

Spain

Governance and legal framework

The Law 9/2017 of Public Sector Contracts transposes the EU Directives 2014/23/UE, 2014/24/UE and 2014/25/UE, in the national legal framework. The Law 9/2017 has come in force on 2018, March 9th. Further developments, when necessary, need the initiative of the Spanish Ministers Council. Autonomous Communities could develop issues in accordance to their own competencies. The Law 24/2011 on public procurement for defence and security transposed the Directive 2009/81/EC.

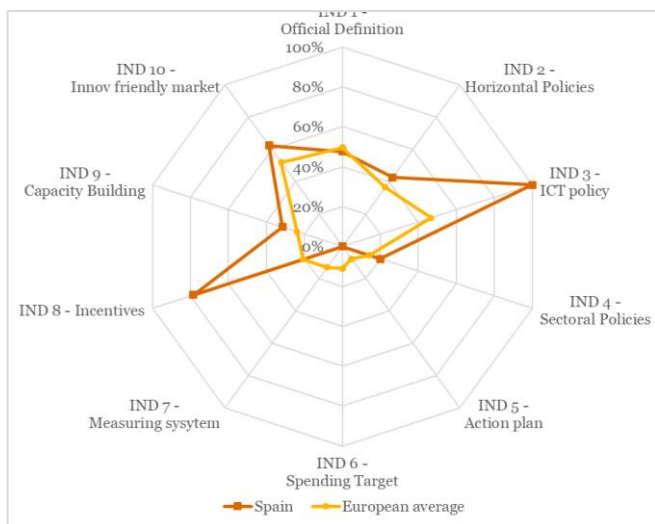
Overall, the Spanish public procurement system is decentralised: the system is based on more than 8,000 contracting authorities at national, regional, and local level, including the central administration and its agencies, public-funded bodies, universities, and healthcare services.

The **Ministry of Economy, Industry and Competitiveness (MEIC)** is responsible for providing the financing of Spanish Innovation Procurement projects under the ESI funds, through its General Secretariat of Science and Innovation. Since 2014, Spain is preparing a new set of innovation procurement proposals for a global amount of € 300 million (for the EU current budget period 2014-20) to be co-financed with this FEDER Technological Fund of ESIF, through the Spanish Programme (INNOCOMPRA-FID) for 2014-20. The **Centre for Development of Industrial Technology (CDTI)** – a public business entity depending on the MEIC – has been appointed by MEIC as national competence centre for innovation procurement in Spain together with ISCIII (National Institute Carlos III for Health) and INTA (National Institute Esteban Terradas for Aerospace Techniques), acting these three entities as a concerted network under the guidance of MEIC

Finally, **Regional Governments** of the seventeen Autonomous Communities and two Autonomous Cities have also competencies in the field of innovation procurement and are progressively devoting greater budget amounts to this aim. As an example, in Barcelona, the **Generalitat de Catalunya** (and in particular AQUAS) is playing a key role in promoting PCP and PPI and in Galicia, the **Galician Innovation Agency (GAIN)** is playing a key role in promoting PCP and PPI.

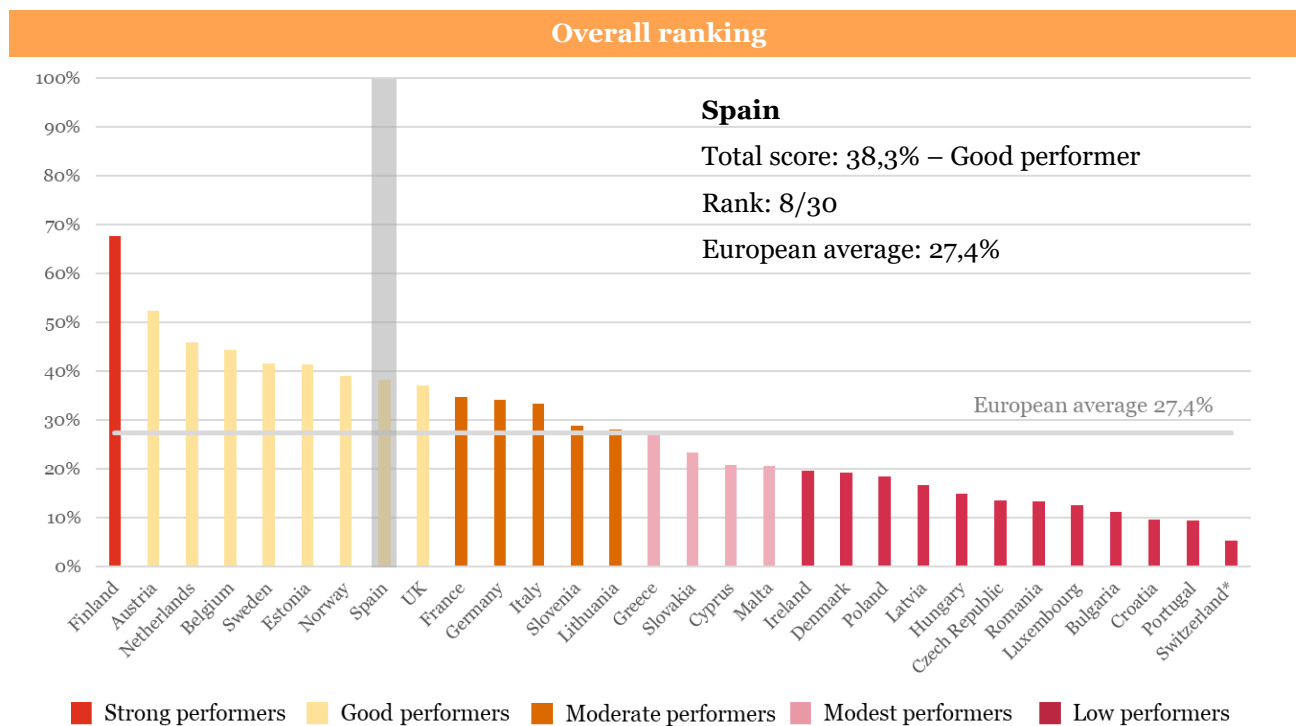
Innovation Procurement Policy Framework Benchmarking (2018)

In the benchmarking of the national innovation procurement policy frameworks across Europe, Spain is at the 8th position in the overall ranking with a total score of 38.3%. From the 30 countries analysed, Spain is among the group of good performing countries in implementing a mix of policy measures that are conducive for mainstreaming innovation procurement. Having implemented 38.3% of the policy measures to roll-out a comprehensive policy framework for innovation procurement, there is however still a significant reinforcement of the policy framework needed in Spain to reach its full 100% potential.



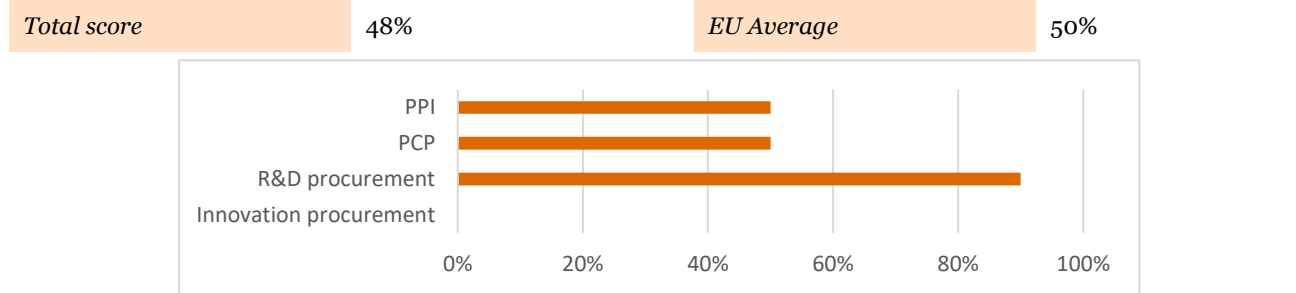
Strength: Application of regional ESIF funds for encouraging innovation procurement. Establishment of a national competence centre. Default IPR regime that is half way there in promoting innovation is anchored into public procurement law.

Weakness: Absence of a structured innovation procurement policy for the whole country that is not for ESIF funded projects only: lack of action plan, spending target, monitoring system for innovation procurement, lack of financial incentives and capacity building outside of the ESIF context.



Overview per indicator

Indicator 1 – Official definition



In the Spanish public procurement legal framework, there is a clear official definition for Research and Development but not for innovation, innovation procurement, Pre-Commercial Procurement (PCP) and Public Procurement of Innovative solutions (PPI). The national “Innovative Public Purchase, Guide 2.0” embeds the definitions of innovation procurement (Compra pública innovadora), PCP (compra pública pre-comercial) and PPI (compra pública de tecnología innovadora). The definition of PCP and PPI are not in line with the EU definition, whereas all the other definitions are in line with the EU official definitions. The total score of the indicator “Official definition” is 48%.

No definition of innovation or **innovation procurement** exists in the national public procurement legal framework or guidance documents. Therefore, the score of this sub-indicator is 0%.

The Spanish public procurement law 9/2017 for non-defence procurers does not provide a definition for **R&D** but it identifies in article 8 R&D via the CPV codes for basic research, applied research and experimental development in line with the CPV provisions in the EU public procurement directives. Law 24/2011 on public procurement for defence and security in Title VI, comma 11 defines R&D as: “all activities that involve basic research, applied research and experimental development. Experimental development may include the production of technological demonstration systems, which are devices for demonstrating the performance of a new concept or technology in a relevant or representative environment”. This definition is coherent with the EC definition but it is only applicable to defence procurers, therefore the total score of this sub-indicator is 90%.

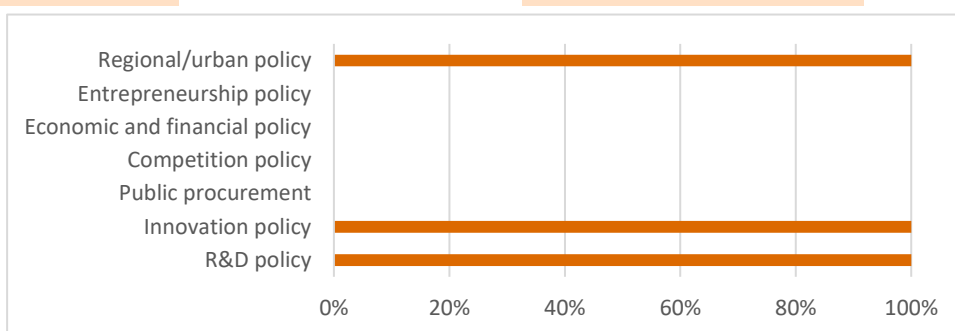
Pre-commercial procurement (PCP) is not defined in the national framework. However, a definition of PCP is provided in the “Innovative Public Purchase, Guide 2.0”. The **Pre-commercial procurement** (PCP) is defined as “the procurement of an R&D activities, fully remunerated by the contracting authority characterized by the fact that [...] the contracting authority shares with the companies’ risks and benefits of the R&D activities which are necessary to develop an innovative solutions not available in the market”. This definition embeds three elements: (i) the activities of R&D, (ii) sharing risks and benefits between contracting authorities and the company winning the tender and (iii) the separation from the subsequent purchase of the developed solutions. The definition is applicable to all public procurers in the country

but not fully in line with the EU definition because it does not recognise that the purchase of non-commercial volumes of solutions can be part of the PCP. Therefore the total score of this sub-indicator is 50%

In national legislation no definition of PPI exists. However, the national guidance document "Innovative Public Purchase, Guide 2.0" defined PPI (compra publica de tecnologia innovadora) as "The procurement 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 organizational method in business practices, workplace organization or external relations. The procurement of a good or service that does not exist in the market but that can be developed over a reasonable period of time. This procurement requires the development of new technology or a significant improvement to an existing one made to meet the requirements of by the procurer." The definition is applicable to all public procurers but is not in line with the EU definition. Existing products that are not widely commercialised yet are not covered by Spanish definition, instead it limits PPI to the case of products that still need to be developed. This assimilates PPI with the innovation partnership procedure which creates confusion among public procurers and limits the potential of PPI. Therefore, the score of this sub-indicator is 50%.

Indicator 2 – Horizontal policies

Total score 43% EU Average 36%



This indicator reflects the extent to which innovation procurement is considered of strategic importance in horizontal policies. As this is only the case in 3 out of 7 horizontal policies, the total score of the indicator is 43%.

In the field of **regional policy**, the **Spanish 2014-2020 ERDF Operational Programme on Smart Growth¹** and the **Regional Smart Specialization Strategies (RIS3)²** foresee innovation procurement among their instruments. There are also regions, alike Catalunya, that have developed their own regional policy for innovation procurement with their own regional budgets.

In the field of **R&D&I**, national political commitment to innovation procurement is very high since the endorsement of the **State Strategy of Innovation (E2i) in 2010** and the **Spanish Strategy on Science, Technology and Innovation 2013-2020³**, currently implemented and executed by the State Secretary for Research, Development and Innovation of the Ministry of Economy, Industry and Competitiveness (MINECO). The strategy specifically plans wider deployment of PCP and PPI procurement.

Indicator 3 – ICT policies

Total score 100% EU Average 47%

The Spanish **Digital Agenda⁴**, managed by the Ministry of Energy, Tourism and Digital agenda, confers to innovation procurement a role to boost the development of the ICT sector. "Goal 5: Boost R&D&I in Information and Communications Technologies. It is a basic principle that public investment in R&D&I in ICT would lead to a greater amount of investment by the private sector. This is why the proposal here is to use public procurement and public - private collaboration strategically...". The national Spanish plan for encouraging the development of natural language processing, machine translation and conversational systems in Spanish official and co-official languages, the **Plan de Impulso a la Tecnologia del lenguaje⁵**, also refers to innovation procurement "with the aim to bring Spanish industry to the innovation frontier to make it competitive on a global scale, while taking advantage of these innovative capabilities to substantially improve public service. For this we must (using innovation procurement) overcome the paradox by which the supplier does not invest in innovative products, which previously require an investment in R & D, for lack of clear demand, and the buyer does not demand innovative products because there is no available offer, adequate and economical for the pending challenges." Therefore the score for this indicator is 100%.

¹ http://ec.europa.eu/regional_policy/en/atlas/programmes/2014-2020/spain/2014es16rfop002

² <http://s3platform.jrc.ec.europa.eu/home>

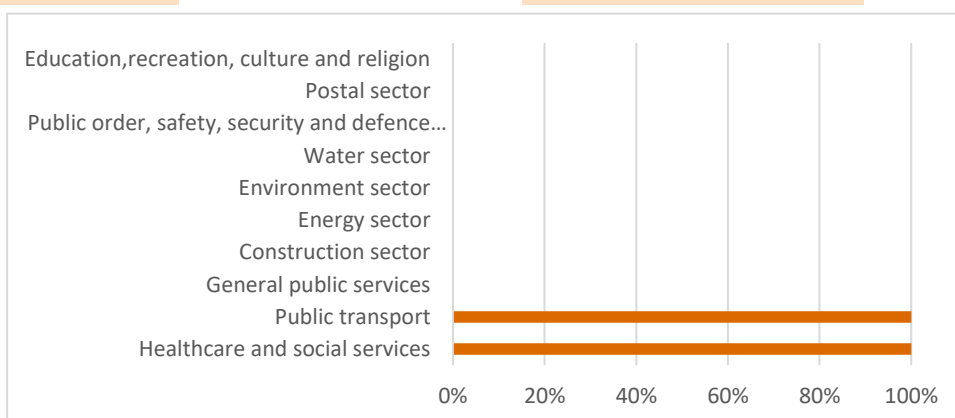
³ http://www.ciencia.gob.es/stfls/MICINN/Investigacion/FICHEROS/Estrategia_espanola_ciencia_tecnologia_Innovacion.pdf

⁴ <http://www.agendadigital.gob.es/digital-agenda/Documents/digital-agenda-for-spain.pdf>

⁵ <http://www.agendadigital.gob.es/tecnologias-lenguaje/Paginas/plan-impulso-tecnologias-lenguaje.aspx>

Indicator 4 – Sectorial policies

Total score 20% **EU Average** 14%



Public transport and healthcare and social service are the only two out of ten sectors that embed innovation procurement in their action plans or strategic frameworks. Therefore the score for this indicator is 20%.

The Program **FID SALUD** is an example of action plan aiming at systematically improving public health services through yearly PPI calls. The program involves every regional health service (18, including Ceuta and Melilla) and is co-ordinated by the Ministry of Health in order to prevent duplication and foster synergies. Structural financing and oversight is provided by the Ministry of Economy and Competitiveness. In 2015, more than 40 proposals have been assessed independently by ISCIII (Health Institute Carlos III), of which 15 have been approved mobilising € 34 million.⁶

The **Innovation Plan on Transport and Infrastructure (Plan de Innovación por el transporte y las infraestructuras 2018-2020)**⁷ implemented by the Ministerio de Fomento also recognizes the strategic importance of innovation procurement in fostering the development of innovative solutions.

Indicator 5 – Action plan

Total score 0% **EU Average** 8%

In Spain, a dedicated action plan for innovation procurement has not been developed yet.

There are specific measures to encourage innovation procurement in other horizontal policies (see indicator "horizontal policies") or specific sectors (see indicator "sectorial policies" and "ICT policy"), but a stand-alone action plan is currently lacking. However, the National law 9/2017 expresses the political commitment to adopt a general strategy on public procurement in which innovation procurement could potentially become a milestone

Indicator 6 – Spending target

Total score 0% **EU Average** 11%

In Spain there is no specific spending target for innovation procurement.

On July 8, 2011, the Spanish government passed a regulation on the public purchase of innovation, whereby all ministries and their public bodies were obliged to specify in their budgets, and in different multiannual action programs, the amounts allocated to the acquisition of innovative products, goods and services. The regulation established that the 3% of the procurement budget of the General State Administration should have been spent on innovation. However, in 2013, due to the effects of the economic crisis, the new administration has not continued supporting that target.

Indicator 7 – Monitoring system

Total score 0% **EU Average** 13%

The Country does not have a structured system for measuring innovation procurement expenditure and for evaluating the impacts of completed innovation procurements.

Before 2013, all central government ministries were obliged to specify the amounts allocated to innovation procurement (while regional and local procurers were exempted). The contracting authority determined the innovative connection of every contract notice and contract award notice in a central public procurement register. The public procurement authority ticked in a web portal (PACE) whether the tender concerned CPI or CPP. However contracting authorities are no more obliged to make use of this system therefore monitoring activity is no more effective. In addition, several public agencies and regional authorities have been operating using their own competing procurement platforms (often via

⁶ http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=47191

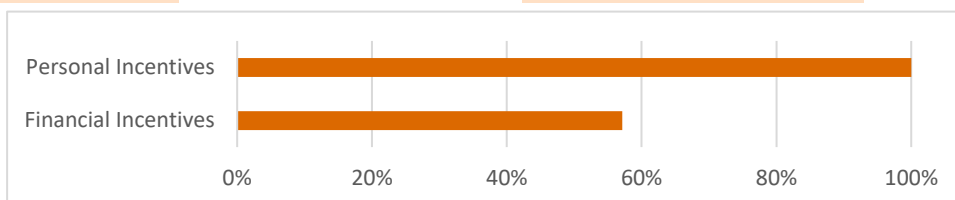
⁷ https://www.fomento.gob.es/recursos_mfom/paginabasica/recursos/innovation_plan_20182020_1.pdf

private IT providers). Today, a new method to monitor and evaluate innovation procurement across the country is under discussion. Today, only single cases of innovation procurements, which have been funded by the INNOCOMPRA-FID programme are monitored and audited in compliance to the procedure foreseen by DG REGIO. As there is no structured system for measuring innovation procurement expenditure in the whole country (covering also non ESIF funded procurements), the total score of the sub-indicator “measurement system” is 0%.

Due to the **absence of an evaluation system**, the overall score of the indicator “monitoring system” is 0%.

Indicator 8 – Incentives

Total score	79%	EU Average	22%
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Spain has set up both financial and personal incentives to promote the use of innovation procurement among procurers.

The **financial incentives** in Spain are not open to all types of public procurers and procurements in the country (only open to projects that are eligible for co-financing from the EU ESIF program as indicated in the smart specialisation priorities of Spain, not for projects that are eligible for Horizon 2020 funding and not for projects that are not eligible for ESIF funding) and focuses on specific sectors (health and security). Therefore, the total score of the sub-indicator “financial incentives” is 79%.

In the health domain they have been able to stimulate wider implementation of innovation procurement. Under the programme INNOCOMPRA-FID, there are financial incentives for CPI, CPTI and CPP, co-financed with ESI funds through ERDF financed FID (Fostering Innovation through Demand). During the last budgetary period 2007-13, 21 innovation demand driven actions have been developed for an overall amount exceeding € 230 million. In the current Programme 2014-2020, 11 projects have been financed so far, and the overall dedicated budget has increased to € 300 million. The Spanish 2014-2020 ERDF Operational Programme on Smart Growth established a specific support in the form of grants or loans to public bodies at the national, regional and local levels to foster the use of innovation procurement. In addition, the Regional Smart Specialization Strategies (RIS3) foresee innovation procurement among its instruments. The most active regions are Galicia and Andalucía.

In addition to the above-mentioned financial incentive financed with EU funds, Spain offers loans granted to procurers with national budget.⁸ The loan covers max. 50-85% in case of PCP and max. 70% for other types of innovation procurement.

In the field of **personal incentives**, there are annual calls of the National Prizes for innovation and Design that have a specific modality focused on Innovation Procurement, evaluated directly by the Deputy DG for Innovation Promotion of the General Secretariat of Science and Technology of MEIC.⁹ The score for the sub-indicator “personal incentives” is therefore 100%.

Based on this evidence, the overall score of the indicator “incentives” is therefore 79%.

⁸ <https://rio.jrc.ec.europa.eu/en/file/11731/download?token=imE> ToBS slide 8

⁹ <https://rio.jrc.ec.europa.eu/en/file/11731/download?token=imE> ToBS slide 6

<http://www.idi.mineco.gob.es/portal/site/MICINN/menuitem.8c7b21bf4d10094b7b381d10026041a0/?vgnextoid=od63ffa939cf6410VgnVCM1000001d04140aRCRD>

Indicator 9 – Capacity building and assistance measures

Total score

31%

EU Average

24%

	Existence	Connection with relevant international /EU initiatives	Free of charge	Covering all types and aspects 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	√		√	√	√		67%
Good practices							0%
Trainings/workshops							0%
Handbooks/guidelines	√	√	√		√	√	83%
Assistance to public procurers							0%
Template tender documents							0%
Coordination / pre-approval							0%
Networking of public procurers	√		√	√		√	67%
One-stop-shop/competence centre	√	√	√	√			67%

As concerns capacity building measures, the “**Innovative Public Purchase Guide 2.0**”¹⁰ is addressed to public administrations and to other public sector agencies. The guide describes the European legislation on innovation procurement, providing guidelines on all types of innovation procurement and describing the best and most appropriate application of the contracting and adjudication procedures both in the case of CPTI and CPP. The guide however lacks guidance on some key implementation aspects for innovation procurements: for example, even though there is a default IPR allocation regime for public procurements in Spain that is conducive to innovation (IPR ownership is left with suppliers) there is no guidance on IPR handling in innovation procurements in the guide. The score for sub-indicator guidance is 83%

In Spain there is not really one **central website** that provides all relevant information on innovation procurement. There is a dedicated page on the website of the ministry of innovation that promotes the ministry's guide on innovation procurement and explains the ESIF funding for innovation procurement for procurers (INNOCOMPRA). The website is not linked to other EU initiatives on innovation procurement though.¹¹ A second page on the CDTI site¹² explains why the country encourages public procurers to undertake innovation procurement, that provides info about the financial support for companies to develop solutions for the public sector (INNODEMANDA) and that links to the above ministry of economy website for info about ESIF funding for procurers (INNOCOMPRA) and the guide. A third separate page on the CDTI website, not linked to the previous two pages, provides info about Horizon 2020 funding for innovation procurement¹³. If we consider the second webpage on the CDTI website to be the closest to a central website that links to most initiatives, then it lacks still links to relevant EU initiatives (besides the EU funding) and it is not yet conceived to address mainstreaming innovation procurement at large scale. Based on this, the score for sub-indicator central website is 67%.

In terms of **networking activities** aimed at fostering innovation procurement, the Country has a structure of interconnected centers specialized in the field, forming a network led by MINECO, with a specialized Deputy Directorate General for fostering innovation, CDTI and supported by two national specialized nodes, namely:

- Node for health: the Ministry for Health, Social Security and Equality;
- Node for dual technologies: the INTA – National Institute for Aerospace Technologies, depending from the Ministry of Defence.

As the networking activities focus on health and defence and the ESIF funding opportunities, they are not addressed equally at all public procurers in the country. Networking procurers at international level with procurers from other countries is also not systematically organised. The score for sub-indicator networking is therefore 67%.

¹⁰

<http://www.idi.mineco.gob.es/portal/site/MICINN/menuitem.8ce192e94ba842bea3bc811001432ea0/?vgnnextoid=8108c3dad5fa2310VgnVCM1000001d04140aRCRD&vgnnextchannel=d7e6c3f020682310VgnVCM1000001d04140aRCRD>

¹¹

<http://www.ciencia.gob.es/portal/site/MICINN/menuitem.7eac5cd345b4f34f09dfd1001432ea0/?vgnnextoid=9caa777e0abe5610VgnVCM1000001d04140aRCRD>

¹²

<https://www.cdti.es/index.asp?MP=4&MS=0&MN=1&textobuscado=innodemanda&tipo=1&TR=A&IDR=38&tipoO=Contenido&id=1549&xtmc=innodemanda&xtr=2>

¹³ <https://www.cdti.es/index.asp?MP=101&MS=841&MN=2>

This network is also acting as a **competence centre / one stop shop** for innovation procurement, providing assistance to public procurers at national level. At local level, MEIC also supports capacity building for municipalities through the network INNPULSO. In addition, Health Ministry has a specialized network for attending IP proposals from the 18 regional health services.

MINECO is participating in the EU-funded project “*Procure2Innovate - European network of competence centres for innovation procurement*” to reinforce the activities of the Spanish competence existing center and collaborate and interchange best practices with other countries.

As the competence center focuses mainly on health and defence and the ESIF funding opportunities, it is not applicable to all public procurers in the country and not mainstreaming innovation procurement at large scale across the whole country. This explains the score for sub-indicator one stop shop is 67%.

Certain Autonomous Communities are advanced in local capacity building on innovation procurement with institutions such as GAIN in Galicia region, several entities in Andalucía, AQUAS in Catalonia, City Halls of Barcelona and Madrid, among others. There are also Municipalities, as for example the Generalitat de Catalunya, which use ESIF budget to offer trainings to public officers on Innovation Procurement.¹⁴

On the basis of the evidence collected above, the total score for this indicator is 31%. The score is affected by the fact that, among all measures considered, the provision of good practice examples, training, assistance, template tender documents and of coordination activities is not offered and the link with EU initiatives is often missing. Mainstreaming capacity building activities at large scale is also often missing as most capacity building activities focus only on procurers in ESIF funded innovation procurements.

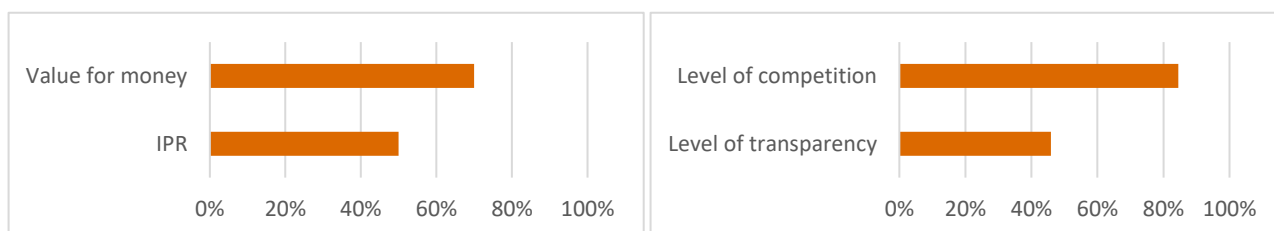
Indicator 10 – Innovation friendly public procurement market

Total score 63%

EU Average 52%

I - Specific techniques to foster innovation in public procurement

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



This indicator synthesises to what extent the national public procurement market encourages the implementation of innovation procurement. It is composed by two sub-indicators measuring:

I. The use of specific techniques to foster innovation in public procurement¹⁵

II. The openness of the national public procurement market to innovations from across the EU single market

With regards to sub-indicator (I) Spain shows the following evidence:

- Default IPR regime:** The score for this sub-indicator is 50% because the Spanish public procurement legislation contains half of 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: the Spanish law assigns by default always usage rights to the public procurer. There is however no default regime for all types of public procurements for the allocation of IPR ownership rights. Spanish innovation procurement guidelines don't inform public procurers about the benefits leaving IPR ownership with suppliers and keeping usage rights with the public procurer.¹⁶ Using such an approach that leaves IPR ownership with suppliers is also important in order to ensure compliance with the Spanish intellectual property rights act¹⁷ which determines that copyright belong in any case inalienably to the creator (moral rights cannot be waived or transferred, only economic rights may be transferred). The fact that a work has been commissioned (e.g. in a public procurement) does not alter the creator's rights. Copyright law protects also scientific work, software and database rights.
- Use of value for money award criteria:** According to the EU single market scoreboard, 70% of the procedures were awarded not only on the basis of the lowest price. This is significantly above 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 60% which is above the EU average of 40% but still below the satisfactory level set by the EU single market scoreboard. This is due to the fact that there is effort done on both sub-indicators, but not yet to the extent to reach the satisfactory level.

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

¹⁴ <http://formacio.eapc.gencat.cat/infoactivitats/AppJava/DetalleActividad.do?codi=10251&ambit=1&edicio=1&any=2017>

¹⁵ 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"

¹⁶ p. 123, 2° <https://boe.es/buscar/pdf/2017/BOE-A-2017-12902-consolidado.pdf>

¹⁷ http://www.wipo.int/wipolex/en/text.jsp?file_id=469891

- c. **Level of competition:** The level of competition of the national public procurement market is 85% which is slightly above the EU average 84% but still below the 92,5% satisfactory level set by the EU single market scoreboard. This result is due to the fact that the percentage of procurements where a call for bid was used is below EU average (92%) and the percentage of procurements with more than one bidder (77%) is slightly above EU average but still below the satisfactory level set by the EU single market scoreboard.
- d. **Level of transparency:** The level of transparency of the public procurement market accounts for 46% which is slightly above the EU average 45% but still below the 66% satisfactory level set by the EU single market scoreboard. This result is due to fact that two sub-indicators – TED publication rate (1,6%) and amount of tenders without missing call for bids information (81%) - are below EU average whereas one sub-indicator – amount of procurements without missing buyer registration numbers (55%) – is above EU average. All three indicators are however below the satisfactory level set by the EU single market scoreboard.

Based on this evidence, the score for sub-indicator II is 65%, which corresponds to the EU average but still below the satisfactory level 79% set by the EU single market scoreboard.

Based on the scores for sub-indicators I and II, the total score for the indicator "innovation friendly public procurement market" is 63% which is above the 52% EU average but is below the satisfactory level for the total of the EU single market scoreboard indicators. This score is explained firstly by the fact that the use of specific techniques to foster innovation in the country is above EU average and the openness of the Spanish procurement market to innovations from across the EU single market is exactly on the EU average. Indeed, the country doing some effort to define a default IPR regime in public procurement and to increase the use of value for money criteria but not to a satisfactory level yet. In addition, although the national public procurement market shows slightly above EU average levels of competition and transparency, they are also not at the satisfactory level yet.