Policy and Support (BOSA)** pools the support services in several areas, including public procurement, and manages the Public Procurement portal<sup>4</sup>.

With regards to innovation procurement, there is no dedicated policy, action plan or initiatives yet at **national level**, although there are signals that there federal level is preparing itself to create a national competence center on innovation procurement.

**At the regional level**, the largest region in Belgium, the Flemish region, has an advanced policy and legal framework for innovation procurement. Its Government adopted a structured and comprehensive program - **Programme for Innovation Procurement (PIO)** - to finance innovation procurement, support local authorities and rise competences. The Walloon region has identified the importance of innovation procurement but has not setup dedicated activities yet. The Brussels region has also started to experiment with its first innovation procurements since 2018.

**At the local level**, the cities of Ghent and Antwerp are the most active and have set a target to spend 10% of their ICT public procurement budget on innovation procurement.

## Policy framework benchmarking

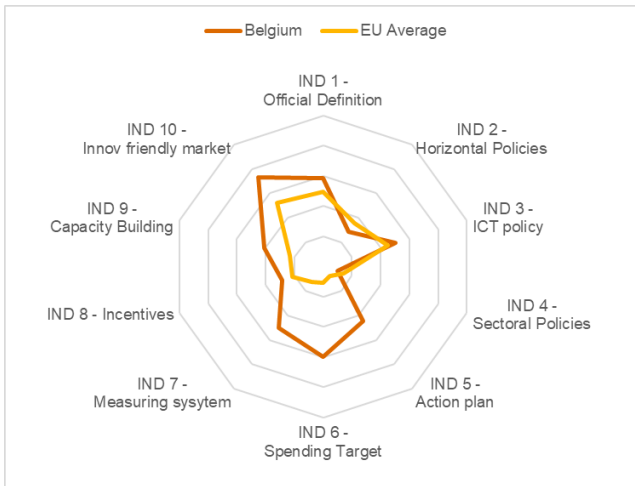
Belgium is among the good performing countries in implementing a mix of policy measures that are conducive for mainstreaming innovation procurement. In the overall ranking, Belgium is at the 4<sup>th</sup> position with a total score of 44.4%.

<sup>1</sup> [http://www.publicprocurement.be/sites/default/files/documents/2013\\_06\\_17\\_loi\\_recoeurs\\_wet\\_verhaal\\_vers\\_2018.pdf](http://www.publicprocurement.be/sites/default/files/documents/2013_06_17_loi_recoeurs_wet_verhaal_vers_2018.pdf)

<sup>2</sup> <https://stats.oecd.org/Index.aspx?QueryId=78413>

<sup>3</sup> [http://ec.europa.eu/regional\\_policy/sources/policy/how/improving-investment/public-procurement/study/country\\_profile/be.pdf](http://ec.europa.eu/regional_policy/sources/policy/how/improving-investment/public-procurement/study/country_profile/be.pdf)

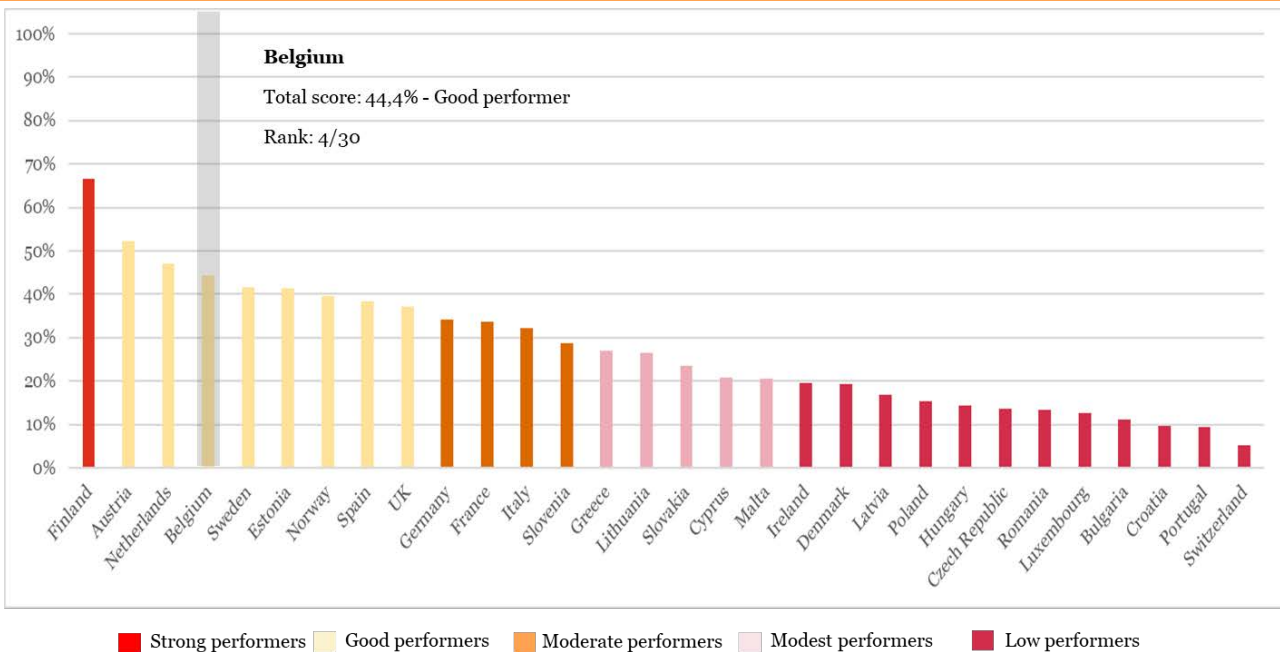
<sup>4</sup> <http://www.publicprocurement.be/fr>



**Strengths:** The Flemish region has a structured innovation procurement policy which can be a good practice example for developing it also in other Belgian regions and at federal level. The federal/national level clearly anchored a default IPR regime that promotes innovation into public procurement law.

**Weaknesses:** At federal level and in other Belgian regions than Flanders, innovation procurement policy is at a very early stage, with no active support to procurer to enhance the use of innovation procurement (lack of national competence center, action plan / spending target, capacity-building activities, etc).

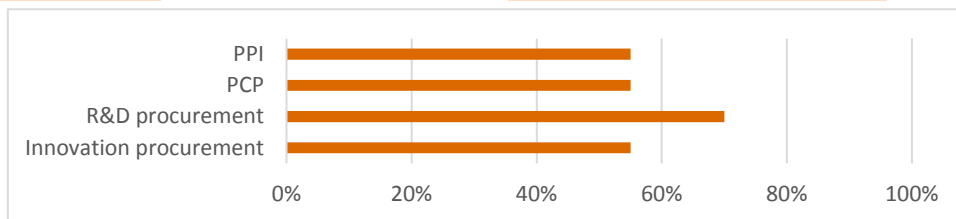
### Overall ranking



### Overview per indicator

#### Indicator 1 – Official definition

**Total score** 59% **EU Average** 50%



In the Belgian public procurement legislation, there are clear official definitions for innovation but not for innovation procurement, R&D, Pre-Commercial Procurement (PCP) and Public Procurement of Innovative solutions (PPI). The Belgian Public Procurement Act identifies research and development by listing the CPV codes that correspond to R&D, but there is no full sentence definition for R&D or for the R&D categories that match these CPV codes. Regarding PCP, the Belgian Public Procurement Act provides a clear legal basis for implementing PCP (although without giving an explicit definition for PCP). The definitions of Innovation procurement, R&D, PCP and PPI are also provided by the

Flemish action plan for innovation procurement. These definitions are compliant with the EU official definitions but they are only applicable at regional level. Therefore, the total score of this the indicator is 59%.

Art 2(32) of the Belgian Public Procurement Act has literally transposed the **definition of Innovation** from the EU public procurement directive as "*the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations inter alia with the purpose of helping to solve societal challenges or to support the Europe 2020 strategy for smart, sustainable and inclusive growth*". This definition is applicable to all types of public procurers across the whole country. Hence, the score for this sub-indicator is 55%.

Although there is no full sentence definition for the notion of **Research and Development** in the Belgian Public Procurement Act, Article 32 of the Act identifies R&D as activities that have the CPV codes for fundamental research, applies research and industrial development. This article also transposes the exclusion for R&D services, which forms the **legal basis for implementing PCP** in Belgium. Art 32 defines that the Act is only applicable to public service contracts for "*research and development services which are covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 provided that both of the following conditions are fulfilled: (a) the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, and (b) the service provided is wholly remunerated by the contracting authority.*" Art 108(4) of the Belgian Public Procurement Act defines that the exclusion for public procurements of R&D services that do not meet those two conditions simultaneously applies to all types of public procurers in Belgium, thereby providing a clear legal basis for all types of public procurers in Belgium to implement pre-commercial procurement. R&D procurement is also defined in the Flemish PIO guidance in line with EU definition.

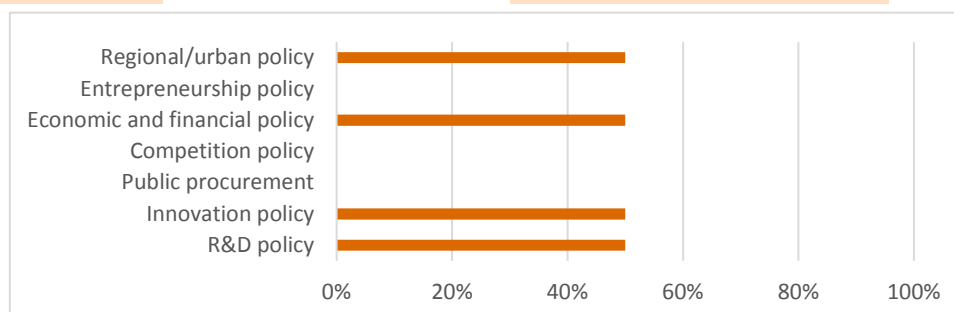
The definitions of all types of innovation procurement are presented in the Flemish action plan for innovation procurement published on the website of PIO, the **Innovative Public Procurement Program of the Flemish Region**.<sup>5</sup>

In particular, **PPI is defined** as follows: "*In public procurement for innovation, the contracting authority purchases innovative solutions. We speak of innovative solutions when the products or services have already (fully or partially) developed, but are not yet widely distributed (<20% market share). A government contract for innovation can follow a pre-commercial purchase process. The purchase of the innovative solution developed in the R&D phase is then proceeded. However, the purchase of the developed innovative solution involves a separate, new procedure. It is also possible that the supplier of the innovative solution in the PPI is not the entrepreneur who was involved in the PCP project. A validation phase can be linked to a government contract for innovation.*" Hence, the score for this sub-indicator is 55%.

While it **defines PCP** as: "*PCP stands for 'Pre-Commercial Procurement'. Pre-commercial purchases concern the purchase of research and development services (R & D services). The R & D services to be purchased are application-oriented. This could involve devising concrete innovative solutions and feasibility studies, the development and testing of prototypes and possibly the development of a limited series of products or services for testing purposes. Excluded are commercial activities such as volume production, customization and routine improvements to existing products or services. Typically, the purchasing government and the executive company (s) share both the costs and the results (the intellectual property) of the R & D. Unless otherwise stipulated, the company receives the intellectual property, while the purchasing authority obtains usage and / or license rights. Provided that the purchase process guarantees maximum competition, transparency, fairness and pricing to market conditions, the purchase of R & D falls outside the Public Procurement Act.*" Therefore the score for this sub-indicator is 55%.

## Indicator 2 – Horizontal policies

**Total score** 29% **EU Average** 36%



At national level, no horizontal policy recognises the role of innovation procurement. However, innovation procurement is recognised as a strategic tool in four horizontal policies at regional level. Therefore, the total score of this indicator is 29%.

At regional level, in Flanders, financial policy is the only area in which it is not currently present any active support to innovation procurement. Two horizontal policies are currently enabling innovation procurement in the region. This is

<sup>5</sup> <http://www.innovatieveoverheidsopdrachten.be/gids-voor-innovatieve-overheidsopdrachten>;  
<http://www.innovatieveoverheidsopdrachten.be/begrippenkader>

also due to the **Coalition Agreement 2014-2019 of the Government of Flanders**<sup>6</sup>, which gives a significant boost in this regard. Under innovation and R&D policy, for instance, the Flemish STI policy (Science, Technology and Innovation) lists innovation procurement among its strategic objectives.<sup>7</sup>

The Brussels-Capital region integrated in its 2012 "**Regional Plan for Innovation**"<sup>8</sup> the objective of developing innovation procurement schemes by 2013-2014 and other short-term and longer-term measures to be undertaken. Longer-term measures (2014-2020) connected to innovation procurement include: sensibilisation of Brussels public procurers to integrate innovation into their procurements; development of a new permanent instrument for supporting innovation procurement; informing Brussels procurers/enterprises about the specificities of innovation procurement; creating cooperation between innovation procurement projects at Belgian and European level.

In addition, the "**Walloon and Brussels joint Strategy for Research 2011-2015**"<sup>9</sup> indicates that public procurement will support the demand for R&D services. The health, transport and energy sectors and alignment with initiatives at European level are identified as particularly important. There is however no concrete innovation procurement action plan yet in Wallonia.

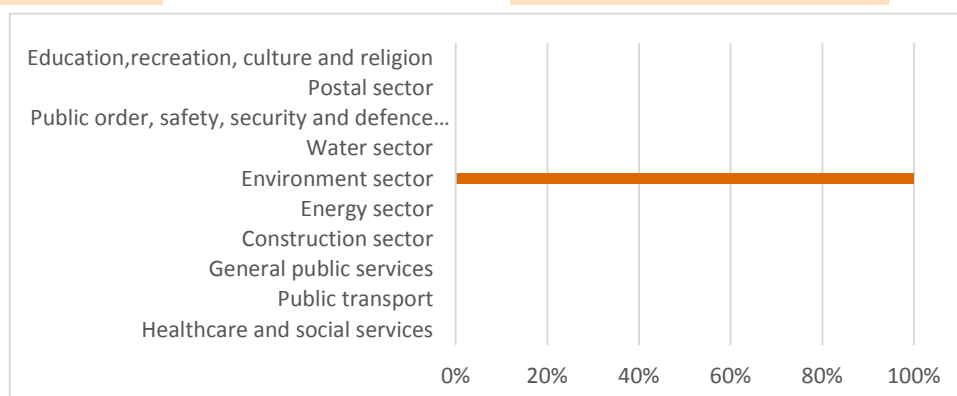
### Indicator 3 – ICT policies

<b>Total score</b>	50%	<b>EU Average</b>	45%
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At federal level, the **2015-2020 Digital Belgium strategy**<sup>10</sup> does not specifically encourage innovation procurement but recognises it indirectly through the importance of procuring new technologies to improve government efficiency. Under priority 3 "digital government", action 4 "operational efficiency" of the strategy states that "government management will be encouraged to carefully follow up ICT government contracts and to create efficiencies by further digitizing services and processes. The government will also utilise new technologies, such as social media and big data, and shall do so with a clear objective: providing better services at lower cost."

### Indicator 4 – Sectorial policies

<b>Total score</b>	10%	<b>EU Average</b>	14%
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At national level, only the environmental strategy embeds innovation procurement. The score of this indicator is 10%.

From 2009 onwards the federal government's **action plan for Green Public Procurement**<sup>11</sup> and later circulars regarding the action plan encourage public procurers to consider in their purchasing decision not only solutions that are innovative in terms of green aspects but also solutions that are innovative in terms of non-green aspects (innovative solutions are referred to as solutions that don't exist yet and still need to be developed)<sup>12</sup>. As the federal government has set a target of 50% in green procurement, this could also boost green innovation procurements.

### Indicator 5 – Action plan

<b>Total score</b>	44%	<b>EU Average</b>	8%
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<sup>6</sup> [http://financeflanders.be/sites/default/files/atoms/files/coalition\\_agreement\\_2014-2019.pdf](http://financeflanders.be/sites/default/files/atoms/files/coalition_agreement_2014-2019.pdf)

<sup>7</sup> [https://www.ewi-vlaanderen.be/sites/default/files/bestanden/sti\\_in\\_flanders\\_2017\\_chapter\\_1.pdf](https://www.ewi-vlaanderen.be/sites/default/files/bestanden/sti_in_flanders_2017_chapter_1.pdf)

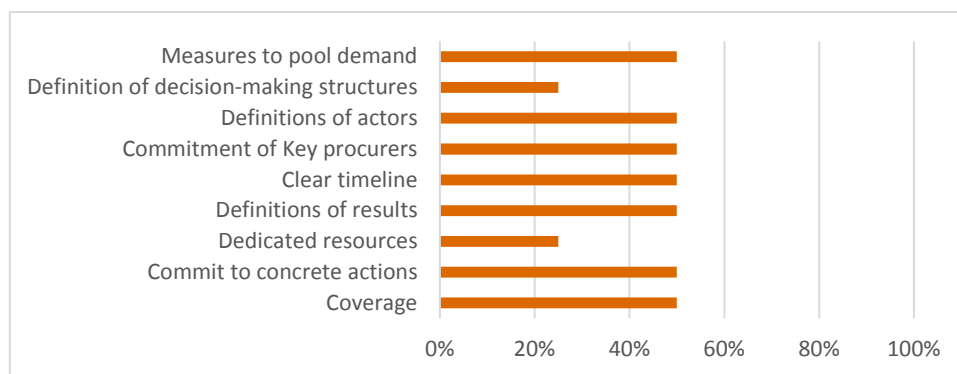
<sup>8</sup> <http://www.innovativebrussels.irisnet.be/fr/accueil/plan-regional/mise-a-jour-du-plan-regional-pour-l-innovation-1>

<sup>9</sup> <http://www.recherchescientifique.be/index.php?id=1236>

<sup>10</sup> <http://digitalbelgium.be/en/5-priorities/digital-government/>

<sup>11</sup> [https://gidsvoorduurzameaankopen.be/sites/default/files/file/20090307\\_Plan\\_D\\_Overheidsopdrachten\\_FINAL\\_NL.pdf](https://gidsvoorduurzameaankopen.be/sites/default/files/file/20090307_Plan_D_Overheidsopdrachten_FINAL_NL.pdf)

<sup>12</sup> [http://www.publicprocurement.be/sites/default/files/documents/2014\\_05\\_16\\_circ\\_cl\\_soc\\_dd\\_omzend\\_soc\\_cl\\_do.pdf](http://www.publicprocurement.be/sites/default/files/documents/2014_05_16_circ_cl_soc_dd_omzend_soc_cl_do.pdf)



At national level there is no dedicated action plan for innovation procurement, while there is one at regional level, in the Flemish region. The total score for most of the sub-indicators is 50%, as the action plan does not cover the whole country. The score for definition of results and definition of resources is 25% because these aspects are clear for the Flemish government and the PIO programme but are not clearly defined for other key actors/public procurers in the Flemish region covered by the action plan. Therefore the total score for the indicator is 44%.

Flanders has an action plan<sup>13</sup> for innovation procurement and innovative procurement that aims to promote innovation in public procurements of all public procurers in all sectors across the region. In this context innovation procurement covers all types of innovation procurement (both R&D procurement, incl. PCP, and PPI).

The Flemish government has adopted the **Innovative Public Procurement Program (PIO)**<sup>14</sup> to promote innovation procurement in the Flemish region. The first round of PIO has been running from 2009 to 2015, the second from 2016 to 2019. Thanks to this program, all Flemish government and public sector organizations that fall under the Belgian Public Procurement Act can contact PIO for information, advice, guidance and co-financing for innovative purchasing projects. PIO has well-defined action plan with expected results, clear timeline and budget (5 Million per year from the Flemish government).

PIO is supported by the **Flemish Ministry of Economy, Science and Innovation**, which is also its manager.

PIO has a number of strategic goals:

- 1) To establish a knowledge centre on innovation procurement;
- 2) To reach 3% of the Flemish Government's budget for public procurement for innovation procurement;
- 3) To draft a portfolio of projects and good practices as examples in order to raise awareness about innovation procurement;
- 4) To stimulate public organisations to participate in EU opportunities of innovation procurement (such as Horizon2020).

In Flanders, there are also some examples of action plans at local level, like the Municipality of Ghent, which has its own innovation procurement strategy since 2014<sup>15</sup>.

## Indicator 6 – Spending target

<i>Total score</i>	60%	<i>EU Average</i>	11%
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At the national level there is no spending target for innovation procurement. Below the national level, only the Flemish region and the cities of Ghent and Antwerp have set a spending target for innovation procurement. The target is set for all types of innovation procurement (including R&D procurement, PCP, and PPI). Thus the score for this indicator is 60%.

The Government of Flanders region has set a spending target to devote **3% of the total public procurement budget of the Flemish Government** to innovation. The target includes not only innovation procurements but also innovative procurements (where the only innovation is in the procurement/contracting procedure, not in what is actually being procured). This objective is backed by operational commitments from the Flemish ministries to invest in innovation procurement and by commitments from some key procurers (e.g. digipolis which procures ICT for city of Ghent and Antwerp) but unfortunately there are no formal commitments of "all" the purchasing authorities in their policy domains. Each of the 13 policy domains of the Flemish government has a target to reach the 3%, but each policy domain can divide this via agreements over all public procurers depending from its policy domain (not only over the relevant ministry but also agencies and advisory boards depending from the policy domain). Via these agreements, each public procurer reports back every year to the ministry in its policy domain about the actual amounts spent that count towards the target.

At local level, the city of Ghent and Antwerp have also set a spending target - at 10% of the budget for ICT – to procure innovative products and services (including R&D and consultancy) or to use innovative procurement methods<sup>16</sup>.

<sup>13</sup> <http://www.innovatieveoverheidsopdrachten.be/over-pio/plan-van-aanpak>

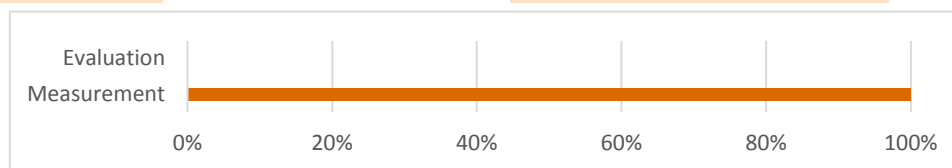
<sup>14</sup> <http://www.innovatieveoverheidsopdrachten.be/gids-voor-innovatieve-overheidsopdrachten>

<sup>15</sup> [http://www.ecoprocurea.eu/fileadmin/editor\\_files/images/Ghent\\_sustainable\\_procurement\\_strategy\\_and\\_innovation\\_charter.pdf](http://www.ecoprocurea.eu/fileadmin/editor_files/images/Ghent_sustainable_procurement_strategy_and_innovation_charter.pdf)

<sup>16</sup> Ibid.

### Indicator 7 – Monitoring system

**Total score** 50% **EU Average** 13%



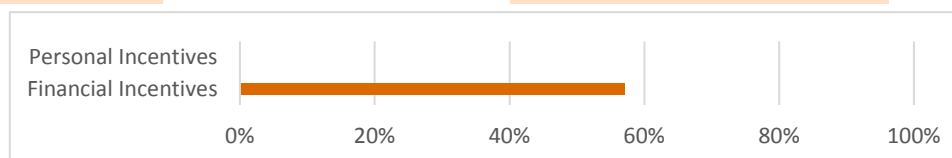
At the national level a structured measurement system for tracking innovation procurement spending is being conceived, but there is no evaluation strategy to evaluate the impacts achieved by completed innovation procurements. Hence the score is 50% for this indicator.

Under the PIO program, a measurement system has been set up, to be applied in the Belgian **e-Procurement platform** and the regional contract management system (**e-Delta**) through an indicator. The aim is flagging out the innovative tenders from the “normal” procurements. The first round of measuring innovation procurement spending has recently started, and first statistics are expected in 2019.

On the state of play of the Belgian innovation procurement policy framework, a qualitative analysis was conducted in 2017: “Barometer Innovative Public Procurement in Belgium” (De Coninck, Viaene, Leysen, Van der Auwera)<sup>17</sup>.

### Indicator 8 – Incentives

**Total score** 29% **EU Average** 22%



At national level there are no incentives to encourage public procurers to start more innovation procurements, while there are some at regional level. The 29% score for this indicator results from the fact that the available incentives are not available/applicable to all procurers in the country and therefore not enabling large scale mainstreaming of innovation procurement across the country. There is also no mobilisation of available ESIF funds in Belgium for innovation procurement.

The Flemish region has set up financial incentives to encourage public procurers to undertake more innovation procurements. The score of this indicator reflects the fact that financial incentives don't cover all procurers in the country and personal incentives for public procurers are not foreseen.

The Flemish financial support for innovation procurement is backed by the Flemish legislative framework for co-financing R&D in the context of public procurement<sup>18</sup>. The PIO programme (the Programme for Innovation Procurement of the Flemish government) takes on part of the costs for the organization of market consultations, the hiring of external expertise, the purchase of research and development services, or the implementation of validation or test phases of the solutions to be purchased. PIO has 5 Million EUR budget annually, and finances:

- 1) up to 30,000 euros for the deployment of external expertise, implementation of market consultations, organization of user surveys, etc.;
- 2) up to 1,000,000 euros for the co-financing of the R&D procured in pre-commercial procurement projects;
- 3) up to 50,000 euros for the costs involved in setting up a validation or testing phase, prior to the purchase of an innovative solution. No co-financing for the purchase of the innovative solution itself.

Funds are directed to public procurers.

### Indicator 9 – Capacity building and assistance measures

**Total score** 41% **EU Average** 23%

	Existence	Connection with relevant international/EU initiatives	Free of charge	Covering all aspects and types of innovation procurement	Available and applicable to all public procurers in the country	Mainstreaming Innovation procurement at a large scale	Sub-total score
Central website	√		√	√			50%

<sup>17</sup> <https://www.vlerick.com/~media/corporate-marketing/our-expertise/pdf/20170927BarometerInnovativePublicProcurementpdf.pdf>

<sup>18</sup> <http://www.innovatieoverheidsopdrachten.be/en/about-pip/regulatory-framework-co-financing-research-and-development-services>



Good practices	√	√	√	√			67%
Trainings/workshops	√	√	√	√			67%
Handbooks/guidelines							0%
Assistance to public procurers	√	√	√	√			67%
Template tender documents							0%
Coordination / Pre-approval							0%
Networking of procurers	√	√	√	√			67%
One-stop-shop / competence centre	√		√	√			50%

At national level there are currently only very limited amount of capacity building measures. The BOSA<sup>19</sup> informs procurers about innovation procurement as part the general information measures on the public procurement, and it promotes networking between procurers via meetings and events. The BOSA is currently contemplating setting up more dedicated capacity building measures for innovation procurement.

The Flemish region foresees seven out of the nine measures generally adopted to build up the know-how of public procurers on innovation procurement. The Flemish **PIO programme** (see Dimension 4) acts as the **one-stop-shop** / competence center for Flanders that offers almost all kind of capacity building measures, such as information sharing, advice, guidance and assistance during the entire purchase process. The one-stop-shop is not in a systematic way interconnected with competence centers on innovation procurement in other countries and its services are limited to Flanders and not scaled up to mainstream innovation procurement widely across the whole country. This explains the score for sub-indicator one-stop-shop is 50%.

In the **PIO website**, the central website in Flanders dedicated to innovation procurement, furthermore, a **Guide for innovation procurement**<sup>20</sup> is announced (still under preparation) and some **tender procedures tips**<sup>21</sup> for public procurers and **good practices examples**<sup>22</sup> are provided. Apart from references to the new 2014 public procurement directives, information on other key EU initiatives on innovation procurement are missing on the website. The score for sub-indicator central website is also 50%.

PIO organises also **trainings**, mainly for public procurers in the Flemish government<sup>23</sup>. **Networking of procurers** is also typically limited to Flemish procurers. Under the impulse of ZENIT, the region North Rhine-Westphalia signed a cooperation agreement with the Netherlands and the Flemish region (Belgium) to network public procurers of their different countries to stimulate cross-border innovation procurements. As this does not concern all procurers in Belgium, the score on the sub-indicators training and networking is for both 67%.

There are no national template tender documents for innovation procurement. There is no national pre-approval of innovation procurements. There is also no central coordination of innovation procurements to foster cooperation between national procurers on implementing innovation procurements together. References / interconnection to recent EU initiatives (e.g. eafip, procure2innovative European network of competence centers, study SMART 2016/0040 that is benchmarking national policy frameworks for innovation procurement across Europe, EU guidance on innovation procurement, EU funding opportunities for innovation procurements (e.g. H2020, ESIF, EIB) and recent EU funded projects (e.g. Horizon 2020 funded projects) however often still missing. All measures performed by PIO do not receive a 100% score because they are offered at regional level, and not at central government level, therefore they are not applicable to all procurers in the country. Resources dedicated to capacity building are not yet at the level for mainstreaming innovation procurement at large scale and the creation of a national Belgian competence center is being contemplated but not implemented yet.

On the basis of the evidence collected, the total score for this indicator is 41%.

## Indicator 10 – Innovation friendly public procurement market

Total score 73%

EU Average 52%

I - Specific measures to foster innovation in public procurement

II – Openness of national public procurement market to innovations from across the EU single market

<sup>19</sup> <https://bosa.belgium.be/fr>

<sup>20</sup> <http://www.innovatieveoverheidsopdrachten.be/gids-voor-innovatieve-overheidsopdrachten>

<sup>21</sup> <http://www.innovatieveoverheidsopdrachten.be/gids-voor-innovatieve-overheidsopdrachten/innovatievriendelijke-aanbestedingsprocedures>

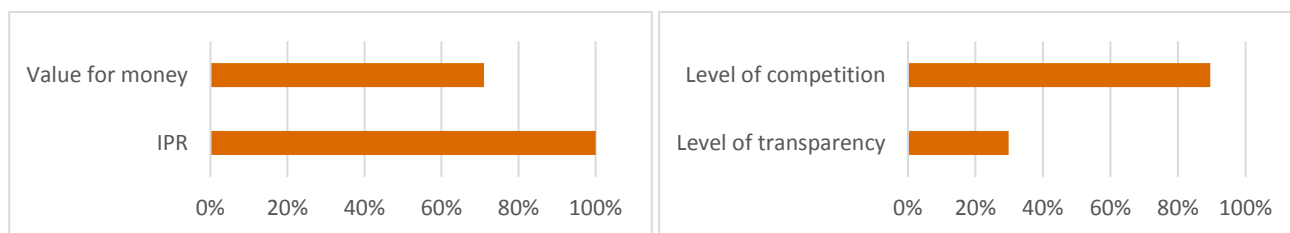
<sup>22</sup> <http://www.innovatieveoverheidsopdrachten.be/lopende-projecten>

<sup>23</sup> Links to different trainings organised.

<http://www.innovatieveoverheidsopdrachten.be/evenementen/infosessie-derde-pio-oproep>

<http://www.innovatieveoverheidsopdrachten.be/evenementen/infosessie-innovatieve-overheidsopdrachten-tweede-oproep>

<https://www.ewi-vlaanderen.be/evenementen/infosessie-innovatieve-overheidsopdrachten>



This indicator synthesises to what extent the national public procurement market encourages the implementation of innovation procurement. The indicator is composed of a number of sub-indicators that show evidence on

- (I) the use of specific techniques to foster innovation in public procurement in Belgium<sup>24</sup> and
- (II) the openness of the national public procurement market to innovations from across the EU single market.:

With regard to the first indicator I, Belgium shows the following evidence:

- a. **IPR default regime:** The score for this sub-indicator is 100% because the Belgian public procurement legislation clearly defines a default regime for the allocation of IPRs that stimulates innovation while enabling the public procurer to use the results of the procurement in the execution of its public tasks: contractors retain the IPR developed by them, notwithstanding that they grant the necessary licenses to the public procurer to use the results and if required to ensure licensing of the results to third parties.<sup>25</sup> The Belgian law also clearly recommends procurers to only deviate from the default IPR regime in limited justified cases: when the contractor is not allowed to reuse the results (e.g. a sensitive/confidential study such as an internal evaluation) or when the contractor is not able to reuse the results (e.g. a unique communication campaign such as a design of a logo made specifically for the procurer). Deviation from the default regime is in any case only possible within the boundaries of applicable IPR/copyright law. The Belgian public procurement law foresees that public procurers can require in the tender specifications the transfer of IPR rights to the procurer. However according to the Belgian copyright act<sup>26</sup>, copyrights (moral rights) cannot be transferred to another party (the procurer), even when the creator is commissioned by the procurer (as contractor) or employed (e.g. by a subcontractor) to work on the procurement contract. If the procurer wants to use the copyright protected work he must require in the tender specifications the transfer, assignment or a license of the economic rights (e.g. usage, licensing, publication, modification, reproduction rights) at equitable payment. Copyright protects also scientific work (product designs, product specifications, tests etc.), computer programs and databases.
- b. **Use of value for money award criteria:** According to the Single Market Scoreboard 71% of the procedures were awarded using not only the lowest price criteria. This is moderately well the EU average of 42% but still below the 80% satisfactory level set out in the EU single market scoreboard.

Based on this evidence, the score for sub-indicator I is 86% which is well above the EU average of 40% but still below the satisfactory level set by the EU single market scoreboard. This is mainly due to the above average performance on IPR default regime but improvement that still needs to be made to obtain a satisfactory level of wide scale use of value for money award criteria.

For the second sub-indicator II Belgium shows the following evidence (according to the Single Market Scoreboard):

- c. **Level of competition:** The level of competition on the public procurement market accounts for 90%, which is above the EU average 84% and just approaching the 92.5% satisfactory level set by the EU single market scoreboard. This positive performance is mainly due to the high percentage of procurement procedures where a call for bids was used (98%).
- d. **Level of Transparency:** The level of transparency of the public procurement market is only 30% which is below the EU average 45% and the 66% satisfactory level set by the EU single market scoreboard. This

<sup>24</sup> The current version of the factsheets takes into only two sub-indicators "IPR default regime" and "Use of value for money instead of lowest price award criteria". In the final version of the factsheets, that are expected to be available in 2019, two additional sub-indicators will be included "Frequency of allowing submission of variant offers" and "Frequency of use of preliminary market consultations"

<sup>25</sup> Art 53 §1 of the Belgian Public Procurement Act has transposed the provisions from the following EU public procurement directives: "The technical specifications can determine whether the transfer of intellectual property rights will be required". This provision refers to transfer of IPR rights to the public procurer. However, according to the Royal Decree of 14 January 2013 that lays down the general implementing rules for public contracts and concessions for public works, the principle applies that the public procurer does not automatically acquire ownership of the intellectual rights that are created, used or developed. To balance in an optimal way the price to be paid for the contract, the rights for the public procurer to use the results of the contract and the rights of companies to commercialize the results, the Royal Decree defines that the default scenario is that the contractors retain the IPR developed during the execution of public procurement contracts, notwithstanding that they grant the necessary licenses to the public procurer to enable it to use the results. This usage can include (to be defined in the tender specifications) internal use, reproduction, adaptation, translation, publication to the public etc. Only in case the public procurement procured R&D related to the object of the tender, the tender specifications can determine that a financial compensation is to be paid by the contractor to the public procurer in case the contractor exploits the results of the contract. The Royal Decree only allocates IPR by default to the public procurer for drawings, distinctive emblems and domain names created during a public procurement contract. In principle, a public procurer can deviate from this default IPR allocation scenario by requiring in the tender specifications that the intellectual property rights resulting from the contract are transferred to himself instead of to the contractor (as described in Art 53 §1 of the Belgian Public Procurement Act), but the procurer is recommended to do so only in specific cases where this is justified. This is because such a transfer is by definition never necessary as a usage license is sufficient for the procurer. A transfer of IPR to the public procurer can be justified for example when the result of a procurement is not reusable by the contractor but only by the procurer, for example a sensitive/confidential study (e.g. an internal evaluation) or a unique communication campaign for the public procurer (e.g. the design of a logo).

<sup>26</sup> [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=125150](http://www.wipo.int/wipolex/en/text.jsp?file_id=125150)



performance is mainly affected by the below EU average publication rate (3,4%), the below average percentage of tenders that does not miss call for bids information (74%) and the high amount of call for bids with missing buyer registration numbers (88%) which makes it hard for potential bidders to understand who is buying what.

Based on this evidence, the score for sub-indicator II is 60% which is below the EU average 65% in and below the satisfactory level 79% set in the EU single market scoreboard. This is mainly due to the low level of transparency which tempers the contribution of the good level of competition to the total result.

Based on the scores for sub-indicators I and II, the total score for the indicator "innovation friendly public procurement market" is 73% which is the second best score of all 30 countries analysed, but also still below the satisfactory level for the total of the EU single market scoreboard indicators. The score is explained firstly by the fact that the use of specific techniques to foster innovation in the country is above EU average and reaching the satisfactory level, but the openness of the Belgian public procurement market to innovations from across the EU single market is below the EU average and below the satisfactory level. Indeed, Belgium is leader in adopting an innovation friendly IPR default regime and value for money criteria are becoming more widely used in public procurements. However, although the national public procurement market shows a good level of competition, there is a clear lack of transparency.